

TRI-PARTY COLLATERAL MANAGEMENT AGREEMENT  
(Collateralized Public Deposits)

**THIS AGREEMENT**, made and executed as of \_\_\_\_\_ between **CITY OF COLLEGE STATION** ("Public Entity"), Bank of America N.A. ("Bank of America") and The Bank of New York Trust Company, N.A. ("Bank of New York").

WITNESSETH

WHEREAS, Public Entity desires to maintain or continue to maintain public deposits with Bank of America;

WHEREAS, Bank of America desires to obtain or continue to maintain such deposits and to provide security therefor as required by applicable law, regulation or rule;

WHEREAS, Bank of America has pledged to Public Entity and granted Public Entity a security interest in certain securities to secure Public Entity's uninsured deposits with Bank of America as required by applicable law, regulation or rule;

WHEREAS, Bank of New York agrees to provide safekeeping services and to hold any securities pledged by Bank of America to Public Entity in trust in a separate custodial account maintained by Bank of New York in the name of Bank of America for the benefit and subject to the control of Public Entity as secured party pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth hereafter, the parties hereto agree as follows:

1. Security Requirements

(a) Bank of America, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by Public Entity, has deposited with Bank of New York certain Securities as more fully described in the initial confirmation or Trust Receipt of such deposit delivered by Bank of New York to Bank of America and Public Entity respectively. Pursuant to the Texas Business and Commerce Code, as amended, Bank of New York shall act as a bailee or agent of Public Entity and, to the extent not inconsistent therewith, hold Securities as a securities intermediary (as such term is defined in Chapter 8 of the Texas Business & Commerce Code, as amended) and in accordance with the provisions hereof. Bank of America shall deliver Securities to Bank of New York in the manner prescribed in Section 2 of this Agreement.

(b) Bank of New York, as agent of Public Entity, shall determine that the Securities to be transferred to the Account constitute Eligible Collateral and that any physical Securities are in negotiable form. Securities which are not Eligible Collateral and physical Securities which are not in negotiable form shall not be transferred to the Account.

(c) On each Business Day on which Public Entity has Uninsured Deposits with Bank of America, Bank of America agrees to deliver or cause to be delivered to Bank of New York for transfer to the Account Eligible Collateral having an Aggregate Margin Value equal or greater than the Collateral Requirement.

(d) On each Business Day Bank of America will notify Bank of New York electronically of the amount of Uninsured Deposits as of the close of business on the immediately preceding Business Day (the "Collateral Requirement"). Bank of New York will determine on each Business Day the Aggregate Margin Value of the Eligible Collateral provided pursuant to this Agreement. If the Aggregate Margin Value of such Eligible Collateral on any Business Day is less than the Collateral Requirement for such day, Bank of New York will so notify Bank of America as soon as possible on such day, and Bank of America shall, upon receipt of such notice, be required to deliver additional Eligible Collateral having an Aggregate Margin Value equal to or greater than such

deficiency as soon as possible but no later than the close of business of Bank of New York on the Business Day on which Bank of America received such notice. If Bank of New York notifies Bank of America on any Business Day that the Aggregate Margin Value of the Eligible Collateral provided pursuant to this Agreement exceeds the Collateral Requirement for such day, Bank of New York shall, at the direction of Bank of America, transfer from the Account to or for the benefit of Bank of America Eligible Collateral having an Aggregate Margin Value no greater than such excess amount. Bank of New York shall update its records of the Account as soon as possible and issue a Trust Receipt to Public Entity in accordance with the requirements of paragraph (f) below.

(e) Public Entity authorizes Bank of New York as its agent to approve substitutions of Eligible Collateral ("Substitute Collateral") supplied to Bank of New York by Bank of America for Eligible Collateral in the Account upon receipt of Oral Instructions or Written Instructions from Bank of America identifying by issuer, CUSIP number and par amount of the collateral to be substituted; provided, however, in no event shall Bank of New York permit any substitution unless Bank of New York shall have determined in each case that the Substitute Collateral (i) constitutes Eligible Collateral and (ii) has a Margin Value equal to or greater than the Margin Value of the Eligible Collateral to be substituted (each, an "Approved Substitution"). Following completion of each Approved Substitution Bank of New York shall update its records of the Account as soon as possible and issue a Trust Receipt to Public Entity in accordance with the requirements of paragraph (f) below. Public Entity approves each Approved Substitution, subject to its right pursuant to Section 2(c)(ii) to present and discuss with Bank of New York possible errors, omissions, and inaccuracies relating to any Approved Substitution.

