

**July 2006**

**To: Chief Fiscal Officers**

**From: Division of Local Government Services and Economic Development**

**Subject: Model Custodial Agreement for Use with Collateral Pools**

**Please give copies of this bulletin to others who may need this information.**

Section 10 of the New York State General Municipal Law was amended in 2005 to authorize an additional option for local governments to secure deposits and temporary investment of public funds. Under the new law, local governments have the option to accept as security a pledge of a pro rata portion of a “pool” of eligible securities. Local governments that choose to utilize the new pooled collateral option must take necessary steps to ensure that their deposits and investment are properly secure.

The Office of the State Comptroller (OSC) is required to provide model security and custodial agreements to local governments, and attached is a memorandum and model three-party agreement prepared by our Legal Division for your use. Please note that this is only a model - local governments are not required to use it – and that we strongly advise you to consult with the local government’s legal counsel before entering into any investment agreement. In addition, local governments that intend to use the pooling method should review their investment policies and determine whether any corresponding amendments to those policies will be necessary.

Questions concerning the new model agreement may be directed to Monica Norris of the Comptroller’s Division of Legal Services at 518-474-4737.

## **Security-Custodial Agreement for Use with Collateral Pool**

Section 10 of the New York State General Municipal Law was amended in 2005 to authorize an additional option for local governments to secure deposits and temporary investment of public funds (Chapter 545 of the Laws of 2005).

Prior to this amendment, local governments were required to secure their deposits and investments, to the extent they exceed the Federal Deposit Insurance Corporation coverage and are not secured by an eligible letter of credit or surety bond, by a pledge of specific eligible securities having an aggregate market value at least equal to the aggregate amounts of their deposits and investments. Under the new law, local governments now have the option to accept as security for deposits and investments a pledge of a pro rata portion of a “pool” of eligible securities (“pooling method”). The new legislation requires that the local government’s security agreement with the depository bank or trust company include all provisions deemed “necessary and sufficient to secure in a satisfactory manner the local government’s interest” in the pool.<sup>1</sup>

The State Comptroller is charged with providing model security and custodial agreements, and a model investment policy, for local governments to assist and guide them in formulating their own agreements and policies (L 1992, ch 708, §44). In response to the new legislation, OSC has provided the attached three-party “*Security-Custodial Agreement for Use with Collateral Pool*” in connection with the new pooling method.

Please note, however, that this is only a model agreement and local governments are not required to enter into identical agreements. As a result, we strongly advise local governments that intend to utilize the pooling option to consult with their legal counsel before using this model agreement, either in its present form or with any modifications. In addition, local governments that intend to use the pooling method should review their investment policies and determine whether any corresponding amendments to the policy will be necessary.

Questions concerning the new model agreement may be directed to Monica Norris of the Comptroller’s Division of Legal Services at 518-474-4737.

---

<sup>1</sup> Note that the 2005 legislation also repealed important provisions in General Municipal Law §10 that expressly had required that (1) unless registered or inscribed in the name of the local government, pledged securities be delivered in a form suitable for transfer or with an assignment in blank to the local government or to a bank or trust company with which the local government has entered into a written custodial agreement and (2) custodial agreements provide that the pledged securities not be commingled with or become part of the backing of any other deposit or other bank liability. Notwithstanding the repeal of the mandatory language in section 10, we believe custodial and security agreements should continue to contain provisions addressing these two matters.

**SECURITY- CUSTODIAL AGREEMENT FOR USE WITH COLLATERAL POOL**

THIS AGREEMENT, made and executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between \_\_\_\_\_ [INSERT NAME OF LOCAL GOVERNMENT], located in the County of \_\_\_\_\_, State of New York ("Local Government"), \_\_\_\_\_ [INSERT NAME OF BANK OR TRUST COMPANY] having offices at \_\_\_\_\_, New York ("Bank") and \_\_\_\_\_ [INSERT NAME OF CUSTODIAN], having offices at \_\_\_\_\_, New York ("Custodian").

