

Policy Respecting the Deposit and Investment of Town Funds

Town of Pendleton, Niagara County, New York

I. SCOPE

This investment policy (the “Policy”) is intended to implement the provisions of Sections 10 and 11 of the General Municipal Law of the State of New York (the “GML”) and applies to all funds for the use and account of the Town of Pendleton, Niagara County, New York (the “Town”).

II. OBJECTIVES

The primary objectives of the Town’s investment activities are, in priority order:

- A. Legality.** To conform with all applicable federal, State and other legal requirements;
- B. Safety.** To adequately safeguard public funds of the Town;
- C. Liquidity.** To provide sufficient liquidity to meet all operating requirements of the Town; and
- D. Yield.** To maximize interest earnings for the benefit of the Town.

III. DELEGATION OF AUTHORITY

- A. Town Supervisor.** Pursuant to Section 64 of the Town Law of the State of New York (the “Town Law”), the town board of the Town (the “Town Board”) is authorized to manage and control the finances of the Town, including administering an investment program (the “Program”) pursuant to this Policy. The Town Board hereby designates the Town Supervisor of the Town (the “Supervisor”) to act on its behalf with respect to administering the Program.

Pursuant to the authority delegated by this Policy, the Supervisor shall establish written procedures (the “Investment Procedures”) for the operation and administration of the Program consistent with applicable law and this Policy. Such Investment Procedures shall include, among other things, internal controls to increase accountability, including maintaining accurate records regarding (a) the description and amounts of investments, (b) the fund(s) for which investments are held, (c) the Depositories (as defined herein) where investments are kept, and (d) other relevant information, including dates of sale or other

dispositions and amounts realized. The internal controls contained in the Investment Procedure shall include, among other things, the internal controls set forth in Article VI of this Policy. In addition, the Investment Procedures shall describe the responsibilities and levels of authority for key individuals involved in the investment program.

B. Designation of Investment Officers The Supervisor and any other officer or employee of the Town so authorized by resolution of the Town Board (each, an “Investment Officer”) are authorized to temporarily invest Town funds not required for immediate expenditure as provided in this Policy. Any designation of an Investment Officer made by resolution of the Town Board may be changed at any time by a further resolution of the Town Board.

IV. PRUDENCE

All participants in the Program shall have a fiduciary duty to ensure that the funds, investments, and deposits of the Town are administered in compliance with applicable laws and with this Policy.

Investments shall be made with prudence, diligence, skill, judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence would exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

Participants in the Program shall not invest or deposit Town funds in any manner which may give rise to a conflict of interest, or which would otherwise violate the provisions of Article 18 of the GML.

V. DIVERSIFICATION

To safely maximize interest earnings, the Town shall seek to diversify its deposits and investments by (a) investing with diverse Depositories, (b) purchasing a variety of investment instruments, and (c) selecting a variety of maturity schedules.

The Town Board shall, by resolution, establish appropriate limits for the amount of investments which can be made with each Depository, and shall evaluate this listing at least annually.

VI. INTERNAL CONTROLS

It is the policy of the Town for all funds collected by any officer or employee of the Town to transfer those funds to the Supervisor, acting as the Treasurer of the Town pursuant to Section 29 of the Town Law, within five (5) days of deposit, or within the time period specified in law, whichever is shorter.

The Supervisor is responsible for establishing and maintaining the Investment Procedures to provide reasonable assurance that (a) deposits and investments are safeguarded against loss from unauthorized use or disposition, (b) transactions are executed in accordance with applicable law and this Policy, (c) proper records are kept, and (d) Town funds, investments and deposits are managed in compliance with applicable laws and

regulations.