(f) Bank of New York shall promptly issue a Trust Receipt to Public Entity on any Business Day on which Eligible Collateral is transferred to and from the Account. For the avoidance of doubt, it is understood and agreed that Trust Receipts may be combined to identify more than one transaction on any one Business Day and Bank of New York shall not be required to issue more than one Trust Receipt to Public Entity on any Business Day.

## 2. Custody of Securities

(a) Bank of America and Public Entity hereby appoint Bank of New York as custodian of all Securities and all Proceeds at any time delivered to or received by Bank of New York pursuant to this Agreement. Bank of New York hereby accepts appointment as such Bank of New York, agrees to establish and maintain the Account in the name of Bank of America for the benefit and subject to the control of Public Entity, and agrees to maintain appropriate records identifying the Securities and Proceeds as pledged by Bank of America to Public Entity. Securities and Proceeds in the Account shall be kept separate and apart from the general assets of Bank of New York on Bank of New York's books and records and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or liability of Bank of New York or any other person or entity. Subject to the terms hereof, Bank of New York, in performing its duties and responsibilities pursuant to this Agreement, shall act as custodian for, and agent of, Bank of America and Public Entity, as their respective interests may appear in the Account. The parties agree that all Securities held in the Account shall be treated as financial assets. For purposes of the Texas Business and Commerce Code, as amended, the security interest granted by Bank of America in the Eligible Collateral and Proceeds for the benefit of Public Entity is created, attaches, and is perfected for all purposes under Texas law from the time Bank of New York identifies the Pledge of any Eligible Collateral or Proceeds to Public Entity and issues a Trust Receipt to Public Entity for such Eligible Collateral or Proceeds. The security interest of Public Entity in Securities and all Proceeds thereof shall terminate upon the transfer of such Securities or Proceeds from the Account.

(b) Bank of America and Public Entity agree that Securities and Proceeds delivered to or received by Bank of New York for deposit in the Account may be in the form of credits to the accounts of Bank of New York at the Book Entry System or a Depository or by delivery to Bank of New York of physical certificates in a form suitable for transfer to Bank of New York or with an assignment in blank. Bank of America and Public Entity hereby authorize Bank of New York on a continuous and ongoing basis to deposit in the Book Entry System and/or the Depositories all Securities and Proceeds that may be deposited therein and to utilize the Book Entry System and/or Depositories and the receipt and delivery of physical Securities or any combination thereof in connection with its performance hereunder. Securities and Proceeds credited to the Account and deposited in the Book Entry System or Depositories will be represented in accounts that include only assets held by Bank of New York or its agent(s) for third parties, including but not limited to accounts in which assets are held in a fiduciary, agency or representative

capacity. Securities that are not held in the Book Entry System or Depositories will be held in Bank of New York's vault and physically segregated from securities and other non-cash property belonging to Bank of New York.

(c)(i) Upon the initial and each subsequent deposit of Eligible Collateral and Proceeds into the Account (including but not limited to any deposit of Eligible Collateral as part of an Approved Substitution), Bank of New York shall promptly provide Public Entity with a Trust Receipt. Additional customized Account statements may be available upon mutual agreement of Public Entity and Bank of New York.

(ii) Public Entity agrees that it shall promptly review all Trust Receipts and Account statements delivered to it by Bank of New York and shall promptly advise Bank of New York by Oral Instruction or Written Instruction of any error, omission or inaccuracy in such statements. In the event that Bank of New York receives such an Oral Instruction or Written Instruction identifying a specific concern with respect to the Aggregate Margin Value or any other matter connected with the Account, Bank of New York shall undertake to correct any errors, failures or omissions, provided that Bank of New York determines in its sole discretion that such error, failure or omission actually occurred and shall notify Public Entity of its action concerning each such error, failure, or omission.

(d) The Account shall not be subject to any security interest, lien or any right of set-off by Bank of New York.

