

**AGENDA PLACEMENT FORM**

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 11/15/2023

Meeting Date: 11/27/2023

Submitted By: Kathy Blackwell

Department: Treasurer

Signature of Elected Official/Department Head:

*Kathy M. Blackwell*

<b>Court Decision:</b> <small>This section to be completed by County Judge's Office</small>
<b>COMMISSIONERS COURT</b>  <b>NOV 27 2023</b>  <b>Approved</b>

**Description:**

Consider and Approve Amended Johnson County Bank Depository Contract  
Allowing for the Use of an Irrevocable Letter of Credit as Collateral Securing  
County Investments with Authorization for County Judge to sign.

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(May attach additional sheets if necessary)

**Person to Present:** \_\_\_\_\_

(Presenter must be present for the item unless the item is on the Consent Agenda)

**Supporting Documentation:** (check one)     PUBLIC     CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

**Estimated Length of Presentation:** \_\_\_\_\_ minutes

**Session Requested:** (check one)

Action Item     Consent     Workshop     Executive     Other \_\_\_\_\_

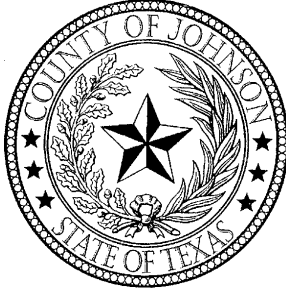
**Check All Departments That Have Been Notified:**

County Attorney     IT     Purchasing     Auditor

Personnel     Public Works     Facilities Management

Other Department/Official (list) \_\_\_\_\_

**Please List All External Persons Who Need a Copy of Signed Documents  
In Your Submission Email**



## AMENDED JOHNSON COUNTY BANK DEPOSITORY CONTRACT

This AMENDED JOHNSON COUNTY BANK DEPOSITORY CONTRACT hereinafter called “AMENDED DEPOSITORY CONTRACT” is made and entered into on the date last herein written by and between JOHNSON COUNTY, TEXAS, hereinafter called “**COUNTY**”, and FIRST FINANCIAL BANK, N. A., a national banking association organized under the laws of the United States and authorized by law to do banking business in Johnson County, Texas and now conducting such business in said County, hereinafter called “**BANK**”, and is an amendment to the Depository Contract that was effective June 1, 2019 through May 31, 2023 and extended for a two-year term beginning on June 1, 2023 and terminating on May 31, 2025, and is as follows:

### I.

**COUNTY**, through action of its Commissioners Court, hereby designates **BANK** as a depository until May 31, 2025. **BANK** and **COUNTY** agreed to the following additional terms when the original four-year term (June 1, 2019 to May 31, 2023) was renewed for a two-year term effective June 1, 2023 to May 31, 2025 and said terms are hereby incorporated into this Amended Depository Contract:

- a. Interest paid to Johnson County deposits held in interest bearing accounts will be at a rate equal to 85% of the 4-week average 91 Day T-Bill rate during the prior month with a cap of 2.50% and a floor of 0.25%.
- b. Standard fees will continue to be waived and a monthly flat fee of \$500 will continue to be charged. This will cover Bank and Treasury Management service charges with the exception of Merchant Services, LockBox, SmartPay Express, and other third-party products and services.
- c. Early withdrawal penalties on CDs will be waived.
- d. First Financial Bank highly encourages Johnson County to use Positive Pay for their accounts. An Acknowledgement of Refusal to Implement Positive Pay Form is requested if not intending to use.

### II.

During the term of this Amended Depository Contract, the **COUNTY** will, through appropriate action of its Commissioners Court, designate the officer, or officers, who singularly or jointly will be authorized to represent and act on behalf of the **COUNTY** in any and all matters of every kind arising under this Amended Depository Contract and to (a) execute and deliver to **BANK** an electronic fund or funds transfer agreement (and any addenda thereto), (b) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or

transfers on behalf of **COUNTY** in accordance with the electronic fund or funds transfer agreement and addenda and (c) make withdrawals or transfers by written instrument.

### III.

Exhibit "A", Collateral Security Agreement; and Exhibit "B", First Financial Bank, N. A.'s Bid for Depository Contract, RFP 2019-905; are attached hereto and incorporated fully as if recited herein verbatim; however, to the extent that any provision in Exhibit "A", conflicts with any provision herein. Exhibit "A" will control; and to the extent any provision in Exhibit "B" conflicts with any provision herein, this Amended Johnson County Bank Depository Contract will control.