W I T N E S S E T H

WHEREAS, the Local Government has designated the Bank for the deposit and investment of public funds; and

WHEREAS, the Local Government desires to maintain or continue to maintain Deposits with the Bank, which Deposits from time to time will aggregate in excess of the amount insured under the provisions of the Federal Deposit Insurance Act; and

WHEREAS, the Local Government desires to have its Deposits in excess of the amount insured under the provisions of the Federal Deposit Insurance Act secured by a pledge of an undivided pro rata portion of a pool of Eligible Securities in accordance with General Municipal Law ("GML") Section 10; and

WHEREAS, the Bank has offered to secure the Local Government's Deposits by pledging to the Local Government an undivided pro rata portion of a pool of Eligible Securities, such pool to be held by a custodian that is not directly or indirectly controlling, controlled by or under common control with the Bank; and

WHEREAS, the Custodian agrees to provide safekeeping services and to hold all Pool Assets in a custodial account established for the benefit of all the Participating Local Governments; and

WHEREAS, the Local Government and the Bank intend by this agreement to give control to the Local Government in a pro rata portion of the pool in order to effectuate for the Local Government a perfected security interest, under the Uniform Commercial Code, in such pro rata portion of the pool.

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

1. (Option A) Schedule of Anticipated Deposits and Collateral Requirements  
Attached as Exhibit "A" hereto is a schedule of the maximum amount of the Deposits anticipated by the Local Government and the Bank during each \_\_\_\_\_ [Insert month or other period] through \_\_\_\_\_ and the Collateral Requirement to be provided by the Bank during each such \_\_\_\_\_ [Insert month or other period].

The obligation of the Bank to pledge an undivided pro rata portion of Pool Assets pursuant to this Agreement shall not be less than the Collateral Requirement shown in Exhibit "A" unless the Bank requests and obtains the Local Government's written consent at least \_\_\_\_\_ Business Days before the Collateral Requirement is reduced. The Local Government and Bank, at any time during the term of this Agreement, may agree to amend Exhibit "A". Any such amendments to either increase or decrease the Collateral Requirements shown in Exhibit "A" shall be confirmed in writing by the parties at least \_\_\_\_\_ Business Days before the new Collateral Requirement becomes effective. A copy of amendments made pursuant to this section shall be furnished to the Custodian.

(Option B) Collateral Requirements

The obligation of the Bank to pledge an undivided pro rata portion of the Pool Assets pursuant to this Agreement shall not be less than the Collateral Requirement described in Exhibit "A".

2. Security Requirements.

- a. The Bank, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by the Local Government, including any interest due thereon, and any costs or expenses arising out of the collection of such Deposits upon default, agrees to provide the Local Government with a pledge of an undivided pro rata portion of Pool Assets.
- b. The Bank agrees that the Total Adjusted Market Value of the Pool Assets shall at all times be no less than one hundred two percent (102%) of the total of the Collateral Requirements for all Uninsured Deposits made to the Bank from all Participating Local Governments. It shall be the duty of the Bank to maintain, continuously, the required Total Adjusted Market Value of Pool Assets and to carry in its accounting records at all times a general ledger or other appropriate account of the total amount of Deposits of all Participating Local Governments required to be secured by pledges of pro rata portions of such Pool Assets, and the total Adjusted Market Value of all Eligible Securities that constitute Pool Assets. The total collateral requirement for such Deposits of all Participating Local Governments required to be secured by pledges of pro rata portions of the Pool Assets shall be determined as of the cut off hour of the banking day, as determined under the Uniform Commercial Code, but no later than 2 p.m. eastern time.
- c. Whenever collateral is provided pursuant to this section, the Bank hereby grants to the Local Government a pledge of and security interest in and to an undivided pro rata portion of Pool Assets. The share of Pool Assets so pledged shall be in the proportion that the total amount of the Collateral Requirement for the Local Government's Uninsured Deposits so secured by Pool Assets bears to the total amount of uninsured deposits of all Participating Local Governments similarly so

secured. Evidence of the Local Government's undivided pro rata portion of Pool Assets shall be maintained in the Account. The security interest of the Local Government in the pro rata portion of the Pool Assets shall terminate upon the transfer of such pro rata portion of Eligible Securities from the Account consistent with the terms of this Agreement.