(e) Public Entity agrees that, with respect to all Securities held in the Account, Bank of New York by itself, or through the use of the Book Entry System or the appropriate Depository, shall, unless otherwise instructed to the contrary by Bank of America or as provided in Section 3 hereof: (i) collect all payments reflecting interest and principal on the Securities in the Account and credit such amounts to the Account pending receipt from Bank of America, for deposit to the Account of additional Eligible Collateral having a Margin Value equal to or greater than the Margin Value of such payments; (ii) forward to Bank of America copies of all information or documents that it may receive from an issuer of Securities which, in the opinion of Bank of New York, is intended for the beneficial owner of the Securities including, without limitation all proxies and other authorizations properly executed and all proxy statements, notices and reports; (iii) execute, as Bank of New York, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons; (iv) hold directly, or through the Book Entry System or Depository, all rights issued with respect to any Securities held by Bank of New York hereunder; and (v) upon receipt of Written Instructions from Bank of America, Bank of New York will exchange Securities held hereunder for other securities and/or cash in connection with (A) any conversion privilege, reorganization, recapitalization, redemption in kind, consolidation, tender offer or exchange offer, or (B) any exercise, subscription, purchase or other similar rights; provided, however, such exchanged securities shall continue to be held by Bank of New York hereunder for the benefit of Public Entity if such exchanged securities constitute Eligible Collateral. Upon receipt of additional Eligible Collateral as provided in clause (i) in the immediately preceding sentence, Bank of New York shall transfer from the Account to or for the benefit of Bank of America principal and interest payments collected with respect to Securities in the Account.

(f) Bank of New York hereby agrees that Public Entity and, if permitted by law, the Comptroller of Public Accounts of the State of Texas (the "Comptroller") may inspect, at any time during regular business hours of Bank of New York, one or more definitive Securities on deposit in the Account or Bank of New York's books and records with respect to the Account. Bank of New York further agrees to file reports with the Comptroller regarding the Eligible Collateral and Proceeds pledged to secure the Uninsured Deposits of Public Entity hereunder, as and when required by the Comptroller.

### 3. Collection of Securities

If Public Entity certifies in writing to Bank of New York that (a) Bank of America is in default under any underlying pledge or security agreement between Public Entity and Bank of America and (b) Public Entity has satisfied any notice or other requirement to which Public Entity is subject pursuant to the Depository Agreement between Public Entity and Bank of America, then Public Entity may give Bank of New York Written Instructions (x) to transfer specific amounts and issues of Securities held in the Account and, if applicable, specific amounts of the Proceeds held in the Account which have not previously been released to Bank of America, to designated accounts of Public Entity and (y) to cease releasing to an account of Bank of America any Proceeds reflecting interest and principal on Securities in the Account as provided in paragraph (e) of Section 2.

4. Representation and Warranties

(a) Representations of Bank of America. Bank of America represents and warrants, which representations and warranties shall be deemed to be continuing, that:

- (i) this Agreement has been legally and validly entered into and is enforceable against Bank of America in accordance with its terms;
- (ii) the performance by Bank of America of its obligations under this Agreement does not and will not violate any statute or regulation applicable to Bank of America;
- (iii) Bank of America is the owner of, or has the right to pledge, Securities deposited in the Account;
- (iv) this Agreement was executed by an officer of Bank of America who was authorized by Bank of America's board of directors or a committee thereof to do so and will at all times be maintained as an official record of Bank of America;
- (v) Bank of America is a bank or trust company duly authorized to do business in the state where it is located; and
- (vi) all acts, conditions and things required to exist, happen or to be performed on its part precedent to and in the execution and delivery of this Agreement by it exist or have happened or have been performed.

(b) Representations of Public Entity. Public Entity hereby represents and warrants, which representations and warranties shall be deemed to be continuing, that:

- (i) this Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it and is enforceable against Public Entity in accordance with its terms;
- (ii) the appointment of Bank of New York has been duly authorized by Public Entity and this Agreement was executed by an officer of Public Entity duly authorized to do so;
- (iii) (A) all Securities identified on the Schedule of Eligible Collateral, attached hereto as Exhibit A, may be used to secure Public Entity's Uninsured Deposits under applicable statutes and regulations, (B) the applicable Margin Percentage for each such Security meets the requirements of such applicable statutes and regulations, (C) the governing board of Public Entity has approved a collateral policy which authorizes all such Securities to be used as Eligible Collateral, and (D) such collateral policy complies with all applicable statutes and regulations;
- (iv) it will not sell, transfer, assign, convey, pledge, or otherwise dispose in whole or in part its interests in or the rights with respect to any Securities deposited in the Account, or the Proceeds thereof, except as permitted in Section 3 of this Agreement; and
- (v) all acts, conditions and things required to exist, happen or to be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed.