### IV.

**COUNTY** may arrange for time deposits, and **BANK** may accept and shall hold such deposits subject to payment in accordance with the terms of the deposit. Interest shall be calculated at the rate which **BANK** has bid for the particular denomination and time period of said deposit at competitive public bidding for said deposits. Time deposits will mature on or before the expiration of this Amended Depository Contract. All Time Deposits that mature beyond the expiration of this Amended Depository Contract will be at contractual interest rates negotiated at the time of purchase.

### V.

**BANK** agrees to charge a flat monthly fee of \$500 to **COUNTY** with the exception of services such as Merchant Services, Lockbox, RemitPlus Express, and Smart Safes, which are billed separately. The **COUNTY** shall also earn interest on all deposited funds at a rate equal to 85% of the average 91 Day T-Bill rate during the prior month with a cap of 2.50%.

### VI.

All funds on deposit with **BANK** to the credit of the **COUNTY** shall be secured by collateral as provided for in the Public Funds Collateral Act of 1989 (Chapter 2257 of the Texas Government Code) which may include a letter of credit issued by a federal home loan bank (a "FHLB"). The total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits will be in an amount at least equal to the minimum market values of one hundred and three percent (103%) of all **COUNTY'S** deposits, plus accrued interest, and reduced to the extent that such deposits are insured by an agency or instrumentality of the United States Government. The market value with respect to any securities (collateral) as of any date and priced on such date will be obtained from a primary dealer. When additional collateral is required, **BANK** will supply the additional collateral at no cost to the **COUNTY**.

### VII.

Except to the extent the collateral utilized is represented by a FHLB letter of credit, **BANK** will utilize pledged securities held by its custodian to provide the required collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of **COUNTY** deposited with **BANK**. Said collateral as hereinafter provided for, shall be kept and retained so long as the depository relationship between **COUNTY** and **BANK** shall exist

hereunder, and thereafter so long as deposits made by **COUNTY** with **BANK** hereunder, or any portion thereof, shall have not been properly paid out by **BANK** to **COUNTY** or on its order.

### VIII.

**BANK** represents that the collateral owned by **BANK** and pledged to **COUNTY** is not otherwise assigned, pledged or encumbered and that no lien, or security interest exist other than the security interest held by the **COUNTY** pursuant to this agreement. Possession of such collateral by **BANK'S** custodian is intended as perfection of **COUNTY'S** security interest therein. **BANK** warrants that such collateral (in the form and amount required by law) is held by **BANK'S** custodian for the benefit of **COUNTY** and as security for **COUNTY'S** funds.

### IX.

Should **BANK** fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposit and the interest on such deposits or in any manner breach its contract with **COUNTY**, **COUNTY** shall give written notice of such failure or breach to **BANK**, and **BANK** shall have three (3) business days to cure such failure or breach. In the event **BANK** shall fail to cure such failure or breach within three (3) business days or should the **BANK** be declared insolvent by a Federal bank regulatory agency, it shall be the duty of **BANKS** custodian upon demand of **COUNTY** (supported by proper evidence of any of the above-listed circumstances), to surrender the collateral owned by **BANK** to **COUNTY**, and to the extent secured thereby, **COUNTY** may sell all or any part of such collateral and out of the proceeds thereof pay **COUNTY** all direct damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, accounting to **BANK** for the remainder, if any, of said proceeds or collateral remaining unsold.

### X.

Any sale of such **BANK**-owned collateral, or any part thereof, made by **COUNTY** hereunder may be either at public or private sale: provided, however, it shall give to both **BANK'S** custodian and **BANK** two (2) hours' notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefore for cash. **COUNTY** and **BANK** shall have the right to bid at such sale.

### XI.

If **BANK** shall desire to sell or otherwise dispose of any one or more of said securities so deposited with **BANK'S** custodian, it may substitute for any one or more of such securities other securities of the same market value and of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by **BANK** as often as it may desire, provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder. If at any time, the value of **COUNTY'S** maximum undrawn beneficial interest under the letter of credit or letters of credit issued by the FHLB for its benefit hereunder when coupled with the aggregate market value of any **BANK**-owned collateral deposited with **BANK'S** custodian for the benefit of **COUNTY** is less than an amount at least equal to one hundred and three percent (103%) of all **COUNTY'S** deposits, plus accrued interest, and reduced to the extent that such deposits are insured by an agency or instrumentality of the United States Government, **BANK** shall

immediately deposit with **BANK'S** custodian such additional collateral as may be necessary to cause the market value of the collateral to be equal to the minimum market values of one hundred and three percent (103%) of all **COUNTY'S** deposits, plus accrued interest, and reduced to the extent that such deposits are insured by an agency or instrumentality of the United States Government. **BANK** shall be entitled to income on securities held by **BANK'S** custodian, and **BANK'S** custodian may dispose of such income as directed by **BANK** without approval of **COUNTY**.