- d. The Custodian will daily determine the Adjusted Market Value of all the Eligible Securities that comprise the Pool Assets and the Local Government's undivided pro rata portion thereof as provided pursuant to this Agreement. If the Total Market Value of Pool Assets is less than one hundred two percent (102%) of the total of the Collateral Requirements for all Uninsured Deposits made to the Bank from all Participating Local Governments, the Custodian shall so notify the Bank and the Bank shall, upon such notice, immediately provide additional Eligible Securities having an Adjusted Market Value equal to or greater than such deficiency. If the Adjusted Market Value of the Pool Assets provided pursuant to this Agreement exceeds the Collateral Requirement, the Custodian, at the direction of the Bank, shall transfer securities from the Account to the Bank, to the extent of such excess.
- e. The Bank may substitute Eligible Securities ("Substitute Collateral") for any Eligible Securities constituting Pool Assets previously pledged to Participating Local Governments, provided the Substitute Collateral has an Adjusted Market Value equal to or greater than the Eligible Securities which it will replace and at all times meets the provisions set forth herein governing Eligible Securities, provided, however, that the custodian may reject the substitution if it determines that the securities provided for substitution are not Eligible Securities, do not have an Adjusted Market Value equal to or greater than the Eligible Securities which they would replace or do not otherwise meet the requirements set forth herein governing Eligible Securities. Substitute Collateral will be transferred by the Custodian to the Bank upon receipt of the required Eligible Securities for which substitution is being made, in accordance with the following: The Bank shall give Written Notice to the Custodian of any proposed substitution. In the event that the Custodian determines that the Substitute Collateral described in such notice consists exclusively of Eligible Securities having sufficient Adjusted Market Value, the Custodian, at the direction of the Bank, shall transfer the Eligible Securities out of the Account to the Bank against delivery to the Account by the Bank on the same Business Day of the Substitute Collateral.
- f. The Custodian, to the extent not contained in the confirmation required by paragraph c of section 3 of this Agreement, shall, upon request, provide each Participating Local Government with a written confirmation setting forth: (1) a complete description of Eligible Securities provided, reduced or transferred to or from the Account pursuant to this section; and (2) the Market Value and Adjusted Market Value of such Eligible Securities as of the date of such transaction.

- g. The Bank certifies that it will maintain separate and complete records related to all Pool Assets. Such records shall be reconciled to the records of the Custodian daily. The books, accounts and collateral records of the Bank and the Custodian, shall be open at all times to the inspection of the Local Government or their authorized representatives. The Bank shall provide all reports required by the Local Government and shall authorize its Trustee, if any, to provide any requested information to the Local Government or their authorized representatives. In addition, the Bank and Custodian shall have an independent audit of their books, accounts and records relating to the collateral conducted annually and such annual audit report shall be made available to the Local Government or their authorized representatives.