5. Concerning Bank of New York

(a) Bank of New York shall not be liable for any loss or damage, including counsel fees, resulting from its action or omission to act or otherwise, except for any loss or damage arising out of its own negligence or

willful misconduct, and shall have no obligation hereunder for any loss or damage, including counsel fees, which are sustained or incurred by reason of any action or inaction by the Book Entry System or any Depository. In no event shall Bank of New York be liable to Public Entity, Bank of America or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement. Bank of New York may, with respect to questions of law, apply for and obtain the advice and opinion of counsel and shall be fully protected with respect to anything done or omitted by it in good faith and conformity with such advice or opinion. Both Public Entity, to the extent permitted by law, and Bank of America agree to indemnify Bank of New York and to hold it harmless against any and all costs, expenses, damages, liabilities or claims, including reasonable fees and expenses of counsel, which Bank of New York may sustain or incur with respect to any third party claim or which may be asserted by a third party against Bank of New York by reason of or as a result of any action taken or omitted by Bank of New York in connection with operating under this Agreement, except those costs, expenses, damages, liabilities or claims arising out of the negligence or willful misconduct of Bank of New York or any of its employees or duly appointed agents. This indemnity shall be a continuing obligation of Public Entity and Bank of America notwithstanding the termination of this Agreement.

(b) Bank of New York shall not be responsible for, or considered to be custodian of, any Securities or Proceeds received by it for deposit in the Account until Bank of New York actually receives and collects such Securities or Proceeds directly or by the final crediting of Bank of New York's account on the books of the Book Entry System or the appropriate Depository. Bank of New York will be entitled to reverse any credits to the Account where such credits have been previously made and the Securities or Proceeds are not finally collected.

(c) Bank of New York shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement and no covenant or obligation shall be implied against Bank of New York in connection with this Agreement.

(d) Public Entity's and Bank of America's authorized officers and, if permitted by law, representatives of the Comptroller, upon reasonable notice, shall each have access to Bank of New York's books and records maintained with respect to Public Entity's and Bank of America's respective interests in the Account during Bank of New York's normal business hours. Upon the reasonable request of Public Entity, Bank of America or the Comptroller when applicable law permits, copies of any such books and records shall be provided by Bank of New York to the requesting party's authorized officer at the requesting party's expense.

(e) In performing hereunder, Bank of New York may enter into subcontracts, agreements and understandings with third parties whenever and on such terms and conditions as it deems necessary or appropriate. If any of such subcontracts, agreements, or understandings with third parties are for the deposit of Eligible Collateral for the benefit of Public Entity, (i) such third party will qualify as a "permitted institution" pursuant to the Texas Public Funds Collateral Act, (ii) Bank of New York shall cause such third party to provide records to Bank of New York evidencing the deposit of Eligible Collateral with such third party, and (iii) records of the third party relating to such Eligible Collateral will at all times state the name of Bank of New York. No such subcontract, agreement or understanding shall discharge Bank of New York from its obligations hereunder.

(f) Reliance on Pricing Services. Bank of New York is authorized to utilize one or more generally recognized pricing information services (including brokers and dealers of securities) in order to provide Market Values hereunder, and Bank of America and Public Entity agree that Bank of New York shall not be liable for any loss, damage, expense, liability or claim (including attorneys' fees) incurred as a result of errors or omissions of any such pricing information service, broker or dealer.

(g) Force Majeure. Bank of New York shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, loss or malfunctions of utilities, computer (hardware or software) or communications service, labor disputes, acts of civil or military authority, or governmental, judicial or regulatory action; provided however, that Bank of New York shall use its best efforts to resume normal performance as soon as practicable under the circumstances.

## 6. Termination

Any of the parties hereto may terminate this Agreement by giving to the other parties a notice in writing specifying the date of such termination, which shall be the earlier of (i) not less than 90 days after the date of giving such notice or (ii) the date on which the Deposits are repaid in full. Such notice shall not affect or terminate Public Entity's security interest in the Eligible Collateral and Proceeds in the Account. Upon termination hereof, Bank of New York shall follow such reasonable Written Instructions of Bank of America and Public Entity concerning the transfer of custody of Securities and Proceeds in the Account, collateral records and other items. Upon the date set forth in the termination notice, this Agreement shall terminate except as otherwise provided herein and all obligations of the parties to each other hereunder shall cease.

