

**DEPOSITORY CONTRACT FOR COUNTY AND TRUST FUNDS  
HELD BY WISE COUNTY**

THIS AGREEMENT, made and entered by and between FIRST FINANCIAL BANK, N.A. SOUTHLAKE, a banking corporation authorized to maintain and maintaining branch offices in Texas, hereinafter called "Bank," and WISE COUNTY, a body corporate and politic under the laws of the State of Texas, hereinafter called "Depositor,"

**WITNESSETH:**

WHEREAS, the Bank has submitted its application for operating bank depository for county and trust funds of the Depositor; and

WHEREAS, the Commissioners Court of WISE COUNTY, sitting as the governing body of the Depositor, has selected the Bank as the operating bank depository for registry funds held by the Depositor; and

WHEREAS, the Bank desires to qualify as the operating bank depository for operating and trust funds held by the Depositor;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, agreements and benefits to both parties, it is agreed as follows:

**I. Duration and Terms**

The conditions of this contract are such that whereas the Bank has been duly and legally chosen by the Commissioners Court of WISE COUNTY as the operating bank depository for the Depositor under Texas law, by reason of the Bank's having agreed to act as the operating bank depository for the county and trust funds held by the Depositor and by reason of the Bank's having bid and agreed to the following:

- A. The Bank will provide the supplies and services required by the Depositor in connection with the depository service. The Bank may be willing to provide additional bank services and products to the Depositor that is not requested in the Depositor's request for bid but which the Depositor later determines would be beneficial. No charge shall be made by the Bank for any service, unless specified above or provided by written amendment signed by both parties.
- B. The Bank agrees to provide these services for a four year term starting May 15, 2009 and ending May 16, 2013, this includes a renewal option for an additional two year term. This contract shall allow the bank to establish, after negotiations with the Depositor, new

interest rates and financial terms that will affect the final two years of the four year contract and the renewal period. Providing the new terms:

1. Do not increase the prices to the Depositor by more than 10%.
  2. Depositor has the option to use the initial variable interest rate option or change the new or fixed or variable rate options proposed by the bank.
- C. The Bank agrees to pledge securities, as approved by the Commissioners Court, for funds deposited under this depository contract in favor of the Depositor. In addition to or in lieu of the securities hereby pledged, the Bank may furnish to the Depositor one or more surety bonds to secure the funds of the Depositor. Securities as collateral will be equal to 102% of the trust checking account, cash bond checking account and the certificates of deposit of the Depositor on deposit with the Bank from day to day that are not covered by Federal Deposit Insurance Corporation insurance protection, and surety bonds will be equal to 125% of the ledger funds of the Depositor on deposit with the Bank from day to day that are not covered by Federal Deposit Insurance Corporation insurance protection. To afford the Bank a reasonable time to adjust the amount of collateral, the Depositor agrees to notify the Bank prior to any expected increase in deposited funds that would require an increase in the amount of collateral. Collateral will be priced to market once monthly. The Bank will provide additional collateral necessary to equal the required amounts of collateral indicated above within one business day after the Bank becomes aware of any deficiency in the amount of collateral.
- D. The volume of funds deposited under this contract will vary from time to time. In order that the deposits may be at all times amply secured by pledged securities pursuant to this contract and the depository laws of the State of Texas, the Depositor shall have the right, upon twenty-four hours written notice, to require an increase in the value of the pledged securities hereunder. Likewise, upon notice, the Bank shall have the right to decrease the value of the pledged securities that are in excess of 102% of the deposits that are not covered by Federal Deposit Insurance Corporation insurance protection, or surety bonds in excess of 125% of the ledger funds of the Depositor on deposit with the Bank from day to day that are not covered by Federal Deposit Insurance Corporation insurance protection. Deposit of additional securities, and withdrawals of excess securities, shall be, for convenience, in units of \$25,000 or more.
- E. The Bank shall have the right to substitute or withdraw any part of the collateral with any type of securities collateral authorized by the Public Funds Collateral Act. When an exchange is desired by the Bank, it shall make application to the Depositor and submit a list of the securities proposed to be exchanged and the securities that it desires to withdraw. If the securities so proposed and tendered for substitution are of the kind and character described above and of the required amount and value, the Depositor will grant the application and permit a substitution or withdrawal, as allowed by law. If permission is granted and securities are substituted, the substituted securities shall thereafter be

subject to all of the terms and conditions of this contract as fully as if originally pledged hereunder.

