

**AGREEMENT FOR TAX ABATEMENT FOR PROPERTY LOCATED
IN THE CITY OF KILLEEN I-14/ TRIMMIER ROAD REINVESTMENT
ZONE**

THE STATE OF TEXAS §

COUNTY OF BELL §

This agreement is entered into pursuant to the authority granted under Chapter 312, Property Redevelopment and Tax Abatement Act, Texas Tax Code, by and between the CITY OF KILLEEN, TEXAS, a home rule city and municipal corporation of Bell County, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "CITY" and FIRST NATIONAL BANK TEXAS, hereinafter referred to as "FNBT."

WITNESSETH

WHEREAS, on April 28, 2020, the City Council of the City of Killeen , established the I-14/ Trimmier Road Reinvestment Zone for commercial/industrial tax abatement as authorized by the Property Redevelopment and Tax Abatement Act, Texas Tax Code, Chapter 312; and

WHEREAS, the property that is the subject of this Agreement is located within the I-14/ Trimmier Road Reinvestment Zone.

WHEREAS, on March 24, 2020, the CITY adopted "Guidelines and Criteria For Granting Tax Abatement," by Resolution 20-027R . All definitions and terms set forth therein are applicable to this Agreement; and

WHEREAS, the policy on tax abatement incentives constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the CITY as required by the Property Redevelopment and Tax Abatement Act; and

WHEREAS, FNBT filed an Application for Tax Abatement with CITY on February 24, 2020. (See Exhibit "A"); and

WHEREAS, FNBT proposes construction of a five-story office building, containing 47,653 square feet and the retention of 130 full time equivalent jobs; and

WHEREAS, the proposed use of the property, the substantial proposed improvements to the property with an estimated new building investment cost of \$12,852,524, and the other terms hereof are consistent with encouraging development of the CITY's reinvestment zone in accordance with the purposes for its creation and are in compliance with the CITY's policy on tax abatement incentives and the ordinance creating the reinvestment zone adopted by the CITY and all applicable laws;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual covenants and agreements recited herein, CITY and FNBT agree as follows:

1. Definitions.

- a. **Abatement:** The full or partial exemption from ad valorem taxes of a new structure in the I-14/ Trimmier Road Reinvestment Zone designated by the CITY.
- b. **Base Year Value:** The assessed value of eligible property on January 1, 2020.
- c. **Eligible Improvements:** Buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the Project. This does not include land, inventory, supplies, tools, furnishings, and other forms of movable personal property, housing, Deferred Maintenance, property which has a productive life of less than 10 years, property owned or leased by a member of the CITY's governing body or its Planning and Zoning Commission.
- d. **Facility:** Property improvements completed or in the process of construction which together comprise an integral whole.
- e. **Full-time Equivalent Position: Full-Time Equivalent Job (FTE)** shall be defined as payment for at least forty (40) hours of work each week for fifty-two (52) weeks per year, including paid time off and holidays. The job is a "position" on the payroll and does not require the same individual to serve in this position the entire fifty-two (52) weeks. Each FTE can also consist of two or more part time positions (or two or more fulltime positions sequentially during a year) that in the aggregate meets the forty (40) hour weekly schedule for fifty-two (52) weeks, including paid time off and holidays.
- f. **Modernization:** A complete or partial demolition of facilities and the

complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration or installation of buildings, structures, machinery or equipment. Modernization shall include improvements for the purpose of increasing productivity or updating the technology of machinery and equipment, or both.

- g. **New Facility or Structure:** A property previously undeveloped, which is placed into service by means other than, or in conjunction with, expansion or modernization.
2. **Project Description.** FNBT is proposing construction of a 5-story, 47,653 square feet building at an estimated cost in excess of \$12 million (including sitework, fill, construction and removal of the Trimmier Banking Center, and other costs, as outlined in the Application for Tax Abatement), with executive offices, private dining, catering kitchen, 2 ATMs, parking, etc. (The "Property" or "Facility"). (In accordance with CITY's Guidelines and Criteria for Granting Tax Abatement in Reinvestment and Enterprise Zones, and substantially in accordance with a detailed site plan illustrating layout and design for structures, landscaping, signage, parking and internal circulation contained within Exhibit "A," with changes therein as approved by the CITY, such changes not to be unreasonably withheld, conditioned or delayed).
 3. **Use of Property.** FNBT agrees that, subject to force majeure (hereinafter defined) it shall continuously operate and maintain the property as a full-service bank facility, offices and related purposes, and for no other purpose(s) without written approval of CITY, said approval shall not be unreasonably withheld, conditioned or delayed, for a period of ten years, commencing from the date of an issuance of a certificate of occupancy for the Property from the CITY.
 4. **Capital Investment.** FNBT will make an estimated capital investment of \$12,852,524 in taxable assets for the development, construction and completion of the Project.
 5. **Increase in Property Value.** The Project will increase the property value at least by 300% for construction of a new facility or 50% for expansion of an existing facility.
 6. **Jobs Retained.** FNBT will retain a minimum of 130 Full-time Equivalent Positions with an average annual salary of \$66,983 assigned to the Facility annualized if FNBT is unable to occupy the Facility due to Force Majeure. Annual compliance under this section is established by determining the average number of FNBT Full-time Equivalent Positions assigned to the Facility for the previous 12-month period as of October 1st of every calendar year divided by the total compensation of employees assigned to the facility over the same period of time. An annual variance of 5% will be acceptable given potential vacancy and time to fill. FNBT agrees to provide CITY with extracts from its payroll records to substantiate the number of employees, hours worked at the bank, and average salary. CITY agrees to keep such payroll information confidential to the extent permitted by law. If requests or demands are made upon CITY for copies of such payroll information, CITY shall forward a copy of any request or demand for information to FNBT so that FNBT has sufficient time to file the appropriate legal action if in their sole discretion deemed necessary to prevent the