7. Confidentiality

Bank of New York agrees to hold in strict confidence all information furnished to or obtained by Bank of New York in the course of providing custodial services under this Agreement except to the extent (a) such information was in the possession of Bank of New York prior to receipt thereof by Bank of New York under this Agreement and not subject to an agreement of confidentiality, (b) such information was in the public domain prior to receipt thereof by Bank of New York under this Agreement, (c) subsequent to receipt by Bank of New York such information becomes available in the public domain through no fault of Bank of New York, (d) disclosure or release is required by law or otherwise compelled by judicial or administrative process, (e) in the opinion of Bank of New York's counsel disclosure of such information is required to be made to regulatory or self-regulatory authorities having authority to regulate any aspect of Bank of New York's business in connection with the exercise of such authority, (f) disclosure is made to Bank of New York's officers, employees, directors, agents, counsel, or auditors having a need to know such information and who have been informed of the requirements of this section and have agreed to be bound thereby, (g) disclosure is made in accordance with the written consent of the party disclosing such information to Bank of New York, or (h) the name, address, securities position and other information of Bank of America or Public Entity or both are required to be disclosed by the rules of any stock exchange, the Book-Entry System or any Depository or the terms of the organizational documents of the issuer of any Security or the terms of any Security itself.

8. Miscellaneous

(a) Public Entity and Bank of America each agree to furnish to Bank of New York a new Certificate substantially in the form of Exhibit B and Exhibit C, respectively, attached hereto in the event that any present Authorized Person ceases to be an Authorized Person or in the event that any other Authorized Persons are appointed and authorized. Until such new Certificate is received, Bank of New York shall be fully protected in acting upon Oral Instructions or Written Instructions or signatures of the present Authorized Persons.

(b) Bank of New York shall be entitled to rely upon any Certificate, Written or Oral Instruction actually received by Bank of New York and reasonably believed by Bank of New York to be duly authorized and delivered. Bank of America and Public Entity each agree to send to Bank of New York Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to Bank of New York. Bank of America and Public Entity each agree that the fact that such confirming Written Instructions are not received or that contrary Written Instructions or Oral Instructions are received by Bank of New York shall in no way affect the validity or enforceability of the transactions previously authorized and effected by Bank of New York.

(c) Any Written Instructions or other instrument in writing authorized or required by this Agreement shall be given to Bank of New York and shall be sufficiently given if sent to Bank of New York by regular mail to its offices at c/o The Bank of New York, One Wall Street, 5<sup>th</sup> Floor, New York, NY 10286, Attn: John Vinci, Vice President, or at such other place as Bank of New York may from time to time designate in writing.

(d) Any notice or other instrument in writing authorized or required by this Agreement to be given to Bank of America shall be sufficiently given if sent to Bank of America by regular mail to its offices at 200 N. College Street, NC1-004-03-06, Charlotte, NC 28255-0001, Attn: Collateral Management, or at such other place as Bank of America may from time to time designate in writing.

(e) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Public Entity shall be sufficiently given if sent to Public Entity by regular mail to its offices at City of College Station 1101 Texas Ave College Station, TX 77842 Attn: \_\_\_\_\_, or at such other offices as Public Entity may from time to time designate in writing.

(f) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and unenforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

(g) This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties hereto.

(h) This Agreement shall extend to and be binding upon the parties hereto, and their respective successors and assigns; provided however, that this Agreement shall not be assignable by any party without the written consent of the other parties.

(i) This Agreement shall be construed in accordance with the substantive laws of the State of Texas, without regard to conflicts of laws principles thereof. In connection with any dispute arising hereunder, Bank of America, Public Entity and Bank of New York hereby consent to the non-exclusive jurisdiction of a state or federal court situated in the county in the State of Texas in which Public Entity maintains its principal office. Bank of America, Public Entity and Bank of New York hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum. Bank of America, Public Entity and Bank of New York each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

9. Waiver of Immunity. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, each party irrevocably agrees, to the extent permitted by law, not to claim, and it hereby waives, such immunity in connection with this Agreement.

10. Definitions.

Whenever used in this Agreement, the following terms shall have the following meanings:

(a) "Account" shall mean the separate custodial account established with Bank of New York in the name of Bank of America and for the benefit and subject to the control of Public Entity as secured party in accordance with this Agreement.

(b) "Aggregate Margin Value" shall mean for each Business Day the sum of the Margin Values of the Securities and Proceeds comprising the Eligible Collateral in the Account at the time of Bank of New York's determination.

