

**THIRD PARTY CUSTODIAN AGREEMENT**  
(Collateralized Municipal Deposits)

**THIS AGREEMENT**, made and executed as of \_\_\_\_\_ by and among the City of Fair Oaks Ranch (the "Public Entity"), Frost Bank (the "Bank") and The Bank of New York Mellon Trust Company, N.A. (the "Custodian").

W I T N E S S E T H

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

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

WHEREAS, Custodian agrees to provide safekeeping services and to hold any securities pledged by Bank in a custodial account established for the benefit 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, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by Public Entity, including any interest due thereon and any costs or expenses incurred by Public Entity and arising out of the collection of any deposits made with Bank, has deposited with Custodian certain investment property as identified by the parties on Schedule A, attached hereto, and as more fully described in the initial confirmation Trust Receipt of such deposit delivered by Custodian to Bank and Public Entity respectively (which investment property together with any additions thereto, substitutions therefor and the proceeds thereof, are hereinafter collectively referred to as "Collateral"), to be held by Custodian pursuant to the provisions hereof. Pursuant to the Texas Business and Commerce Code, as amended, Custodian shall act as a bailee or agent of Public Entity and, to the extent not inconsistent therewith, hold the Collateral as a securities intermediary (as such terms are defined in Chapter 8 of the Texas Business & Commerce Code, as amended, and in Chapter 2257 of the Texas Government Code, as amended) and in accordance with the provisions hereof. Bank hereby grants to Public Entity a pledge and security interest in and to such Collateral and shall deliver Collateral to Custodian in the manner prescribed in Section 2 of this Agreement.

(b) Subject to paragraph (c) below, Public Entity authorizes Custodian as its agent to approve substitutions of Collateral ("Substitute Collateral") supplied to Custodian by Bank for Collateral in the Account upon receipt of Written Instructions from Bank identifying the Collateral to be substituted. Such Written Instructions shall when received by Custodian be deemed Bank's representation and warranty, on which Custodian may rely without further inquiry, that (i) the Substitute Collateral constitutes Collateral that is eligible for deposit hereunder and (ii) has a Margin Value equal to or greater than the Margin Value of the Collateral to be substituted (each, an "Approved Substitution"). Following completion of each Approved Substitution Custodian 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 (d) below.

(c) Custodian assumes no responsibility to determine or monitor whether or not any Collateral originally deposited hereunder or Substitute Collateral or additional Collateral hereafter deposited are eligible for deposit under applicable law, rule or regulation or whether the Market Value of the Collateral thereof meets the requirements of any law, rule or regulation applicable to the deposit hereunder. The determination of eligibility and whether the Market Value of the Collateral satisfies statutory or regulatory requirements will be the responsibility of Bank. Custodian shall be fully protected in relying on Written Instructions of either Bank or Public Entity directing Custodian to release any of the Collateral to Bank. To the extent of any conflict in the instructions of Public Entity and Bank, the instructions of Public Entity shall control and Bank shall hold Custodian harmless for acting in accordance with Public Entity's instructions.

(d) Custodian shall promptly issue a Trust Receipt to Public Entity on any Business Day on which 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 Custodian shall not be required to issue more than one Trust Receipt to Public Entity on any Business Day.

## 2. Custody of Collateral

(a) Bank and Public Entity hereby appoint Custodian as custodian of all Collateral at any time delivered to Custodian pursuant to this Agreement. Custodian hereby accepts appointment as such Custodian and agrees to establish and maintain the Account and appropriate records identifying the Collateral as pledged by Bank to Public Entity. Collateral in the Account shall be kept separate and apart from the general assets of Custodian on Custodian's books and records. Subject to the terms hereof, Custodian, in performing its duties and responsibilities pursuant to this Agreement, shall act as custodian for, and agent of, Public Entity. 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 in the Collateral for the benefit of Public Entity is created, attaches, and is perfected for all purposes under Texas law from the time Custodian receives Collateral for deposit or credit to the Account and issues a Trust Receipt to Public Entity for such Collateral. The security interest of Public Entity in the Collateral and all Proceeds thereof shall terminate upon the transfer of such Collateral or Proceeds from the Account.