release of said payroll information. FNBT will provide the payroll information to the City redacted in such a manner to avoid disclosure of Personally Identifiable Information.

7. **Abatement Amount.** Upon the issuance of a certificate of occupancy for the Facility and FNBT's occupancy of the Facility, 100% of the ad valorem property taxes above the current taxable value of \$1,399,883 on the additional value of new eligible improvements (but not on the land or furnishings), which FNBT owes to CITY, shall be abated. The estimated, adjusted new investment value of property that will be eligible for abatement is \$11,452,691. After construction on the improvements for which FNBT is requesting tax abatement has been completed, FNBT shall obtain a Bell County Appraisal District value for the improvements. This amount will establish the additional value of the actual eligible improvements for purposes of this Agreement.

Abatement will be calculated in accordance with the following formula, with the first year commencing with the fiscal year upon which taxes are levied after the completion of the new bank building and issuance of a Certificate of Occupancy:

- a. Years One through Ten: 100% abatement of property tax above the current taxable value of \$1,399,883 on the additional value of new eligible improvements.

The value of ineligible property as provided in Section III of CITY'S Guidelines and Criteria for Granting Tax Abatement in Reinvestment and Enterprise Zones shall be fully taxable. The base year value of existing eligible property as determined each year shall be fully taxable.

8. **Independent Actors.** It is understood and agreed between the parties that FNBT, in performing its obligations under this AGREEMENT, is acting independently, and the CITY assumes no responsibility or liability in connection therewith to third parties and FNBT agrees to indemnify the CITY therefrom; it is further understood and agreed among the parties that the CITY, in performing its obligations under this AGREEMENT, is acting independently, and FNBT assumes no responsibility or liability in connection therewith to third parties and the CITY agrees to indemnify FNBT therefrom, to the extent allowed by law.
9. **Default.** During the abatement period covered by the Agreement, after notice and opportunity to cure as provided herein, CITY may declare a default thereunder by FNBT:
 - (a) If FNBT refuses or neglects to comply in any material respect with any of the material terms of this Agreement, its Application, or the Guidelines;
 - (b) If FNBT fails to maintain the number of employees as specified in paragraph 6 above;
 - (c) If FNBT allows its ad valorem taxes owed to CITY related to the Base Year Assets and Eligible Property that are contemplated by this Agreement to become delinquent and fails to timely and properly follow the legal protest procedures if it determines to do so; OR

(d) If any representation made by FNBT in this Agreement or its Application for tax abatement is knowingly false or misleading in any material respect.

Should the CITY determine that FNBT is in material default in any terms and conditions of this Agreement, then the CITY shall notify FNBT in writing of such default, and if such default is not cured within thirty (30) days from the date of such notice ("Cure Period"), this Agreement may be terminated or modified on a going forward basis by CITY; provided, however, that in the case of a default that for causes beyond FNBT's reasonable control cannot with reasonable due diligence be cured within such Cure Period, the Cure Period shall be deemed extended for a period of time to be determined reasonably by CITY if FNBT: (i) shall immediately, upon the receipt of such notice, advise CITY of FNBT's intention to institute steps necessary to cure such default, and: (ii) shall specify in writing and institute thereafter and proceed to completion with reasonable dispatch all steps necessary to cure same.

If City should terminate this Agreement pursuant to the terms of section 9(a)-(d) of this Agreement, it shall provide FNBT written notice of such termination, and except where provided otherwise, all taxes otherwise abated by virtue of the Agreement for the period during which FNBT was not in compliance with this Agreement will be recaptured and paid to CITY within sixty (60) days' notice of the termination, subject to any and all lawful offsets, settlements, deductions, or credits to which FNBT may be entitled (but without the addition of penalty; interest will be charged at the statutory rate for delinquent taxes as determined and required by nonwaivable provisions of Section 33.01 of the Texas Tax Code). If FNBT believes that such termination was improper, FNBT may file suit in the Bell County District Courts, appealing such termination within sixty (60) days after receipt from CITY of written notice of the termination. If an appeal suit is filed, FNBT shall remit to CITY within sixty (60) days after receipt of the notice of termination any additional and/or recaptured taxes as may be payable during the pendency of the litigation. (Section 42.08, Forfeiture of Remedy for Nonpayment of Taxes, Texas Tax Code). If the final determination of the appeal increases Applicant's tax liability above the amount of tax paid, FNBT shall remit the additional tax or a performance bond of same amount to CITY. (Section 42.42, Texas Tax Code, current and as may be amended). If the final determination of the appeal decreases FNBT's tax liability, CITY shall refund to FNBT the difference between the amount of tax paid and the amount of tax for which FNBT is liable within 60 days. (Section 42.43, Texas Tax Code, current and as may be amended).

