

## Third Party Custody Agreement

This Third Party Custody Agreement ("Agreement"), made and executed this 21st day of August, 2012, between Elmira Heights Central School District, located at 2083 College Avenue, Elmira Heights NY 14903 in the County of Chemung, State of New York (the "Local Government"), Five Star Bank, a Bank having offices at 55 North Main Street, Warsaw, New York 14569 (the "Bank"), and Manufacturers and Traders Trust Company, having offices at One M&T Plaza, Buffalo, New York 14203 (the "Custodian").

### WITNESSETH

WHEREAS, the Local Government desires to maintain or continue to maintain public deposits with the Bank;

WHEREAS, the Bank desires to obtain such deposits and to provide security therefore as required by the New York General Municipal Law, the New York Banking Law and other applicable statutes;

WHEREAS, the Custodian agrees to provide safekeeping services and to hold any securities pledged by the Bank in a custodial account established for the benefit of the Local Government 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) The Bank, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by the Local Government, including any interest due thereon, shall provide the Local Government with Eligible Collateral having an Adjusted Market Value equal to the Collateral Requirement. Whenever Eligible Securities are provided pursuant to this paragraph, the Bank hereby grants to the Local Government a pledge and security interest in and to such Eligible Securities and shall deliver such Eligible Securities to the Custodian in the manner prescribed in section 2 of this Agreement. The security interest of the Local Government in Eligible Securities shall terminate upon the transfer of such Eligible Securities from the Account. Eligible Letters of Credit and Eligible Surety Bonds provided pursuant to this paragraph shall be subject to the prior approval of the Local Government unless the Local Government has approved in writing the form of an Eligible Letter of Credit or Eligible Surety Bond to be issued by a specific entity or the form of such Eligible Letter of Credit or Eligible Surety Bond is attached hereto as an Exhibit.
- b) The Custodian will daily determine the Adjusted Market Value of the Eligible Collateral provided pursuant to this Agreement. If the Adjusted Market Value of such Eligible Collateral is less than the Collateral Requirement, the Custodian shall notify the Bank and the Bank shall, upon such notice, be required to provide additional Eligible Collateral having a Adjusted Market Value equal to or greater than such deficiency that same Business Day. If the Adjusted Market Value of the Eligible Collateral provided pursuant to this Agreement exceeds the Collateral Requirement, the Custodian, at the direction of the Bank, shall transfer securities from the Account, or in the case of other Eligible Collateral, cause or consent to a reduction in the amount thereof, to the extent of such excess.
- c) The Bank may substitute Eligible Collateral ("Substitute Collateral") for any Eligible Collateral previously provided pursuant to this Agreement so long as the Substitute Collateral has an Adjusted Market Value equal to or greater than the Eligible Collateral which it will replace. The Bank shall give Written or Oral Instructions thereof 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 against delivery to the Account on the same Business Day of the Substitute Collateral. In the event the Substitute Collateral described in such notice consists of an Eligible Letter of Credit or Eligible Surety Bond, the prior consent of the Local Government shall be required before the Bank or Custodian may complete the substitution described in such notice unless the Local Government has, in writing, previously approved and consented to the form and issuer of the Eligible Letter of Credit and/or Eligible Surety Bond to be provided as Substitute Collateral.

2) Custody of Eligible Securities

- a) The Bank and Local Government hereby appoint the Custodian as custodian of all Eligible Securities 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 Eligible Securities as pledged by the Bank to the Local Government. The Account shall be kept separate and apart from the general assets of the Custodian and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or liability of the Custodian. The Custodian, in performing its duties and responsibilities pursuant to this Agreement, shall act as Custodian for, and agent of, the Local Government.
- b) The Bank and Local Government agree that Eligible Securities delivered to the Custodian for deposit 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. Eligible Securities credited to the Account and deposited in the Book Entry System or Depositories or other financial intermediaries will be represented in accounts of the Custodian that 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. Eligible Securities 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.

The Custodian shall provide the Local Government and the Bank each month with a statement identifying all Eligible Securities in the Account, the Market Value thereof as of the date of such statement. Upon request, the Custodian shall provide the Local Government and Bank with a written confirmation within three (3) Business Days of any day on which Eligible Securities are transferred to and from the Account. Such confirmation shall identify the specific securities that are the subject to the confirmation and state the Market Value thereof as of the date of such transaction.