(b) The Bank and Public Entity agree that Collateral delivered to the Custodian for deposit in or credit to the Account may be in the form of credits to the accounts of 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 Public Entity or Custodian. The Bank and Public Entity hereby authorize the Custodian on a continuous and ongoing basis to deposit in the Book-Entry System and/or the Depositories all Collateral 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. Collateral that is 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)(i) Upon the initial and each subsequent deposit of Collateral and Proceeds into the Account (including but not limited to any deposit of Collateral as part of an Approved Substitution), Custodian shall promptly provide Public Entity with a Trust Receipt. Additional customized Account statements may be available upon mutual agreement of Public Entity and Custodian.

(ii) Public Entity agrees that it shall promptly review all Trust Receipts and Account statements delivered to it by Custodian and shall promptly advise Custodian and Bank by Written Instruction of any error, omission or inaccuracy in such statements. In the event that Custodian receives such a Written Instruction identifying a specific concern with respect to a suspected error, failure or omission with respect to the Account, Custodian shall undertake to correct any errors, failures or omissions, provided that Custodian and Bank shall work together to determine that such error, failure or omission actually occurred and Custodian 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 Custodian.

(e) With respect to all Collateral held in the Account, Custodian by itself, or through the use of the Book-Entry System or the appropriate Depository, shall, unless otherwise instructed to the contrary by Bank: (i) collect all income and other payments reflecting interest and principal on the Collateral in the Account and credit such amounts to the account of Bank; (ii) forward to Bank copies of all information or documents that it may receive from an issuer of Collateral which, in the opinion of Custodian, is intended for the beneficial owner of the Collateral 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 Collateral held by Custodian hereunder; and (v) upon receipt of Written Instructions from Bank, Custodian will exchange Collateral 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.

(f) Custodian agrees to file reports with the Comptroller of Public Accounts of the State of Texas (the "Comptroller") regarding the Collateral pledged to secure the Uninsured Deposits of Public Entity hereunder, as and when required by the Comptroller.

3. Events of Default

Subject to applicable law, rules and regulations, or regulatory authority and oversight, in the event Bank shall fail to pay Public Entity any amount of the Uninsured Deposits by Public Entity covered by this Agreement in accordance with the terms of such Deposit, or should Bank fail or suspend active operations, the Uninsured Deposits in such Bank shall become due and payable immediately and Public Entity shall have the right to unilaterally demand delivery of all the Collateral in the Account by Written Instructions to Custodian and to sell such securities at public or private sale. In the event of such sale, Public Entity, after deducting all legal expenses and other costs, including reasonable attorneys' fees, from the proceeds of such sale, shall apply the remainder towards any one or more of the liabilities of Bank to Public Entity and shall return the surplus, if any, to Bank.

4. Representation and Warranties

(a) Representations of Bank. Bank 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 Bank in accordance with its terms;

(ii) it is the legal and actual owner, free and clear of all liens and claims, of all the Collateral pledged pursuant to this Agreement;

(iii) this Agreement was executed by an officer of Bank who was authorized by Bank's board of directors to do so and will at all times be maintained as an official record of Bank;

(iv) all Collateral held by Custodian hereunder are eligible to secure Public Entity's deposits at Bank under applicable statutes or regulations and the Market Value of the Collateral held by Custodian hereunder at all times meet the requirements of such statutes or regulations;

(v) Bank is a bank or trust company duly authorized to do business in the state where it is located;

(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 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 Custodian has been duly authorized by Public Entity and this Agreement was executed by an officer of Public Entity duly authorized to do so;

- (iii) it will not transfer, assign its interests in or the rights with respect to any Collateral pledged pursuant to this Agreement, except as authorized pursuant to Section 3 of the Agreement;
- (iv) 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 Custodian

(a) 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 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 Custodian be liable to Public Entity, Bank or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement. Custodian 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. Public Entity, to the extent permitted by law, and Bank agree, jointly and severally, to indemnify Custodian and to hold it harmless against any and all costs, expenses, damages, liabilities or claims, including reasonable fees and expenses of counsel, which Custodian may sustain or incur or which may be asserted against Custodian by reason of or as a result of any action taken or omitted by 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 Custodian or any of its employees or duly appointed agents. This indemnity shall be a continuing obligation of Public Entity and Bank notwithstanding the termination of this Agreement.