- F. The Bank agrees to provide Depositor interest bearing checking accounts. The accounts will earn a rate of interest equal to the average rate earned by the bank on its federal fund investments less 1.25%. This rate will be adjusted on a daily basis and will be paid on the average daily collected balance. The bank agrees to pay a minimum of 0.25% and a maximum of 3.00% interest on all checking accounts.
- G. The Bank is never obligated to pay any item or permit any transaction that would cause an overdraft in the applicable accounts. The Bank reserves all rights and remedies it has under its Terms and Conditions of Deposit Accounts or otherwise with respect to overdrafts. The Bank expects that the Depositor will conduct its affairs so as to avoid overdrafts in its accounts, and that the Depositor will fund any account that has a negative collected balance on the same day that the Depositor is notified of the situation. Overdraft interest will be charged any time the collected balance in any individual account of the Depositor is negative at the end of a banking day at a rate equal to the Bank's standard overdraft interest charge as it changes from time to time. The Bank's current overdraft interest charge is the Earnings Credit Rate. Additionally, if the Depositor's accounts are in an aggregate overdraft position during the banking day, the Bank reserves the right to pass on to the Depositor any amount the Federal Reserve Bank charges the Bank for daylight overdraft positions in the Bank's reserve accounts. Further, the Bank must recognize and honor all stamped statements by the Depositor on all checks as to their validity after 60 days, even if a fee is charged to the Depositor for such services.
- H. The Bank agrees to pay interest to the Depositor on certificates of deposit in the depository at the Bank's then-current quoted rates plus 10 basis points for time deposits of like amount and term or at a rate equal to the discount rate of a like maturity United States Treasury Bill on the date of purchase less 25 basis points. The bank agrees to pay a minimum of .50% and a maximum of 3.50% on all CDs. Interest is compounded daily, calculated on a 365-day simple interest basis. Interest shall be credited to the respective certificates of deposit monthly. The Bank shall send an interest earned statement reflecting the above and the rates during the month, within 3 business days after the close of the preceding calendar month. Provided, however, that rates shall at no time exceed the maximum rate permitted under all applicable law.
- I. The Bank shall discharge all of the duties required by law in the care, safekeeping and custody of the investment securities placed with/pledged to the Depositor. When any securities owned by the Depositor are placed in the Bank, the Bank shall provide for the care, safekeeping and custody of such other securities. The Bank will deliver transaction advices for any transaction affecting the securities of the Depositor. On a monthly basis, the Bank will deliver a complete listing of all securities held at the beginning of the month and any received during the month. The report shall report any security sold or matured and the market value of any security held at the end of the month and submitted to the County Auditor. Market value shall be obtained from a nationally recognized source, acceptable to the Depositor.

- J. It is expressly understood that the Depositor shall have the right pursuant to court order to withdraw funds, without penalty except as required by law, from time to time, any amount of funds of the Depositor that are deposited in the Bank and to invest those funds in direct debt securities of the United States, Certificate of Deposit or deposits in other depositories and other investments that the Depositor may now or hereafter be authorized to make under the laws of Texas. Bank expressly agrees to pay interest on all time deposits from the date of purchase to the date the time deposits are paid to the Depositor, at the market rate plus 10 basis points at the date of purchase and without penalty except as required by law, if withdrawal is court ordered.
- K. The Bank will accept wire transfer deposits made by or on behalf of the Depositor. Such deposits will be made to such accounts as the Depositor may direct in writing or by telephone. Any deposit instructions given by telephone by the Depositor will be confirmed by letter electronically mailed within the business day of the telephone instruction to the designated bank representative.
- L. The Bank will provide account balances and transaction information to the Depositor each banking day via computer terminal. The Depositor will make deposits to the accounts at various times during the banking day and the Bank will give same-day ledger credit on deposits the Bank receives before 3:00 p.m. The level of available funds in all accounts will be determined on the following schedule:

**DEPOSITORY ITEMS AVAILABILITY**

1. Cash, items drawn on the depository, wire transfers, ACH deposits, letters of credit	SAME DAY
2. Encoded items drawn on Direct Clearing institutions that meets at the local clearinghouse check exchange and received by bank by noon	SAME DAY
3. Items on local institutions (other than those listed in #2 above)	NEXT DAY
4. Other items	FEDERAL RESERVE AVAILABILITY SCHEDULE

- M. The Bank will provide to the Depositor a statement at least annually for each certificate of deposit, including a statement as of the last business day of each year. The statement or statements collectively will include the interest earned, early withdrawal penalty (if any), and the ending balance as of the closing date for the statement. The end of the year statement will be provided to the Depositor no later than 31 days after the end of the calendar year.

N. Not later than 8:00 a.m. of each banking day, the Bank shall make available to the Depositor via computer terminal the daily ending ledger and collected balances of each account for the banking day immediately preceding. Not later than 10:00 a.m. of each banking day, the Bank shall make available to the Depositor the dollar amount of checks deposited by the Depositor with the Bank that were charged back to the Depositor's account during the banking day immediately preceding. Not later than three (3) banking days after the end of each calendar month, the Bank will furnish the Depositor a separate monthly statement for each account showing overall activity to the account in the calendar month. The Bank will provide the Depositor with a full reconciliation or a paid tape for each account as requested by the Depositor. The Bank will furnish the statement in paper form and in electronic file format acceptable the Depositor. Additionally, canceled check images will be furnished to the Depositor. The Bank will fine sort checks in ascending numerical order. If requested by the Depositor, the Bank will provide canceled checks via computer disk (CD), along with appropriate software to access the data.

## **II. Termination**

During the time of this contract, the Bank or the Depositor can terminate this contract for convenience or default at any time with 60 day written notice. In the cases of default, the Bank shall have the opportunity to cure the default with the time allotted in the written notice. If the default is for a criminal action the contract is subject to immediate termination. In the event that this contract is terminated, whether voluntarily or involuntarily or by selection of the successor depository, Bank agrees to pay interest on all time deposits from the date of purchase to the date the time deposits are paid to the Depositor, at the market rate plus 10 basis points at the date of purchase, without penalty for early withdrawal, except as required by law. Notwithstanding the stated term of this bid, the Bank may terminate all or particular services at any time during the bid term for the reasons stated in the Treasury Management Service Agreement or any other agreement that governs those services, so long as Bank's termination of services are in accordance with the provisions of Chapters 116 & 117, Texas Local Government Code.

## **III. Jurisdiction and Compliance with Texas Law**

Any suit arising out of or in any way connected with this contract shall be tried in WISE COUNTY in a court of proper jurisdiction. Texas law shall govern this contract and its terms. All of the provisions and requirements of the laws governing county depositories shall be a part of this contract.

## **IV. Written Communications**

Any written notice permitted or required to be given by the Depositor to the Bank shall be hand-delivered or mailed via certified mail, return receipt requested to any officer of the Bank, between the hours of 9:00 a.m. and 5:00 p.m. on any day other than a Saturday, Sunday or legal Bank holiday, to the following address:

909 Stevens Street  
Bridgeport, Texas 76426

Such written notice shall be deemed received when handed to any officer of the Bank. The Depositor recognizes that the Bank's lobby closes at 4:00 p.m. Monday through Thursday. While Bank Officers are generally present until 5:00 p.m., notification should be received by the Bank during normal business hours.

Any notice permitted or required to be given by the Bank to the Depositor shall be hand delivered or mailed via certified mail, return receipt requested the Depositor at:

P.O. Box 554  
Decatur, Texas 76234

Between the hours of 9:00 a.m. and 5:00 p.m. on any day other than a Saturday, Sunday, legal Bank holiday, County holiday or when the Courthouse is closed.

## **V. Miscellaneous**

### **A. Depositor's Access**

The Wise County Treasurer has exclusive control over all Depositors' accounts. Also, the depositor's accounts must be able to be accessed by the Wise County Auditor. A signature from each of the above offices is required to cash a Depositor's check.