- c) The Account shall not be subject to any security interest, lien or any right of set-off by or against the Custodian.
- d) With respect to all Eligible Securities 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 the 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 Eligible Securities which, in the opinion of the Custodian, are intended for the beneficial owner of the 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 held by

the Custodian hereunder; and (v) upon receipt of written instruction from the Bank, the Custodian will exchange Eligible 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.

3) Events of Default

- a) In the event the Bank shall fail to pay the Local Government any amount of the Deposits by the Local Government covered by this Agreement in accordance with the terms of such Deposit, or should the Bank fail or suspend active operations, the Deposits in such Bank shall become due and payable immediately and the Local Government shall have the right to unilaterally demand delivery of all Eligible Securities in the Account by notice to the Custodian and to sell such securities at public or private sale. In the event of such sale, the Local Government, 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 the Bank to the Local Government and shall return the surplus, if any, to the Bank.

4) Representation and Warranties

- a) Representations of the Bank. The Bank represents and warrants that:
- i) it is the legal and actual owner, free and clear of all liens and claims, of all Eligible Securities pledged pursuant to this Agreement;
  - ii) the form of this Agreement was approved by its board of directors;
  - iii) this Agreement was executed by an officer of the Bank who was authorized by the Bank's board of directors to do so and will at all times be maintained as an official record of the Bank;
  - iv) all securities pledged pursuant to this Agreement are Eligible Securities and that all letters of credit and surety bonds obtained by the Bank in satisfaction of its obligations hereunder and of which the Local Government is the beneficiary are Eligible Collateral;
  - v) the Bank is a bank or trust company located and authorized to do business in the State of New York;
  - 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 the Local Government. The Local Government hereby represents and warrants 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 the Local Government in accordance with its terms;
  - ii) 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;
  - iii) it will not transfer, assign its interests in or the rights with respect thereto any Eligible Securities pledged pursuant to this Agreement except as authorized pursuant 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 the Custodian

- a) 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 conformity with such advice or opinion. 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.
- b) The Custodian shall not be responsible for, or considered to be the Custodian of, any security received by it for deposit in the Account 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 credits made on the Local Government's behalf where such credits have been previously made and the Eligible Securities are not finally collected.
- c) The Bank shall pay to the Custodian such fees as may be agreed upon from time to time.
- d) 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.
- e) 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 Account during the Custodian's normal business hours. Upon the reasonable request of the Local Government, the Custodian shall provide copies of any such books and records to the Local Government or the Local Government's authorized officer at the Local Government's expense.

6) Termination

- a) 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 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 Eligible Securities in the Account. Upon termination hereof, the Bank 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 concerning the transfer of custody of Eligible Securities, collateral records and other items. In the event the Custodian also receives separate Written Instructions from the Local Government concerning the transfer of Eligible Securities, 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.

7) Miscellaneous

- a) The Local Government and Bank each agrees to notify the Custodian 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 notification is received, the Custodian shall

be fully protected in acting upon Oral or 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 One M&T Plaza, 8<sup>th</sup> Floor, Buffalo, New York 14203, Attn: Institutional Custody Services or at such other place as the Custodian may from time to time designate in writing.
- 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 address listed at the end of this Agreement or at such other place as the Bank 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 the Local Government shall be sufficiently given if sent to the Local Government by regular mail to its address listed at the end of this Agreement or at such other offices as the Local Government may from time to time designate in writing.
- 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 by the Local Government or the Bank except with the written consent of the Custodian. The Custodian may amend or modify this Agreement upon thirty (30) days' prior written notice to the Local Government and the Bank, and continued the use of the services provided by the Custodian under this Agreement to the Local Government and the Bank after the effective date of such amendment or modification shall be deemed to constitute their consent to such amendment or modification.
- 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) This Agreement shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles thereof.

8) Definitions

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

- a) "Account" shall mean the custodial account established with the Custodian for the benefit of the Local Government as secured party in accordance with this Agreement.
- 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 Exhibit B, 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 agency, 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 Exhibit B, the Adjusted Market Value shall be an amount equal to its Market Value multiplied by 0.8; (3) in the case of eligible securities enumerated in subparagraph (ix) of Exhibit B, the Adjusted Market Value shall be an amount equal to its market value multiplied by 0.7; and, (4) in the case of Eligible Letters of Credit, the Adjusted Market Value shall be the amount of the letter divided by 1.4.

- c) "Authorized Person" shall be any officer of the Local Government or the Bank designated in writing from time to time as authorized to give Oral Instructions or Written Instructions on behalf of the Local Government or the Bank, as the case may be.
- d) "Bank" shall have the meaning set forth in the heading of this Agreement.
- e) "Book Entry System" shall mean the Federal Reserve/Treasury Book Entry System for receiving and delivering government securities.
- f) "Business Day" shall mean any day on which the Custodian and the Bank are open for business and on which the Book Entry System and/or the Depositories are open for business.
- g) "Collateral Requirement" shall mean the amounts required in Exhibit "A" unless Bank and Local Government agree to a different amount in accordance with this agreement.
- h) "Depository" shall include the Depository 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 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 Collateral" shall mean Eligible Securities, Eligible Letters of Credit and Eligible Surety Bonds.
- k) "Eligible Letter of Credit" shall mean an irrevocable letter of credit issued in favor of the Local Government for a term not to exceed ninety days by either: (1) a bank (other than the Bank) whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company's commercial paper and other unsecured short-term debt obligations) are rated in one of three highest rating categories based on the credit of such bank or holding company by at least one nationally recognized statistical rating organization; or, (2) by a bank (other than the Bank) which is in compliance with applicable federal minimum risk-based capital requirements.
- l) "Eligible Securities" shall mean any securities of the types enumerated in the Schedule of Eligible Securities attached hereto as Exhibit "B"; as such Schedule may be amended by the parties in writing from time to time. Such a Schedule may establish limitations pertaining to the types or amounts of Eligible Securities that may be provided pursuant to this Agreement.
- m) "Eligible Surety Bond" shall mean a bond executed by an insurance company authorized to do business in the State of New York, the claims paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations.
- n) "Market Value" shall mean, with respect to any Eligible Security held in the Account, 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. The Market Value of Eligible Letters of Credit and Eligible Surety Bonds shall be the face amount thereof.
- o) "Margin Percentage" shall equal 100 percent.

- p) "Nationally Recognized Statistical Rating Organization" shall mean Moody's, Standard and Poors, Fitch, Duff and Phelps, BankWatch and IBCA and in the case of Eligible Surety Bonds, shall also include Bests.
- q) "Oral Instructions" shall mean verbal instructions actually received by the Custodian from an Authorized Person or from a person reasonably believed by the Custodian to be an Authorized Person.
- r) "Substitute Collateral" shall have meaning set forth in paragraph c of Section 2 of this Agreement.
- s) "Uninsured Deposits" shall mean that portion of the Local Government's Deposits with the Bank that exceeds the insurance coverage available from the Federal Deposit Insurance Corporation.
- t) "Written Instructions" shall mean written communications actually received by the Bank or the Custodian from an Authorized Person or from a person reasonably believed by the Bank or the 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.

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**M&T Investment Group**

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

ACKNOWLEDGED AND AGREED:

Elmira Heights Central School District  
Local Government, as Pledgee

By: *Lesa Bussmann*  
Name: *lesa Bussmann*  
Title: *Treasurer*

2083 College Avenue Elmira Heights NY 14903  
Address

607-795-5350  
Telephone Number

Five Star Bank  
Bank, as Depositary and Pledgor

By: *Karen D Stevens*  
Name: *Karen D Stevens*  
Title: *Municipal Business Officer*  
Phone: *607-324-7783*

55 North Main Street, Warsaw, NY 14569  
Address

585-786-1100  
Telephone Number

MANUFACTURERS AND TRADERS  
TRUST COMPANY, as Custodian

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

**Collateral Requirement:**

On any Business Day that the Local Government has Uninsured Deposits in the Bank, the Bank, in accordance with paragraph b of section 1 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, if any.

**EXHIBIT B**

**Schedule of Eligible Securities**

- (i) Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government sponsored corporation.
- (ii) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
- (iii) Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.
- (iv) Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such State or obligations of any public benefit corporation, which under a specific State statute may be accepted as security for deposit of public moneys.
- (v) Obligations issued by states (other than the State of New York) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- (vi) Obligations of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- (vii) Obligations of counties, cities and other governmental entities of a state other than the State of New York having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- (viii) Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.
- (ix) Any mortgage related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by banks under the limitations established by bank regulatory agencies.
- (x) Commercial paper and bankers' acceptances issued by a bank, other than the Bank, rated in the highest short term category by at least one nationally recognized statistical rating organization and having maturities of not longer than 60 days from the date they are pledged.
- (xi) Zero coupon obligations of the United States government marketed as "Treasury strips".