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

(c) 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 Custodian in connection with this Agreement.

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

(e) In performing hereunder, Custodian may enter into subcontracts, agreements and understandings with third parties (including affiliates) 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 Collateral for the benefit of Public Entity, (i) such third party will qualify as a "permitted institution" pursuant to Chapter 2257 of the Texas Government Code (the "Texas Public Funds Collateral Act"), (ii) Custodian shall cause such third party to provide records to Custodian evidencing the deposit of Collateral with such third party, and (iii) records of the third party relating to such Collateral will at all times state the name of Custodian. No such subcontract, agreement or understanding shall discharge Custodian from its obligations hereunder.

(f) Reliance on Pricing Services. If Custodian, as an accommodation to Bank or the Public Entity, agrees to provide information concerning Market Values, Custodian is authorized to utilize any generally recognized pricing information service (including brokers and dealers of securities) in order to provide Market Values hereunder, and Bank and Public Entity agree that Custodian 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. Custodian 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 Custodian shall use its best efforts to resume normal performance as soon as practicable under the circumstances. Provided, however, that if Custodian cannot resume normal performance within thirty (30) days of the cessation of such "force majeure" event, in addition to the termination rights set forth in Section 6 of this Agreement, Bank and Public Entity may terminate this Agreement immediately and without early termination penalty, liquidated damages or other penalty.

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 Collateral in the Account. Upon termination hereof, Custodian shall follow such reasonable Written Instructions of Bank and Public Entity concerning the transfer of custody of Collateral, 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. Miscellaneous

(a) Public Entity and Bank each agree to furnish to Custodian a new Certificate substantially in the form of Exhibit A and Exhibit B, 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, Custodian shall be fully protected in acting upon Written Instructions or signatures of the present Authorized Persons.

(b) Custodian shall be entitled to rely upon any Certificate or Written Instruction actually received by Custodian and reasonably believed by Custodian to be duly authorized and delivered. Notwithstanding anything herein to the contrary, it is understood and agreed that regardless of the circumstances, Custodian shall accept and solely act upon Written Instructions.

(c) Any Written Instructions or other instrument in writing authorized or required by this Agreement shall be given to Custodian and shall be sufficiently given if sent to Custodian by regular mail to its offices at

c/o The Bank of New York Mellon  
101 Barclay Street, 4<sup>th</sup> Floor  
New York, NY 10286  
Attention: GCS – Collateral Management

or at such other place as Custodian 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 shall be sufficiently given if sent to Bank by regular mail to its offices at

Manuel Long, Vice President  
Frost Bank  
111 W. Houston St.  
San Antonio, TX 78205  
manuel.long@frostbank.com

or at such other place as Bank 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

Summer Fleming, Finance Director  
City of Fair Oaks Ranch  
7286 Dietz Elkhorn  
Fair Oaks Ranch, TX 78015  
sfleming@fairoaksranchtx.org

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, Public Entity and Custodian 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, Public Entity and Custodian 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, Public Entity and Custodian each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

8. Adjudication of Claims. Solely to the extent required or permitted under applicable law governing the operations of the Public Entity (including Tex. Civ. Prac. & Rem Code Ann. §101.001 et. seq. (the Texas Tort Claims Act) and Tex. Loc. Gov't Code Ann. §271.151 et. seq. (Adjudication of Claims Arising Under Written Contacts with Local Governmental Entities)), each party hereto irrevocably agrees not to claim or assert, for itself or its assets, immunity (sovereign or otherwise) from suit, execution, attachment (before or after judgment) or any other legal process arising out of this Agreement in respect of such party's obligations hereunder.