3. Custody of Eligible Securities

- a. The Bank and Local Government hereby appoint the Custodian as custodian of all Eligible Securities that constitute Pool Assets at any time delivered to the Custodian pursuant to this Agreement. The Custodian hereby accepts appointment as such Custodian and agrees to establish and maintain the Account and appropriate records identifying the undivided pro rata portion of Pool Assets as pledged by the Bank to the Local Government. The Pool Assets and Account shall be kept separate and apart from the general assets of the Custodian. The Custodian, in performing its duties and responsibilities pursuant to this Agreement, shall act exclusively as Custodian for, and agent of, the Local Government.
- b. The Bank and Local Government agree that the Local Government's undivided pro rata portion of Pool Assets held by the Custodian in the Account may be in the form of credits to the accounts of the Custodian at the Book Entry System or a Depository or by delivery to the Custodian of physical certificates in a form suitable for transfer or with an assignment in blank to the Local Government or Custodian. The Bank and Local Government hereby authorize the Custodian on a continuous and ongoing basis to deposit in the Book Entry System and/or the Depositories all Eligible Securities 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. Pool Assets held in the Account and deposited in the Book Entry System or Depositories or other financial intermediaries will be represented in accounts of the Custodian of the type that shall include only assets held by the Custodian for customers, including but not limited to accounts in which the Custodian acts in a fiduciary, agency or representative capacity. Pool Assets that are not held in the Book Entry System, Depositories or through another financial intermediary will be held in the Custodian's vault and physically segregated from securities and other non-cash property belonging to the Custodian.
- c. The Custodian shall provide the Bank with a written confirmation on each Business Day on which Eligible Securities are transferred to and from the

Account. Upon request, the Custodian shall provide the Local Government with a written confirmation of Eligible Securities that are transferred to and from the Account. Such confirmation shall identify the specific securities which are subject to the confirmation and state both the Market Value and Adjusted Market Value thereof. The Custodian shall also provide the Local Government and the Bank each \_\_\_\_\_ [Insert month or more frequent other period] with a statement identifying all the Eligible Securities constituting Pool Assets, the Market Value and Adjusted Market Value thereof as of the date of such statement, as well as the total amount of Collateral Requirements for all Uninsured Deposits made to the Bank from all Participating Local Governments and the Adjusted Market Value of the Local Government's undivided pro rata portion of the Total Adjusted Value of Pool Assets, as of the date of the statement.

- d. An amount equal to the Local Government's undivided pro rata portion of Pool Assets in the Account shall remain pledged to the Local Governments and shall not be subject to any security interest, lien or any right of set-off by or against the Custodian.
- e. With respect to any Eligible Securities constituting Pool Assets held in the Account, the Custodian, by itself, or through the use of the Book Entry System or the appropriate Depository, shall, unless otherwise instructed to the contrary by the Bank: (i) collect all income and other payments reflecting interest and principal on such Eligible Securities in the Account and credit such amounts to the account of the Bank; (ii) forward to the Bank copies of all information or documents that it may receive from an issuer of any Eligible Securities constituting Pool Assets which, in the opinion of the Custodian, are intended for the beneficial owner of such Eligible Securities, including, without limitation all proxies and other authorizations properly executed and all proxy statements, notices and reports; (iii) execute, as Custodian, 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 Eligible Securities constituting Pool Assets by the Custodian hereunder; and (v) upon receipt of written instruction from the Bank, the Custodian will exchange any Eligible Securities constituting Pool Assets 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.

#### 4. Events of Default

- a. The following shall constitute events of default: (a) the failure of the Bank at any time, to pay the Local Government any Deposits covered by this Agreement, including interest earned, (b) the insolvency, failure or suspension of active operations by the Bank, (c) failure of the Bank to pay and satisfy upon

presentment, any check, electronic funds transfer, or draft lawfully drawn upon any Deposit of the Local Government, or (d) failure of the Bank to maintain adequate Collateral as required by this Agreement.

- b. In the event of a default as described in paragraph a of section 4, the Local Government's Deposits in such Bank shall become due and payable immediately and the Local Government shall have the right to unilaterally demand delivery of Eligible Securities having an Adjusted Market Value in an amount equal to its pro rata portion of the Pool Assets as contained in the Account, by notice to the Custodian, and to sell or direct the sale of such securities at public or private sale. After deducting all legal expenses and other costs, including reasonable attorneys' fees, from the proceeds of such sale, the Local Government shall apply the remainder towards any one or more of the liabilities of the Bank to the Local Government and shall remit the surplus, if any, to the Bank.

5. Representation and Warranties.

- a. Representations of the Bank. The Bank represents and warrants that:
  - (1) It is the legal and actual owner, free and clear of all liens and claims, of all Pool Assets;
  - (2) The form of this Agreement was approved by its Board of Directors or an authorized committee of its Board of Directors;
  - (3) This Agreement was executed by an officer of the Bank who was authorized by the Bank's Board of Directors to do so and the Bank shall maintain this Agreement among its official records continuously until such time as this Agreement is terminated and all Local Government Deposits have been properly paid out;
  - (4) All Pool Assets constitute Eligible Securities as defined herein;
  - (5) The Bank is a bank as defined by the New York State Banking Law, a national banking association, or a trust company as defined by the New York State Banking Law, and is located and authorized to do business in New York State; and
  - (6) 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.
- b. Representations of the Local Government. The Local Government hereby represents and warrants that:

- (1) 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 the Local Government in accordance with its terms;
- (2) The appointment of the Custodian has been duly authorized and no other action by the Local Government is required and this Agreement was executed by an officer of the Local Government authorized to do so;
- (3) It will not transfer, assign its interests in, or the rights with respect thereto, any Pool Assets pledged pursuant to this Agreement except as authorized pursuant to section 4 of the Agreement; and
- (4) 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.

6. Concerning the Custodian.

- a. The Custodian represents and warrants that it is a bank as defined by the New York State Banking Law, a national banking association, or a trust company as defined by the New York State Banking Law, and is located and authorized to do business in New York State, and does not directly or indirectly control, and is not directly or indirectly controlled by or under common control with the Bank.
- b. The Custodian 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, damage, claim or expense 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 Depository. The Custodian may, with respect to questions of law, apply for and obtain the advice and opinion of competent counsel and shall be fully protected with respect to anything done or omitted by it in good faith and in conformity with such advice or opinion, provided that a copy of such opinion shall be provided to an Authorized Person of the Local Government within three business days after it is received by the Custodian or three days prior to the action that is the subject of the opinion, whichever is earlier. The Local Government and Bank agree, jointly and severally, to indemnify the Custodian and to hold it harmless against any and all costs, expenses, damages, liabilities or claims, including reasonable fees and expenses of counsel, which the Custodian may sustain or incur or which may be asserted against the Custodian by reason of or as a result of any action taken or omitted by the Custodian in connection with operating under this Agreement, except those costs, expenses, damages, liabilities or claims arising out of the negligence or willful misconduct of the Custodian or any of its employees or duly appointed agencies. This indemnity shall be a continuing obligation of the Local Government and Bank notwithstanding the termination of this Agreement.

- c. The Custodian shall not be responsible for, or considered to be the Custodian of, any security received by it for inclusion as Pool Assets until the Custodian actually receives and collects such security directly or by the final crediting of the Custodian's account on the books of the Book Entry System or the appropriate Depository. The Custodian will be entitled to reverse any additions or credits made to the Pool Assets on behalf of the Participating Local Governments where such additions or credits have been previously made and the Eligible Securities are not finally collected.
- d. The [Bank] [Local Government] shall pay to the Custodian such fees as may be agreed upon from time to time.
- e. The Custodian 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 the Custodian in connection with this Agreement.
- f. The Local Government's authorized officer, upon reasonable notice, shall have access to the Custodian's books and records maintained with respect to the Local Government's interest in the Pool Assets in the Account during the Custodian's normal business hours. Upon the reasonable request of the Local Government, copies of any such books and records shall be provided by the Custodian to the Local Government or the Local Government's authorized officer at the Local Government's expense.

7. Termination.

Any of the parties hereto may terminate this Agreement by giving to the other party a notice in writing specifying the date of such termination, which shall be the earlier of (i) not less than ninety (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 the Local Government's security interest in the undivided pro rata portion of Pool Assets in the Account. Upon termination hereof, the [Bank] [Local Government] shall pay to the Custodian such compensation as may be due to the Custodian as of the date of such termination and the Custodian shall follow such reasonable Written Instructions of the Bank and the Local Government concerning the transfer of custody of the undivided pro rata portion of Pool Assets, collateral records and other items. In the event of a discrepancy between Written Instructions of the Bank and the Local Government, the Custodian shall act pursuant to the Local Government's Written Instructions. 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 except as provided herein.

8. Miscellaneous.

- a. The Local Government and Bank each agree to furnish to the Custodian a new Certificate (Exhibit B) 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, the Custodian shall be fully protected in acting upon Written Instructions or signatures of the present Authorized Persons.
- b. Any Written Instructions or other instrument in writing authorized or required by this Agreement shall be given to the Custodian and shall be sufficiently given if sent to the Custodian by regular mail to its Offices at \_\_\_\_\_ or at such other place as the Custodian may from time to time designate in writing, or by facsimile or electronic mail whereby the receiver of such communications is able to verify by personal identification number or otherwise with a reasonable degree of certainty the identity of the sender of such communication.
- c. Any notice or other instrument in writing authorized or required by this Agreement to be given to the Bank shall be sufficiently given if sent to the Bank by regular mail to its Offices at \_\_\_\_\_ or at such other place as the Bank may from time to time designate in writing, or by facsimile or electronic mail whereby the receiver of such communications is able to verify by personal identification number or otherwise with a reasonable degree of certainty the identity of the sender of such communication.
- d. Any notice or other instrument in writing, authorized or required by this Agreement to be given to the Local Government shall be sufficiently given if sent to an Authorized Person of the Local Government by regular mail to his or her Office at \_\_\_\_\_ or at such other Offices as the Local Government may from time to time designate in writing, or by facsimile or electronic mail whereby the receiver of such communications is able to verify by personal identification number or otherwise with a reasonable degree of certainty the identity of the sender of such communication.
- e. 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.
- f. This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties hereto.

- g. 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.
- h. It is the express purpose of this Agreement to comply with the provisions of 12 USCA §1823(e) and GML §§10 and 11.
- i. This Agreement shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles thereof.

9. Definitions.

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

- a. "Account" shall mean the custodial securities account established with the Custodian containing all the Pool Assets and evidence of the Local Government's undivided pro rata portion of Pool Assets. Such Account shall not be commingled with any other accounts or assets of the Custodian
- b. "Adjusted Market Value" shall be one hundred percent of Market Value except that: (1) in the case of Eligible Securities enumerated in subparagraphs (v), (vi) and (vii) of paragraph f of subdivision one of section ten of the General Municipal Law, the Adjusted Market Value shall be an amount equal to its Market Value multiplied by 0.9 if such Eligible Security is not rated in the highest rating category by at least one nationally recognized statistical rating organization, but is so rated in the second highest rating category, and an amount equal to its Market Value multiplied by 0.8 if such Eligible Security is not so rated in one of the two highest categories, but is so rated in the third highest rated category; (2) in the case of Eligible Securities enumerated in subparagraphs (viii), (x) and (xi) of paragraph f of subdivision one of section ten of the General Municipal Law, the Adjusted Market Value shall be an amount equal to its Market Value multiplied by 0.8; and (3) in the case of eligible securities enumerated in subparagraph (ix) of paragraph f of subdivision one of section ten of the General Municipal Law, the Adjusted Market Value shall be an amount equal to its market value multiplied by 0.7.
- c. "Authorized Person" shall be any officer of the Local Government or Bank, as the case may be, duly authorized to give Written Instructions on behalf of the Local Government or Bank, such persons to be designated in a Certificate substantially in the form of Exhibit "B" attached hereto, as such Exhibit may be amended from time to time.
- d. "Book Entry System" shall mean the Federal Reserve/Treasury Book Entry System for receiving and delivering government securities.