10. Recapture.

a. In the event that the Facility is completed and begins being occupied, but subsequently discontinues being occupied for any reason excepting fire, flood, tornado, earthquake, riot, legal enactment, government regulations (including but not limited to orders issued the any federal, state or local government in connection with a pandemic or other health disaster), Act of God, explosion or other casualty or accident or natural disaster or other reason beyond FNBT's reasonable control (collectively, "force majeure"), for a period of thirty (30) days during the abatement period, then this Agreement shall terminate and so

shall the abatement of the taxes for any calendar year during which the facility no longer is occupied. Unless appealed as herein provided, taxes abated under this Agreement for each calendar year during which the facility no longer is occupied shall be recaptured and paid by FNBT to CITY within sixty (60) days after written notice from CITY. Furthermore, the taxes otherwise abated for the calendar year during which the termination occurs shall be paid to the CITY and other taxing agencies within sixty (60) days from the date of termination.

11. Administration.

a. Inspections. CITY, individually or in conjunction with other taxing entities, shall annually evaluate the Facility receiving abatement to ensure compliance with the Agreement. Such evaluation may include site visits and inspections by appropriate CITY, or other taxing entity staff, at reasonable times. FNBT must provide access to all facilities subject to this Agreement only during normal business hours and with 24 hours prior notice for CITY's inspection to ensure that the improvements are made according to the specifications and conditions of this Agreement. All inspections will be made with one or more representatives of the owner and in accordance with its safety standards, and such inspections shall not unreasonably interfere with the operation of the Facility. FNBT shall maintain appropriate records or such other documentation that may be required to demonstrate compliance with this Agreement.

b. Annual Reports. FNBT shall certify to the Killeen City Council and governing body of each taxing unit on or before April 1 of each year that the Applicant is in compliance with each applicable term of this Agreement. This certification shall be by FNBT's Chief Financial Officer, or other FNBT officer approved in advance by CITY.

c. A third-party audit of FNBT's compliance with the Abatement Agreement may be conducted at any time CITY deems necessary, at CITY's expense.

d. No extension to the period of tax abatement will be granted.

Notice. Any notice required to be given under the provision of this Agreement shall be in writing and deposited, enclosed in a wrapper with the proper postage prepaid thereon, and either duly registered or certified, return receipt requested, in a United States Post Office, or delivered by overnight carrier, addressed to the CITY or FNBT at the following addresses. If mailed, any notice or communication shall be deemed to be received on the date shown on the returned receipt. However, if receipt is not returned to sender, the notice or communication shall be deemed received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

TO FNBT:

First National Bank Texas

c/o Robert W. Hoxworth
President and CEO
P.O. Box 937
Killeen, TX 76540

TO CITY:
City of Killeen
City Manager's Office
101. N. College
P.O. Box 1325
Killeen, Texas 76540

Either party may designate a different address by giving the other party ten days' written notice.

12. **Non-transferrable.** This Agreement is between CITY and FNBT. Benefits obtained through this Agreement are not transferable to any other party or entity, without written consent of CITY, which consent shall not be unreasonably withheld.
13. **Jurisdiction.** All causes of action and disputes arising in and out of this Agreement or the administration of this Agreement shall have jurisdiction in Bell County, Texas. This agreement is deemed to have been executed in Killeen, Bell County, Texas, regardless of where the parties are located at the time of signing.
14. **Binding Agreement.** The terms and conditions of this agreement are binding upon the successors and assigns of all parties hereto. The agreement cannot be assigned by FNBT unless written permission is first granted by CITY, which permission will not be unreasonably withheld.
15. **Application Incorporated.** This Agreement fully incorporates FNBT'S Application for Tax Abatement, received by the City on February 24, 2020, and attached as Exhibit "A," by this reference as if written into this Agreement verbatim.
16. **Authorization and Execution.** This agreement was authorized by the City Council of CITY at its Council meeting on the 28th day of April, 2020, authorizing the City Manager to execute the agreement on behalf of CITY. The execution of this agreement is accomplished by an official of FNBT, who is authorized to execute the agreement on its behalf. This Agreement has been executed by the parties in multiple originals, each having full force and effect.
17. **Termination.** This agreement may be terminated by the mutual consent of all parties, and no repayment of abated taxes will be required as long as FNBT is in full compliance with the agreement on the effective date of the termination.

WITNESS OUR HANDS this the ____ day of _____, 2020

Kent Cagle, City Manager

ATTEST:

Lucy Aldrich, City Secretary

APPROVED AS TO FORM:

Traci Briggs, City Attorney

First National Bank Texas

By: _____
Robert W. Hoxworth
President and CEO