## **XII.**

**BANK'S** custodian shall promptly forward to **COUNTY** copies of safekeeping or trust receipts covering all such **BANK**-owned collateral held for the benefit of **COUNTY**, including substitute collateral as provided for herein.

## **XIII.**

If at any time the collateral shall have a market value in excess of the amount required in Article VI above, the **COUNTY** shall authorize the withdrawal of a specified amount of the **BANK**-owned collateral. **BANK'S** custodian shall deliver this amount of collateral (and no more) to **BANK**, taking receipt therefore, and **BANK'S** custodian shall have no further liability for collateral so redelivered to **BANK**.

## **XIV.**

Either **COUNTY** or **BANK** shall have the right to terminate this contract prior to the expiration date by advance written notice to the other of its election to do so, and this contract shall be void from and after the expiration of ninety (90) days after receipt of such notice, provided all provisions of this contract have been fulfilled. This contract shall not automatically renew.

## **XV.**

When the relationship of **COUNTY** and **BANK** shall have ceased to exist between **COUNTY** and **BANK**, and when **BANK** shall have properly paid out all deposits of **COUNTY**, it shall be the duty of **COUNTY** to give **BANK'S** custodian a certificate to that effect; whereupon **BANK'S** custodian shall, with the approval of **COUNTY**, redeliver to **BANK** all collateral then in its possession belonging to **BANK**, taking its receipt therefore. An order in writing to **BANK'S** custodian by **COUNTY** and a receipt for such collateral by **BANK** shall be a full and final release of **BANK'S** custodian of all duties and obligations undertaken by it by virtue of these presents.

## **XVI.**

**BANK** and its agents, employees, officers and/or volunteers shall not, by performing work pursuant to this contract, be deemed to be employees, agents or servants of **COUNTY** and shall not be entitled to any privileges or benefits of **COUNTY** employment.

## **XVII.**

**COUNTY** is a political subdivision of the State of Texas. As a governmental entity, **COUNTY** is prohibited by statute from indemnifying any other party by contract.

**XVIII.**

This contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Johnson County, Texas. Jurisdiction and venue for all legal purposes shall be in the state district courts in Johnson County, Texas, or the federal district courts in Dallas County, Texas.

In the event of one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**BANK** shall comply with all applicable laws, ordinances and codes of the State of Texas, all local governments, and any other entities with local jurisdiction. **BANK** shall indemnify **COUNTY** in the event of non-compliance.

The waiver by either party of a breach of any provision of this contract shall not operate as or be construed as a waiver of any subsequent breach.

Any amendments of this contract shall be of no effect unless in writing and signed by all parties hereto.

**XIX.**

Any and all notices or communications required or permitted under this contract shall be delivered in person or mailed, certified mail, return receipt requested, as follows:

To County: Christopher Boedeker  
County Judge  
2 North Main Street  
Cleburne, TX 76033  
Telephone No. 817-556 -6360

To Bank: First Financial Bank, N. A.  
Contact person: Jaye Weishuhn  
Address: 200 North Ridgeway  
Cleburne, TX 76033  
Telephone No: 817-202-3182

Copy to: Kathy Blackwell  
County Treasurer  
2 North Main Street, #214  
Cleburne, TX 76033  
Telephone No. 817-556-6340

Steve Watson  
County Auditor

2 North Main Street, #314  
Cleburne, TX 76033  
Telephone No. 817-556-6305

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

**IN TESTIMONY OF WHICH, THIS CONTRACT** has been executed by the **COUNTY** and **BANK** as of the date stated below. The provisions of this contract shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

**JOHNSON COUNTY**

By:   
Christopher Boedeker, County Judge

Date: 11-27-23


**ATTEST:**

By:   
April Long, County Clerk




Date: 11-27-23

**FIRST FINANCIAL BANK, N.A.**

By:   
Printed Name: Austin Elsner  
Title: Cleburne Region President & CEO

Date: 11/16/2023

**ATTEST:**

By:   
Printed Name: Jaye Weishuhn  
Title: Cleburne Region SVP | COO

Date: 11/16/2023

Attachments:

Exhibit "A", Collateral Security Agreement

Exhibit "B", First Financial Bank, N. A.'s Bid for Depository Contract, RFP 2019-905