The Investment Procedures shall include, but shall not be limited to, the following:

- A. Proper Records.** The Supervisor shall maintain (or cause an Investment Officer to maintain) a proper record of all books, notes, securities or other evidences of indebtedness held by or for the Town for purposes of investment. Such record shall at least (where applicable) identify (1) the security, (2) the fund for which held, (3) the place where kept, (4) the date of acquisition, (5) the date of sale or other disposition, and (6) the amount received from such sale or other disposition.
- B. Periodic Reviews.** To the maximum extent possible, the Supervisor shall prepare and submit to the Town Board at each regular meeting of the Town Board (but not more often than monthly), a summary showing the amount of Town funds on deposit in each Depository and the general nature of the investment of such Town funds.
- C. Quarterly Report.** To the maximum extent possible, the Supervisor shall prepare and submit to the Town Board a quarterly cash-flow forecast to estimate the Town funds that may be available for investment pursuant to the provisions of this Policy.
- D. Annual Report.** Within sixty (60) days of the end of each fiscal year, the Supervisor shall prepare and submit to the Town Board an annual investment report (the “Annual Investment Report”) showing the deposits and investments of Town funds as of the beginning of such fiscal year, a summary of the changes in such amounts during such fiscal year, a summary of the earnings thereon during such fiscal year, and the balance thereof as of the end of such fiscal year.
- E. Annual Audit.** The Annual Investment Report shall be audited by the Town’s independent certified public accountant as part of the Town’s annual general audit.
- F. Annual Review.** The Town Board shall review the Annual Investment Report and the annual audit and this Policy, and shall make any amendments to this Policy necessary to achieve the purposes of this Policy.

VII. DESIGNATION OF DEPOSITARIES

For purposes of this Policy, the term “Bank” shall mean (1) a bank or trust company organized under or subject to Article 3 of the New York Banking Law, or (2) a national banking association located and authorized to do business in the State of New York. Such term shall not a savings bank chartered by either the State of New York or the federal government.

The Town shall, by resolution or resolutions of the Town Board, designate one or more Banks (each Bank so designated, a “Depository”) for the deposit of Town funds received by the Supervisor or any other officer of

the Town authorized by law to make deposits. Such resolution or resolutions shall specify the maximum amount that may be kept on deposit at any time in each such Depository. Such designations and amounts may be changed at any time by a further resolution of the members of the Town Board.

All agreements or other documents to be entered into by and between the Town and a Depository with respect to deposits, investments, account openings, or other arrangements must be reviewed by counsel to the Town and approved by a resolution of the Town Board prior to execution thereof.

VIII. SECURING DEPOSITS AND INVESTMENTS

All Town funds in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereinafter amended shall be secured in accordance with the provisions of Section 10(3) of the GML. Generally, Section 10(3) of the GML provides that Town funds may be secured by (1) a pledge of “eligible securities” (as defined in Section 10(1) of the GML), together with a security agreement and custodial agreement meeting the requirements of Section 10(3)(a) of the GML, or (2) an “eligible surety bond” or an “eligible letter of credit” (as such quoted terms are defined in Section 10(1) of the GML) securing 100% of such Town funds.

IX. COLLATERALIZATION AND SAFEKEEPING

Eligible securities used for collateralizing deposits (examples of which are set forth in Exhibit A attached hereto) made by officers of Town shall be held by a Depository acting as a custodian, (each a “Custodial Depository”) subject to security and custodial agreements.

A. Security Agreement

Each security agreement shall provide that eligible securities (or the pro rata portion of a pool of eligible securities) are being pledged to secure such deposits of Town funds, together with agreed-upon interest, if any, and any costs or expenses arising out of the collection of such deposits of Town funds upon a default. It shall also provide the conditions under which the securities (or pro rata portion of a pool of eligible securities) held may be sold, presented for payment, substituted or released and the events of default which will enable the local government to exercise its rights against the pledged securities.

In the event that the pledged securities are not registered or inscribed in the name of the Town, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Town or the Custodial Depository. Whenever eligible securities delivered to the Custodial Depository are transferred by entries on the books of a federal reserve bank or other book-entry system operated by a federally regulated entity without physical delivery of the evidence of the obligations, then the records of the Custodial Depository shall be required to show, at all times, the interest of the local government in the securities (or the pro rata portion of a pool of eligible securities) as set forth in the security agreement.

B. Custodial Agreement

Each custodial agreement shall provide that pledged securities (or the pro rata portion of a pool of eligible securities) (a) will be held by the Custodial Depository as agent of, and custodian for, the Town, (b) will be kept separate and apart from the general assets of the Custodial Depository, and (c) will not be commingled with or become part of the backing of any other deposit or other liability of the Custodial Depository. The Custodial Agreement shall also describe how the Custodial Depository shall confirm the receipt, substitution or release of the collateral and it shall provide for the frequency of revaluation of collateral by the Custodial Depository and for the substitution of collateral when a change in the rating of a security causes ineligibility. Each Security Agreement and Custodial Agreement shall also include all other provisions necessary to provide the Town with a perfected security interest in the eligible securities and to otherwise secure the Town's interest in the collateral, and may contain other provisions that the Town Board deems necessary.