9. Compliance with Texas Government Code Section 2271.002. As required by Section 2271.002 of the Texas Government Code, Custodian hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the phrase "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

10. Compliance with Texas Government Code Section 2252.152. Pursuant to Section 2252.152 of the Texas Government Code, Custodian hereby verifies that it is not engaged in active business operations with Sudan, Iran or a foreign terrorist organization. For purposes of this Agreement, the phrase "foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

11. Definitions

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



(a) "Account" shall mean the custodial account established with Custodian for the benefit of Public Entity as secured party in accordance with this Agreement.

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

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

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

(e) "Business Day" shall mean any day on which Custodian and Bank are open for Business and on which the Book-Entry System and/or the Depositories are open for business.

(f) "Certificate" shall mean the Certificate of Authorized Persons attached hereto as Exhibit "A" or Exhibit "B".

(g) "Comptroller" shall have the meaning set forth in paragraph (d) of Section 5 of this Agreement.

(g) "Depository" shall include the Depository Trust Company and any other securities depository and clearing agency (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.

(h) "Deposits" shall mean all deposits by Public Entity in Bank that are available for all uses generally permitted by Bank to Public Entity for actually and finally collected funds under Bank's account agreement or policies.

(i) "Market Value" shall mean, with respect to any Security held in the Account, the market value of such Security as made available to Custodian by a generally recognized source selected by Custodian 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 Custodian in its sole discretion based on information furnished to Custodian by one or more brokers or dealers; provided however that, if agreed in writing by the parties hereto, Bank may provide Custodian with such Market Values.

(j) "Nationally Recognized Statistical Rating Organization" shall mean Moody's, Standard and Poor's, Fitch, Duff and Phelps, BankWatch and IBCA.

(k) "Public Entity" shall mean a state or a political or governmental entity, agency, instrumentality, or subdivision of the State of Texas, including a municipality, an institution of higher education, as defined by Section 61.003, Texas Education Code, a junior college, a district created under Article XVI, Section 59, of the Texas Constitution, and a public hospital.

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

(m) "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 Collateral which is the subject of the transaction and state the Market Value thereof. Statements of account shall identify all Collateral in the Account, the Aggregate Margin Value thereof, and the applicable Collateral Requirement.

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

(o) "Written Instruction(s)" shall mean written communications actually received by Custodian from an Authorized Person or from a person reasonably believed by Custodian 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 FAIR OAKS RANCH**

**FROST BANK**

\_\_\_\_\_

\_\_\_\_\_

By: Scott M. Huizenga

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

Title: City Manager

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

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

\_\_\_\_\_

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

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



**EXHIBIT A  
 CERTIFICATE OF AUTHORIZED PERSONS  
 (Public Entity - Written Instructions)**

The undersigned hereby certifies that he/she is the duly elected and acting City Secretary of the City of Fair Oaks Ranch (the "Public Entity"), and further certifies that the following officers or employees of Public Entity have been duly authorized in conformity with Public Entity's City Council to deliver Written Instructions to The Bank of New York Mellon Trust Company, N.A. ("Custodian") pursuant to the Third Party Custodian Agreement between Public Entity, Frost Bank ("Bank") and Custodian dated \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

<u>Scott M. Huizenga</u> Name	<u>City Manager</u> Title	_____ Signature
<u>Carole Vanzant</u> Name	<u>Assistant City Manager</u> Title	_____ Signature
<u>Summer Fleming</u> Name	<u>Finance Director</u> Title	_____ Signature
_____ Name	_____ Title	_____ Signature
_____ Name	_____ Title	_____ Signature
_____ Name	_____ Title	_____ Signature

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

\_\_\_\_\_  
 Name: Christina Picioccio  
 Title: City Secretary  
 Date: \_\_\_\_\_