(c) "Authorized Person" shall be any officer of Public Entity or Bank of America, as the case may be, duly authorized to give Oral Instructions or Written Instructions on behalf of Public Entity or Bank of America, such persons to be designated in a Certificate substantially in the form of Exhibit "B" for Public Entity or Exhibit "C" for Bank of America attached hereto as such exhibits may be amended from time to time.

(d) "Approved Substitution" shall have the meaning set forth in paragraph (e) of Section 1 of this Agreement.

(e) "Book-Entry System" shall mean the Federal Reserve/Treasury Book Entry System for receiving and delivering U.S. Government Securities.

(f) "Business Day" shall mean any day on which Bank of New York and Bank of America are open for business and on which the Book Entry System and/or the Depositories are open for business.

(g) "Certificate" shall mean the Certificate attached hereto as Exhibit "B" or Exhibit "C".

(h) "Collateral Requirement" shall have the meaning set forth in paragraph (d) of Section 1 of this Agreement.

(i) "Comptroller" shall have the meaning set forth in paragraph (f) of Section 2 of this Agreement.

(j) "Depository" or Depositories shall mean the Depository Trust Company and other securities depositories and clearing agencies (and their successors and nominees) registered with the Securities and Exchange Commission as a clearing agency or otherwise regulated by appropriate federal or state agencies as a clearing corporation.

(k) "Deposits" shall mean all deposits by Public Entity in Bank of America, including all accrued interest thereon, that are available for all uses generally permitted by Bank of America to Public Entity for actually and finally collected funds under the Bank of America's account agreement or policies.

(l) "Eligible Collateral" shall mean any Securities of the types enumerated in the Schedule of Eligible Collateral (which types are in compliance with the collateral policy adopted and approved by the governing body of Public Entity) attached hereto as Exhibit "A", as such exhibit may be amended from time to time pursuant to a written amendment signed by each of the parties hereto, and any Proceeds thereof.

(m) "Margin Percentage" shall mean the percentage indicated on Exhibit "A" attached hereto with respect to particular types of Eligible Collateral, as such exhibit may be amended from time to time pursuant to a written amendment signed by each of the parties thereto.

(n) "Margin Value" means for each Security and Proceeds thereof held in the Account, the Market Value of such Security and Proceeds divided by the applicable Margin Percentage.

(o) "Market Value" shall mean (i) with respect to any Security held in the Account, the market value of such Security as made available to Bank of New York by a generally recognized source selected by Bank of New York plus, if not reflected in the market value, any accrued interest thereon, or, if such source does not make available a market value, the market value shall be as determined by Bank of New York in its sole discretion based on information furnished to Bank of New York by one or more brokers or dealers and (ii) with respect to any cash held in the Account, the face amount of such cash.

(p) "Oral Instructions" shall mean verbal instructions actually received by Bank of New York from an Authorized Person or from a person reasonably believed by Bank of New York to be an Authorized Person.

(q) "Proceeds" shall mean any principal or interest payments or other distributions made in connection with Eligible Collateral and anything acquired upon the sale, lease, license, exchange or other disposition of Eligible Collateral.

(r) "Security" shall include, without limitation, any security held in the Book-Entry System or at a Depository, common stock and other equity securities, bonds, debentures and other debt securities, notes, mortgages or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein.

(s) "Substitute Collateral" shall have the meaning set forth in paragraph (e) of Section 1 of this Agreement.

(t) "Trust Receipt" shall mean evidence of receipt, identification, and recording, including a written or electronically transmitted advice or confirmation of transaction or statement of account. Each advice or confirmation of transaction shall identify the Eligible Collateral which is the subject of the transaction and state the Market Value

thereof. Statements of account shall identify all Eligible Collateral in the Account, the Aggregate Margin Value thereof, and the applicable Collateral Requirement.

(u) "Uninsured Deposits" shall mean that portion of Public Entity's Deposits with Bank of America which exceeds the insurance coverage available from the Federal Deposit Insurance Corporation.

(v) "Written Instructions" shall mean written communications actually received by Bank of America or Bank of New York from an Authorized Person or from a person reasonably believed by Bank of America or Bank of New York to be an Authorized Person by a computer, telex, telecopier or any other system whereby the receiver of such communications is able to verify by codes or otherwise with a reasonable degree of certainty the identity of the sender of such communication.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their respective seals to be hereunto affixed, as of the day and year first above written.

