

DONATION AGREEMENT

THIS AGREEMENT (“*Agreement*”) dated _____, 2022, is entered by and between **FIRST NATIONAL BANK TEXAS**, a national bank having its primary place of business in Killeen, Bell County, Texas (“*Donor*”) and the City of Killeen, a home rule municipal corporation in Bell County, Texas (“*City*.”)

1. Background: The City has the lawful authority to accept a donation of realty for the purpose of carrying out its public functions and duties. The Donor is a property owner desiring to donate certain real property to the City as a gift for exclusively public purposes and without cost or charge to the City in order to qualify for one or more federal tax deductions as well as credit under The Community Reinvestment Act of 1977. Such real property (“*Property*”) is described in the proposed Donation Deed attached hereto as **Exhibit “A”** and incorporated herein. The City wishes to accept the donation of the Property in furtherance of the public purposes and benefits set forth in that certain Interlocal Agreement dated July 26, 2022, between the City and Bell County, which Interlocal Agreement is incorporated herein and attached hereto as **Exhibit “B.”** Pursuant to that certain Interlocal Agreement the City is supportive of a portion of the Property, locally known as 507 N. Gray, Killeen, Texas and described as Tract 2 in Exhibit “A”, for the Bell County Killeen Annex and has an interest in revitalizing its downtown area and seeks to keep and attract entities to locate in that area. Bell County has indicated a need to relocate the Bell County Killeen Annex, currently located on Priest Drive in Killeen; therefore:

- a. the City in relevant part agreed, subject to paragraph 4.c of the Interlocal Agreement, to acquire Tract 2 of the Property locally known as 507 N. Gray, Killeen, Texas, demolish the structures and clear this portion of the Property and to convey this portion of the Property on or before December 31, 2022, to Bell County as ‘shovel ready’ at no cost to Bell County; and
- b. Bell County in relevant part agreed, subject to paragraph 1 and paragraph 4.d of the Interlocal Agreement, for the County to construct a new building(s) on Tract 2 of the Property with square footage of at least thirty thousand (30,000) square feet, with the new building(s) substantially complete within thirty-six (36) months of receipt of the Property.

Donor does not desire to see the Property sit vacant and therefore, fully supports the plans set forth by the City and Bell County in that certain Interlocal Agreement and will continue to support the revitalization and development of the downtown Killeen area to serve the people of the City and Bell County.

2. Agreement:

- A. The Donor, being fully informed of its right to receive just compensation for the Property, agrees to donate the Property to the City as a gift for exclusively public purposes. The fair market value of the Property as determined by a formal appraisal dated May 20, 2022 from CBRE Valuation & Advisory Services is \$4,037,000.00, and the parties stipulate that such value is true and correct.
- B. THE CITY ACKNOWLEDGES THAT EXCEPT AS CLEARLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT THE DONOR HAS MADE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY, THE FITNESS OF THE PROPERTY FOR ANY INTENDED USE OR PURPOSE, THE EXISTENCE OR NOT OF ANY HAZARDOUS OR TOXIC MATERIALS OR ANY OTHER ENVIRONMENTAL CONDITION IN OR ON THE PROPERTY, THE AVAILABILITY

OF UTILITIES OR OTHER SERVICES TO THE PROPERTY, ACCESS RIGHTS, DRAINAGE OR FLOODING ISSUES, THE WORKMANSHIP OR MATERIALS USED IN THE IMPROVEMENTS ON THE PROPERTY, THE LEGAL REQUIREMENTS APPLICABLE TO THE PROPERTY, THE PRESENT OR FUTURE INCOME THAT MAY BE GENERATED FROM THE PROPERTY, OR ANY OTHER MATTER WHATSOEVER. THE CITY FURTHER ACKNOWLEDGES THAT IT HAS BEEN AFFORDED AMPLE OPPORTUNITY TO INSPECT THE PROPERTY TO ITS FULL SATISFACTION, AND THAT IN ACCEPTING THE DONATION IT IS OR WILL BE RELYING SOLELY UPON ITS OWN INVESTIGATIONS AND EXAMINATIONS OF THE PROPERTY, AND NOT UPON ANY STATEMENT, PROMISE OR REPRESENTATION BY THE DONOR OR ANY OF ITS PRINCIPALS, AGENTS, ATTORNEYS, EMPLOYEES, BROKERS OR OTHER REPRESENTATIVES. THE CITY ACCORDINGLY WAIVES ALL CLAIMS FOR FRAUDULENT INDUCEMENT, DISCLAIMS ANY DUTY OF THE DONOR TO MAKE ANY DISCLOSURES WITH RESPECT TO THE PROPERTY, AND ACCEPTS THE PROPERTY "AS IS, WHERE IS," "WITH ALL FAULTS," AND "IN ITS PRESENT CONDITION," WITH ANY AND ALL LATENT AND PATENT DEFECTS.

3. Representations and Warranties:

- A. The Donor represents and warrants that it has indefeasible fee ownership and use of the Property and that by signing the Donation Deed it is forever relinquishing and transferring all rights and interest in and to the Property to the City. Donor's President and CEO is authorized to execute this Agreement along with any and all documents necessary to complete the donation.
- B. Donor acknowledges that while it is the intent of the City to perform the commitments set forth in the Interlocal Agreement attached as Exhibit "B," the City has the right to terminate the Interlocal Agreement at any time prior to performing the commitments for any reason, including the inability to complete demolition within the timeline specified.
- C. The Donor acknowledges that it has been fully informed of Donor's right to receive just compensation for the Property.
- D. The Donor acknowledges that there is no conflict of interest between the Donor and the City.
- E. The Donor acknowledges that it will receive no benefit from the City as a result of the donation of the Property.
- F. The City officially finds and determines that acceptance of the donation will provide a significant public benefit, and that such acceptance does not improperly influence or appear to improperly influence the City in the performance of its duties.
- G. The Donor acknowledges that the City does not determine the tax deductibility of any donation for federal income tax purposes.
- H. These representations and warranties will survive the transfer and delivery of the Donation Deed and the Property.

4. Costs: The City, without cost to the Donor, shall pay the cost of recording all instruments conveying title to the City, and the City may, but is not obligated to, purchase an owner's title policy at the City's expense.

5. Notices: All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following addresses:

Donor:	City:
Attn: Mark D. Conzelmann, Sr. EVP / General Counsel P.O. Box 937 Killeen, TX 76540-0937	Attn.: Kent Cagle, City Manager P.O. Box 1329 Killeen, TX 76540-1329

The notice shall be received by the addressee on the date delivered or deposited in the mail. Either party may change its address by sending written notice of the change to the other in the manner provided.

6. Miscellaneous: This Agreement and the Donation Deed constitute the sole and entire agreement between the parties relating to the subject matter hereof, and supersede all previous understandings and agreements between the parties (whether oral or written) relating to its subject matter. This Agreement may be amended only by an instrument in writing signed by the parties. Each party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement. This Agreement may not be assigned by the City without Donor's express written consent, and any attempted or purported assignment in the absence of such consent shall be void. There are no third-party beneficiaries of this Agreement. This Agreement will be construed fairly and simply, and not strictly for or against either party. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY	DONOR
City of Killeen	First National Bank Texas
BY: _____ Kent Cagle, City Manager	BY: _____ Robert W. Hoxworth, President / CEO
Date: _____	Date: _____