### **B. Departmental Access**

The Depositor allows only certain county departments to either open or maintain an account in the Bank. County or District Clerk may maintain any number of accounts for their registry accounts. County Tax Assessor Collector may only have three accounts. Further, each Justice of the Peace may have only one account being a merchant restitution account.

### **C. Positive Pay**

Every depositor has an obligation to take reasonable steps to prevent fraud on its accounts. For that reason, the Bank offers customers a "Positive Pay" service, which allows customers to notify the Bank of certain information regarding issued checks for comparison with checks presented to the Bank for payment. Under applicable provisions of the Uniform Commercial Code, courts will assess liability for losses between the bank and bank customers based on the degree to which each party's failure to exercise ordinary care contributed to the loss. The Bank believes that ordinary care requires all public fund customers to use positive pay to help prevent third-party fraud on their accounts.

### **D. Courier Services**

Courier services used by the Depositor to deliver currency, checks, or other items to the Bank must meet the requirements for courier services specified in the Bank's Treasury Management Service Agreement and Administrative Rules.

#### **E. Third-Party Service Providers**

In the normal course of its business, the Bank may engage certain third party vendors to provide or assist in providing all or part of certain services. The Bank has no obligation to specifically disclose the existence of these arrangements to the Depositor or to obtain the Depositor's consent to these arrangements unless the third party is engaged solely for the purpose of serving the Depositor's business.

#### **F. Other Agreements**

All services are subject to the terms of the Bank's Terms and Conditions of Deposit Accounts and Treasury Management Service Agreement, as well as any other standard agreements applicable to the products and services provided. To the extent of any conflict between this Agreement and the Bank's standard agreements, this Agreement will control.

#### **G. No Oral Agreements**

THIS AGREEMENT AND OTHER DOCUMENTS SIGNED BY THE BANK AND THE DEPOSITOR REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

#### **H. Additional Documents Required to Provide Services**

In connection with establishing the Accounts and providing services to Depositor, the Bank will require additional documentation. Those documents include the following:

- (1) Current signature cards on file with the Bank for each of the Account; and,
- (2) Implementation forms relating to each additional service requested or used by the Depositor.

#### **I. Additional Contract Documents**

The documents listed below are attached and incorporated in the event a conflict in interpretation exists, the parties can refer to the original bid documents for clarification:

- (1) Wise County Depository Application submitted by Bank  
Attached hereto as Exhibit "C"
- (2) Wise County Invitation to on Depository Contract Bid NO. 09-600-055  
Attached hereto as Exhibit "D"

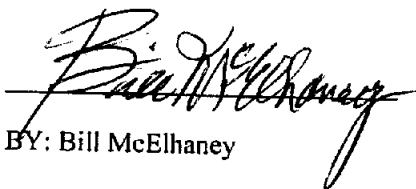
#### **J. Secretary's Certificate**

Prior to execution of this contract by either party, a proper secretary's certificate certifying that the individual signing this contract on behalf of the Bank has been duly appointed by the Bank through its Board of Directors to act on behalf of the Bank for purposes of this Contract. Said Certificate shall be incorporated herein for all purposes.

EXECUTED in triplicate originals this 15<sup>th</sup> day of MAY, 2009.

COUNTY OF WISE  
STATE OF TEXAS

FIRST FINANCIAL BANK

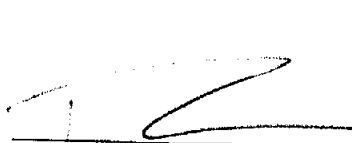
  
BY: Bill McElhaney

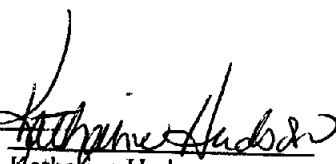
  
BY: V.B. Quinn


TITLE: County Judge

TITLE: SVP/Cashier

Approved as to form\*: Approved

  
Thomas J. Aaberg  
Commissioner Court Attorney

  
Katherine Hudson  
Wise County Treasurer

  
Ann McCuiston  
Wise County Auditor

\* By law, the Commissioner Court Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document as offered solely for the behalf of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s)