**CITY OF COLLEGE STATION**  
**[PUBLIC ENTITY]**

**THE BANK OF AMERICA N.A.**

\_\_\_\_\_

Daniel A. Van Vorst

By: Ron Silvia

By: [Signature]

Title: Mayor

Title: V.P.

**THE BANK OF NEW YORK TRUST  
COMPANY, N.A.**

By: [Signature]

Title: MANAGING DIRECTOR

ATTEST:

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

APPROVED:

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

*Carla Robinson*  
\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

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

**EXHIBIT A**  
**SCHEDULE OF ELIGIBLE SECURITIES**  
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Custodial Undertaking in Connection with Tri-Party Collateral Management Agreement dated as of \_\_\_\_\_, among **CITY OF COLLEGE STATION** ("Public Entity"), Bank of America N.A. ("Bank of America") and The Bank of New York Trust Company, N.A. ("Bank of New York").

SECURITY TYPE	YES	MARGIN <i>(e.g.: 100)</i>	OTHER RESTRICTIONS <i>(e.g.: Ratings: A or better, Maturity &lt;10 yrs.)</i>
<b><u>U.S. TREASURIES</u> - ALL</b>			
Bills	X	105	
Bonds	X	105	
Notes	X	105	
Inflation-Indexed Notes	X	105	
Inflation-Indexed Bonds	X	105	
Strips			
Synthetic Treasuries (e.g CATS, TIGRS)			
<b><u>GNMA</u> - ALL</b>			
GNMA I/II - Single Family	X	105	
GNMA I/II - Others Fixed Rate			
GNMA I/II - Others Adjustable Rate			
<b><u>AGENCY NOTES/BONDS</u> - ALL</b>			
Export-Import Bank	X	105	Ratings: AAA
Federal Agricultural Mortgage Corp			
Financial Assistance Corp			
Federal Farm Credit Banks			
Federal Housing Administration			
Federal Home Loan Banks			
Federal Home Loan Mortgage Corp			
Financing Corporation			
Federal Land Bank Bonds			
Federal National Mortgage Association			
Resolution Funding Corp			
Student Loan Marketing Association			
Tennessee Valley Authority			
Overseas Private Investment Corp			
Small Business Administration			
U.S. Agency for International Development			
U.S. States Postal Service			
<i>AGENCY STRUCTURED NOTES</i>			

**EXHIBIT A**  
**SCHEDULE OF ELIGIBLE SECURITIES**  
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SECURITY TYPE	YES	MARGIN <i>(e.g.: 100)</i>	OTHER RESTRICTIONS <i>(e.g.: Ratings: A or better, Maturity &lt;10 yrs.)</i>
<b><u>INTERNATIONAL AGENCIES</u> - ALL</b>			
Asian Development Bank			
African Development Bank			
Inter-American Development Bank			
<b><i>World Bank</i></b>			
International Bank for Reconstruction and Development			
International Finance Corporation			
<b><u>AGENCY MORTGAGE -BACKED</u> - ALL</b>			
Pass Throughs-Fixed Rate			
Pass Throughs-Adjust. Rate			
MBS Strips (IO, PO, Recomb)			
Trust Receipts			
<b><u>AGENCY CMO or REMICS</u> - ALL</b>			
Residuals			
Inverse IO Floaters			
IOettes			
Interest Only (IO)			
Principal Only (PO)			
Inverse Floaters			
Companion Floaters			
Sequential Floaters			
Pac & Other Sequential Floaters			
Z Bonds			
Companion Bonds			
Sequential Bonds			
TAC Bonds			
PAC & Other Scheduled Bonds			
<b><u>MUNICIPAL NOTE S and BONDS</u> - ALL</b>			
G.O. bonds of any state			
G.O. bonds limited to state of:			
Revenue bonds of any state			
Revenue bonds limited to state of:			
<b><u>PRIVATE LABELS MBS &amp; CMOS</u> - ALL</b>			
MBS Pass Throughs			
<b><i>CMO TYPES:</i></b>			
Residuals			
Inverse IO Floaters			
IOettes			