All Security Agreements or Collateral Agreements to be entered into by and between the Town and a Depository or Custodial Depository with respect to deposits in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereinafter amended must be reviewed by counsel to the Town and approved by a resolution of the Town Board prior to execution thereof.

X. PERMITTED INVESTMENTS

Except as otherwise provided by resolution of the Town Board, the Supervisor, or other designated Investment Officer, may invest Town funds in any obligation described in Section 11 of the GML. Generally, Section 11 of the GML permits the following types of investments:

- A.** Special time deposit accounts in, or certificates of deposit issued by, a Bank located and authorized to do business in the State of New York;
- B.** Through a program in compliance with all the requirements of Sections 10(2)(ii) and 11(2)(a)(2) of the GML (a "Deposit Placement Program"), certificates of deposit in one or more "banking institutions", as defined in Banking Law Section 9-r;
- C.** Obligations of the United States of America;
- D.** Obligations guaranteed by agencies of the United States of America, where the payment of principal and interest are guaranteed by the United States of America;
- E.** Obligations of the State of New York;
- F.** With the approval of the State Comptroller, obligations issued pursuant to Local Finance Law Section 24.00 or 25.00 (i.e., Tax Anticipation Notes and Revenue Anticipation Notes) by any municipality, school district or district corporation in the State of New York other than the Town; and
- G.** Obligations of the Town, but only with respect to moneys in a reserve fund established pursuant to

Sections 6-c, 6-d, 6-e, 6-f, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m, or 6-n of the GML.

All investment obligations shall be payable or redeemable at the option of the Town within such times as the proceeds will be needed to meet expenditures for purposes for which the funds were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event at the option of the Town within two (2) years of the date of purchase. Time deposit accounts and certificates of deposit shall be payable within such times as the proceeds will be needed to meet expenditures for which the funds were obtained, and shall be secured as provided in Articles VIII and IX herein.

Any obligation that provides for the adjustment of its interest rate on set dates is deemed to be payable or redeemable on the date on which the principal amount can be recovered through demand by the holder.

XI. COMMINGLING

Any Town funds invested pursuant to Article X hereof may be commingled for investment purposes upon compliance with the requirements of Section 11(6) of the GML. Generally, Section 11(6) of the GML allows commingling of Town Investments so long as (1) any such investment is payable or redeemable at the option of the Town within such time as the proceeds are needed by the Town, (2) the separate identity of the sources such funds are maintained at all times, and (3) income received on such commingled moneys is credited on a pro rata basis to the fund or account from which the moneys were invested.

XII. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

All financial institutions and dealers with which the Town transacts business shall be creditworthy, and have an appropriate level of experience, capitalization, size and other factors that make the financial institution or the dealer capable and qualified to transact business with the Town. The Supervisor shall evaluate the financial position and maintain a listing of proposed Depositories, trading partners, and custodians. The Supervisor shall obtain, or shall cause to be obtained, recent Reports of Condition and Income (call reports) for proposed financial institutions and security dealers. Any security dealers that are not affiliated with a Bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank as primary dealers.

The Town shall maintain a list of financial institutions and security dealers approved for investment pursuant to this Policy, and establish, by resolution of the Town Board, appropriate limits to the amounts of investments that can be made with each financial institution or security dealer.

XIII. PURCHASE OF INVESTMENTS

The Supervisor is authorized to contract for the purchase of investments:

- A.** Directly, from an authorized trading partner; or
- B.** By participation in a cooperative investment agreement (each a “Cooperation Agreement”) with other

authorized municipal corporations (each an “Authorized Municipality”) pursuant to Article 5-G of the GML and in accordance with Article 3-A of the GML.

All Cooperation Agreements with respect to contracts for the purchase of investments to be entered into by and between the Town and an Authorized Municipality must be reviewed by counsel to the Town and approved by resolution of the Town Board prior to execution thereof.

All purchased obligations, unless registered or inscribed in the name of the Authorized Municipality, shall be purchased through, delivered to and held in the custody of a Depository. Such obligations shall be purchased, sold or presented for redemption or payment by such Depository only in accordance with prior written authorization from an Investment Officer. All such transactions shall be confirmed in writing to the Town by the Depository.

Any obligation held in the custody of a Custodial Depository shall be held pursuant to a Custodial Agreement as described in Section 10(3)(a) of the GML, and further pursuant to the terms of Article IX(B) of this Policy.

The Supervisor, where authorized, may direct the Depository to register and hold the evidences of investments in the name of the Depository’s nominee, or may deposit or authorize the Depository to deposit, or arrange for the deposit of any such evidences of investments with a federal reserve bank or other book-entry transfer system operated by a federally regulated entity. The records of the Depository shall show, at all times, the ownership of such evidences of investments, and they shall be, when held in the possession of the Depository, at all times, kept separate from the assets of the Depository. All evidences of investments delivered to a Depository shall be held by the Depository pursuant to a written Custodial Agreement as described in Section 10(3)(a) of the GML, and further pursuant to the terms of Article IX(B) of this Policy. When any such evidences of investments are so registered in the name of a nominee of the Depository, the Depository shall be absolutely liable for any loss occasioned by the acts of such nominee with respect to such evidences of investments.

XIV. COURIER SERVICE

The Town Board may, by resolution, authorize the Supervisor, or another Investment Officer to turn over the physical safekeeping any evidences of the investments made pursuant to this Policy (“Town Investments”) to any entity authorized pursuant to Section 11(4) of the GML to act as a custodian of Town Investments, but only upon compliance with the requirements of Section 11(4) of the GML. Generally, Section 11(4) of the GML allows the following types of entities to act as custodians of Town Investments:

- A.** any bank or trust company incorporated in the State of New York;
- B.** any national bank located in the State of New York; and
- C.** any private banker duly authorized by the New York State Superintendent of Banks to engage in business in New York State which maintains a permanent capital of not less than one million dollars in New York State.

The Town may agree with the Depository, pursuant to a reimbursement agreement (each a “Reimbursement Agreement”), that the Depository will reimburse all or part of, but not more than, the actual cost incurred by the Town in transporting items for deposit through a custodian. Any such Reimbursement Agreement shall apply only to a specified deposit transaction, and may be subject to such terms, conditions and limitations as the Depository deems necessary to ensure sound banking practices, including, but not limited to, any terms, conditions or limitations that may be required by the Department of Financial Services or other federal or State authority. However, any such Reimbursement Agreement shall be subject to review and approval by counsel to the Town prior to execution by the Town.

XV. ANNUAL REVIEW AND AMENDMENTS

The Town shall review this Policy annually, and it shall have the power to amend this Policy at any time.

XVI. DEFINITIONS

The terms “public funds,” “public deposits,” “bank,” “trust company,” “eligible securities,” “eligible surety bond,” and “eligible letter of credit” shall have the same meanings as set forth in Sections 10 and 11 of the GML.

EXHIBIT A

ELIGIBLE SECURITIES FOR
COLLATERALIZING DEPOSITS AND
INVESTMENTS IN EXCESS OF FDIC COVERAGE

<p>Eligible Securities for Collateral</p>	<p>For purposes of determining aggregate “market value,” eligible securities shall be valued at these percentages of “market value”:</p>
<p>(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.</p>	<p>100%</p>
<p>(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.</p>	<p>100%</p>
<p>(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.</p>	<p>100%</p>
<p>(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 this State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.</p>	<p>100%</p>
<p>(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.</p>	<p>100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.</p>
<p>(vi) Obligations of the Commonwealth of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.</p>	<p>100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.</p>
<p>(vii) Obligations of counties, cities and other governmental entities of another state having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of</p>	<p>100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.</p>

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.	80%
(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 federal bank regulatory agencies.	70%
(x) Commercial paper and bankers' acceptances issued by a bank (other than the bank with which the money is being deposited or invested) rated in the highest short-term category by at least one nationally recognized statistical rating organization and having maturities of not longer than sixty (60) days from the date they are pledged.	80%
(xi) Zero-coupon obligations of the United States government marketed as "Treasury STRIPS."	80%