- e. "Business Day" shall mean any day on which the Federal Reserve Bank shall be open for the transaction of business.
- f. "Certificate" shall mean the Certificate attached hereto as Exhibit "B".
- g. "Collateral Requirement" shall mean the amounts required in Exhibit "A" unless the Bank and Local Government agree to a different amount in accordance with this Agreement.
- h. "Depository" shall include, but not be limited to, the Federal Reserve Bank of New York, the Depository Trust Company, the Participants Trust Company and other securities depositories and clearing agencies (and their successors and nominees) registered with the Securities and Exchange Commission or otherwise regulated by appropriate federal or state agencies as a securities depository or clearing agency.
- i. "Deposits" shall mean all deposits and investments, including demand deposits, certificates of deposit and special time deposits, by the Local Government in the Bank that are available for all uses generally permitted by the Bank to the Local Government for actually and finally collected funds under the Bank's account agreement or policies.
- j. "Eligible Securities" shall mean Eligible Securities as defined under GML §10(1)(f).
- k. "Market Value" shall mean, with respect to any Eligible Security held as part of Pool Assets, the market value of such Eligible Security as made available to the Custodian by a generally recognized source selected by the Custodian or by the Bank or the most recently available closing bid quotation from such source plus, if not reflected in the market value, any accrued interest thereon, or, if such source does not make available a market value or a closing bid price for a particular security, the market value shall be as determined by the Custodian in its sole discretion based on information furnished to the Custodian by one or more brokers or dealers or based on information otherwise reasonably acceptable to the Local Government; provided however that, if agreed in writing by the parties hereto, the Bank may provide the Custodian with such Market Values.
- l. "Margin Percentage" shall equal one hundred two percent (102%).
- m. "Nationally Recognized Statistical Rating Organization" shall mean those credit rating agencies whose credit ratings are used under the Securities and Exchange Commission's regulations to provide its opinion on the creditworthiness of an entity and the financial obligations (such as, bonds, preferred stock, and commercial paper) issued by that entity

- n. "Participating Local Government" shall mean a local government, as defined in section 10 of the General Municipal Law, within the State of New York that has duly elected to accept a pledge by the Bank of a pro rata share of a pool of Eligible Securities as security for its deposits and investments with the Bank, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, and has entered into an agreement with the Bank that is the same as, or similar to, this Agreement.
- o. "Pool Assets" shall mean a single group or aggregation of Eligible Securities to be pledged on a pro rata basis by the Bank to Participating Local Governments to secure Deposits made by such local governments in the Bank in excess of the amount insured under the provisions of the Federal Deposit Insurance Act.
- p. "Substitute Collateral" shall have meaning set forth in paragraph e of Section 2 of this Agreement.
- q. "Total Adjusted Market Value of Pool Assets" shall mean the total amount of the Adjusted Market Value of all Eligible Securities that comprise the Pool Assets.
- r. "Uninsured Deposits" shall mean that portion of the Local Government's Deposits with the Bank which exceeds the amount insured under the provisions of the Federal Deposit Insurance Act.
- s. "Written Instructions" or "Written Notice" shall mean written communications actually received by the Bank or the Custodian from an Authorized Person by regular mail, electronic mail, facsimile or any other system whereby the receiver of such communications is able to verify by personal identification number 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.

**EXHIBIT A \***

OPTION A

Schedule of Anticipated Deposits and Collateral Requirements

	<u>Maximum Amount of Anticipated Uninsured Deposits</u>	<u>Amount of Collateral Required</u>
January	_____	_____
February	_____	_____
March	_____	_____
April	_____	_____
May	_____	_____
June	_____	_____
July	_____	_____
August	_____	_____
September	_____	_____
October	_____	_____
November	_____	_____
December	_____	_____

OPTION B

Collateral Requirement. On any Business Day that the Local Government has Uninsured Deposits in the Bank, the Bank, in accordance with subparagraph b of paragraph 2 of this Agreement, agrees to deliver or cause to be delivered to the Custodian for deposit in the Account Eligible Collateral having an Adjusted Market Value equal to the Collateral Requirement. For purposes of this Agreement, Collateral Requirement shall mean the amount of such Uninsured Deposits times the Margin Percentage.

\* This exhibit should include all official accounts on deposit in the bank including offices and departments whether Option A or Option B is utilized.

**EXHIBIT B**

**Certificate of Authorized Person**