**EXHIBIT A  
SCHEDULE OF ELIGIBLE SECURITIES  
Page 3 of 3**

<b>SECURITY TYPE</b>	<b>YES</b>	<b>MARGIN</b> <i>(e.g.: 100)</i>	<b>OTHER RESTRICTIONS</b> <i>(e.g.: Ratings: A or better, Maturity &lt;10 yrs.)</i>
<b><u>PRIVATE LABELS MBS &amp; CMOS</u></b> - cont.			
Interest Only (IO)			
Principal Only (PO)			
Inverse Floaters			
Companion Floaters			
Sequential Floaters			
PAC & Other Sequential Floaters			
Z Bonds			
Companion Bonds			
Sequential Bonds			
TAC Bonds			
PAC & Other Scheduled Bonds			
<b><u>ASSET BACKED SECURITIES</u></b> - ALL			
Asset Backed Securities			
<b><u>CORPORATES</u></b> - ALL			
Domestic Rated AAA			
Domestic Rated AA			
Domestic Rated A			

PUBLIC ENTITY ACKNOWLEDGES AND AGREES THAT IF A CLASS OF SECURITY CONTAINS NEW ISSUES OF SECURITIES, SUCH NEW ISSUES OF SECURITIES SHALL BE DEEMED TO BE ELIGIBLE SECURITIES.

[PUBLIC ENTITY]  
**CITY OF COLLEGE STATION**

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By: \_\_\_\_\_  
[SIGNATURE]

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

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

[BANK OF AMERICA]  
**BANK OF AMERICA N.A.**

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By: *[Signature]*  
[SIGNATURE]

Title: *V. P.*

Date: *10-5-05*

[BANK OF NEW YORK]  
**THE BANK OF NEW YORK TRUST COMPANY, N.A.**

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By: *[Signature]*  
[SIGNATURE]

Title: *MANAGING DIRECTOR*

Date: *10/3/05*

**EXHIBIT B  
 CERTIFICATE OF AUTHORIZED PERSONS  
 (Public Entity - Oral and Written Instructions)**

The undersigned hereby certifies that he/she is the duly elected and acting   MAYOR   of   CITY OF COLLEGE STATION   (the "Public Entity"), and further certifies that the following officers or employees of Public Entity have been duly authorized in conformity with the Public Entity's   RESOLUTION NO. \_\_\_\_\_   to deliver Oral and Written Instructions to The Bank of New York Trust Company, N.A. ("Bank of New York") pursuant to the Tri-Party Collateral Management Agreement among Public Entity, Bank of America N.A. ("Bank of America") and Bank of New York dated \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

<u>Glenn Brown</u> Name	<u>Interim City Manager</u> Title	_____ Signature
<u>Jeffrey Kersten</u> Name	<u>Director of Finance and Strategic Planning</u> Title	_____ Signature
<u>Irene Jett</u> Name	<u>Assistant Director of Fin. and Strat. Planning</u> Title	_____ Signature
<u>Phillip Guillen</u> Name	<u>Accounting Manager</u> Title	_____ Signature
_____ Name	_____ Title	_____ Signature

This certificate supersedes any certificate of authorized individuals you may currently have on file.

[corporate seal]

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

Title: Mayor

Date:

**EXHIBIT C**  
**CERTIFICATE OF AUTHORIZED PERSONS**  
**(Bank of America - Oral and Written Instructions)**

The undersigned hereby certifies that he/she is the duly elected and acting Assistant Corporate Secretary of Bank of America NA (the "Bank of America"), and further certifies that the following officers or employees of Bank of America have been duly authorized in conformity with Bank of America's Articles of Incorporation and By-Laws to deliver Oral and Written Instructions to The Bank of New York Trust Company, N.A. ("Bank of New York") pursuant to the Tri-Party Collateral Management Agreement among Bank of America, \_\_\_\_\_ and Bank of New York dated \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

<u>Bert L. Harper</u> Name	<u>Senior Vice President</u> Title	 Signature
<u>Daniel A. VanVooren</u> Name	<u>Vice President</u> Title	 Signature
<u>Barry Hagan</u> Name	<u>Vice President</u> Title	 Signature
<u>Sudhir C. Patel</u> Name	<u>Vice President</u> Title	 Signature
<u>Linda P. Grant</u> Name	<u>Vice President</u> Title	 Signature
<u>Richard M. Marelli</u> Name	<u>Assistant Vice President</u> Title	 Signature
 Name	 Title	 Signature
 Name	 Title	 Signature

This certificate supersedes any certificate of authorized individuals you may currently have on file.

[corporate  
seal]

\_\_\_\_\_  
Allison Gilliam

Title: ASSISTANT CORPORATE SECRETARY

Date: