

STATE OF TEXAS           §  
                                     §  
COUNTY OF BELL       §

## AGREEMENT

This Agreement, regarding the conveyance of a permanent utility easement across certain property (“**Agreement**”), is made and entered into by and between the CITY OF KILLEEN, TEXAS, a home-rule municipal corporation organized under the laws of Texas (“**City**”) and BTM Holding LLC, owner(s) of certain real property (“**Owner**”); collectively the “**Parties.**”

## RECITALS

**WHEREAS**, pursuant to Chapter 271 of the Texas Local Government Code, the City is authorized to enter into agreements to acquire interest in real property;

**WHEREAS**, Owner owns in fee simple the property legally described as 177.645 acres of land, out of the Moses T. Marting Survey, Abstract No. 963 in Bell County, Texas as evidenced and more thoroughly described in the Warranty Deed recorded in Vol. 13330, Pg. 684, of the Real Property Records of Bell County, Texas, as Instrument No. 2023037443 (the “**Property**”);

**WHEREAS**, City requires an easement upon and across said Property to install and maintain water and sewer mains (“**Easement**”), with said Easement being more thoroughly described in the attached Permanent Utility Easement Agreement;

**WHEREAS**, the City owns in fee simple two properties legally described as a 0.211-acre tract and a 0.090-acre tract both situated in the Moses T. Martin Survey, Abstract No. 963, and both being a portion of a called 1.024-acre tract of land described in a deed to the City of Killeen as recorded in Vol. 14195, Pg. 352, of the Real Property Records of Bell County, Texas, as Instrument No. 2025034374 (collectively, the “**City Properties**”), which are more thoroughly described in the survey and metes and bounds descriptions attached to Exhibits B & C.;

**WHERE**, the City Properties are adjacent to, and surrounded by the Property and the City finds they serve no public purpose, lack access to public roads, and cannot be used independently due to their shape, location, and small area; and

**WHEREAS**, the Parties have determined that it is in their best interests to contract with each other with regard to conveyance of the Easement.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

## **I. Term**

A. This Agreement shall become effective upon execution by the City and Owner (“**Effective Date**”) and shall automatically terminate upon (i) full performance by both Parties or (ii) by written agreement between the Parties.

B. The Parties fully understand that the term of this Agreement shall not affect the duration of the Easement, which shall run with the land in perpetuity.

## **II. Consideration**

A. Owner, within 30 days of the Effective Date of this Agreement, shall sign and return the Permanent Utility Easement (attached as Exhibit A), thereby granting the Easement to the City.

B. City, within 30 calendar days of the Effective Date of this Agreement, shall issue to Owner two Special Warranty Deeds (attached as Exhibits B and C) conveying the City Properties to Owner.

C. Owner shall grant a temporary construction easement to City across the Property and the City Properties during construction of a water storage tank on adjacent City property. Said temporary construction easement will run so long as construction persists and will cease upon notification by the City of the completion of construction of the water storage tank.

## **III. Miscellaneous Provisions**

A. Recitals. All the above recitals are hereby found to be true and are hereby incorporated into this Agreement as if fully set forth in their entirety.

B. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein. There is no other collateral oral or written agreement among the Parties that in any manner related to the subject matter of this Agreement. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of each party. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

C. Severability. The provisions of this Agreement are severable and, in the event that any portion of this Agreement is found to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected, and this Agreement will be construed as if it had never contained such invalid or unconstitutional provision.

D. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

E. Exhibits. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. In the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

*(signature page follows)*

**IN WITNESS THEREOF**, the Parties have caused this Agreement to be signed on the date of each signature below. This Agreement shall be **EFFECTIVE** on the date of the last required signature.

CITY OF KILLEEN

**OWNER**

|                            |      |
|----------------------------|------|
| Kent Cagle<br>City Manager | Date |
|----------------------------|------|

|                  |      |
|------------------|------|
| BTM Holding, LLC | Date |
|------------------|------|