

RESOLUTION NO. 2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS APPROVING THE RECOMMENDATION OF THE TAX INCREMENT REINVESTMENT ZONE NO. ONE AND POWER CENTER BOARD OF DIRECTORS APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TERRELL AND P3 WORKS, LLC

WHEREAS, the City of Terrell, Texas, (the "City"), promotes the development of a certain geographic area within its jurisdiction as authorized by the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, Vernon's Texas Codes Annotated (the "Act"); and

WHEREAS, the City Council of the City of Terrell on November 20, 2007, approved Ordinance No. 2355 creating Tax Increment Financing Reinvestment Zone Number One (TIRZ #1), establishing a Board of Directors for such Reinvestment Zone (Board), including the Project Plan and the Finance Plan,; and

WHEREAS, on September 8, 2008 the County Commissioners' Court approved an Interlocal Agreement with the City of Terrell for the Reinvestment Zone, including the Project Plan and Finance Plan; and in accordance with the provisions of Chapter 380 and Chapter 381 of the Texas Local Government Code, the City and Kaufman County executed an Interlocal Agreement regarding a Power Center on September 6, 2013; and

WHEREAS, the City requires specialized services related to the evaluation of the TIRZ No. 1 and the Power Center and administration of the Zone and Power Center, as described in the Texas Tax Code, Chapter 311, the Tax Increment Financing Act ("TIF Act"); and

WHEREAS, P3Works has agreed to properly administer the Zone and Power Center and will ensure compliance with the TIF Act, and the Final Project and Financing Plan, as amended.

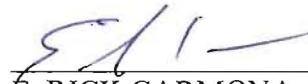
NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS:

Section 1 That the City Council of the City of Terrell, Texas approves the recommendation of the Tax Increment Reinvestment Zone No. 1 Board of Directors authorizing the City Manager to execute a Professional Agreement with P3 Works to provide Zone and Power Center administration services.

Section 2. That the City Council of the City of Terrell, Texas approves the recommendation of the Tax Increment Reinvestment Zone No. 1 Board of Directors authorizing use of TIRZ# 1 funds to fund the P3Works Agreement as shown in "Exhibit A".

Section 3. This Resolution shall be effective immediately after its passage.

PASSED AND APPROVED by the City Council of the City of Terrell, Texas, on this 24th day of May, 2022.


E. RICK CARMONA, MAYOR

Attest:


Dawn Steil, City Secretary

STATE OF TEXAS §
COUNTY OF §

AGREEMENT FOR CONSULTING SERVICES

This Agreement for Tax Increment Reinvestment Zone Administration Services ("Agreement") is entered into this 24th day of May, 2022 by and between P3Works, LLC, ("P3Works") and the City of Terrell, Texas ("City"), acting by and through their authorized representatives.

RECITALS

WHEREAS, the City Council has created Tax Increment Financing Reinvestment Zone Number One, City of Terrell, Texas, as well as a complementary area in a defined 380/381 Agreement referred to as the Power Center which shall jointly be referred to as the "Zone", and has established Boards of Directors for the Zone; and

WHEREAS, the Board of Directors of the Zone considered and adopted a Final Project and Financing Plan (the “Project and Financing Plan”) for the Zone; and

WHEREAS, the City requires specialized services related to the evaluation of the TIRZ No. 1 and administration of the Zone, as more fully set forth in this Agreement and described in the Texas Tax Code, Chapter 311, the Tax Increment Financing Act ("TIF Act"); and

WHEREAS, P3Works has agreed to properly administer the Zone and will ensure compliance with the TIF Act, and the Final Project and Financing Plan, as amended; and

WHEREAS, the City desires to retain P3Works to provide Zone administration services as set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for good and valuable consideration, P3Works and the City agree as follows:

ARTICLE I TERM OF AGREEMENT

1.0 The Agreement shall be effective as of its approval by all parties and shall be for a period of three (3) years, subject to annual appropriation by the City Council, and shall automatically renew on a year-to-year basis until terminated pursuant to Article IV of this Agreement.

ARTICLE II SERVICES TO BE PROVIDED BY P3WORKS

2.0 The scope and timing of services to be performed by P3Works are set forth in Exhibit A, which is attached hereto and incorporated into this Agreement by this reference.

2.1 The Services to be provided by P3Works under the terms of this Agreement relate only to the Tax Increment Financing Reinvestment Zone Number One, City of Terrell, Texas

2.2 P3Works agrees that its services pursuant to this Agreement shall be performed under the direction of the City Manager, or his or her designee, and nothing in this Agreement shall constitute an assignment of any right or obligation of the City under any applicable contract, agreement, or law.

2.3 P3Works shall supply all tools and means necessary to perform the services and production of the work product described in Exhibit A. P3Works agrees to devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement.

2.4 P3Works shall furnish the facilities, equipment, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

ARTICLE III **PAYMENT TERMS AND CONDITIONS**

3.0 In consideration for the services to be performed by P3Works, the City agrees to pay P3Works the fees for all services and related costs and expenses set forth in Exhibit A.

3.1 Monthly invoices shall be submitted to the City under the rates provided in Exhibit A. City agrees to pay the amount due to P3Works upon receipt of each invoice.

3.2 The rates set forth in Exhibit A shall remain in effect during the term of this Agreement. Any changes to established rates shall require the prior written consent of the City.

3.3 Copies of all invoices for expenses and materials provided by P3Works will accompany the invoices for services to the City. Mileage will be billed at the P3Works travel rate, as provided in Exhibit A. P3Works will pass any third-party cost through to the City without markup and will not incur any printing or publication expense in excess of \$200 without written consent of the City.

3.4 P3Works's services are to be paid exclusively from the TIRZ Fund in accordance with the TIRZ #1 Final Project and Finance Plan (the "TIRZ Plan"). In the event TIRZ funds are not available at the time of invoice, P3Works will defer its remuneration until such time as funds are available in the fund, but any payments that have been deferred by P3Works shall be paid first when funds are available before additional project funds are expended.

ARTICLE IV **TERMINATION OF THIS AGREEMENT**

4.0 Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement at any time by giving sixty (60) days written notice to the other party without penalty and without limitation of its right to seek damages. City shall pay any final invoices provided by P3Works,

within 30 days of such termination which shall include all of P3 Works's fees and expenses actually accrued or incurred up to the date of termination.

ARTICLE V **GENERAL PROVISIONS**

5.0 This Agreement supersedes any and all agreements, either oral or written between the parties hereto with respect to rendering of services by P3 Works to the City and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

5.1 This Agreement shall be administered and interpreted under the laws of the State of Texas and venue for any action concerning this Agreement shall be in the State District Court of Kauffman County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.2 This Agreement shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall remain in full force and effect.

5.3 This Agreement and any duties or obligations under this Agreement may only be assigned by P3 Works to an affiliate organization upon written approval by the City, which approval shall not be unreasonably withheld. In the event of an assignment by P3 Works to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.4 All records, reports, and other documents prepared by P3 Works for the purposes of providing the services described in this Agreement are working documents of P3 Works until submitted to the City, at which point they shall become the property of the City.

5.5 The City acknowledges P3 Works's ownership of its software, programs, inventions, know-how, trade secrets, confidential knowledge, source code, or other proprietary information relating to products, processes, services, software, formulas, developmental or experimental work, business plans, financial information, or other subject matter ("Confidential Information") pertaining to the business of P3 Works. This Agreement shall not in any way give rise to any requirement or obligation for P3 Works to disclose or release any Confidential Information.

5.6 It is understood and agreed by and between the Parties that P3 Works, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by P3 Works pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the city. P3 Works shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.7 P3WORKS DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGEMENTS, LOSSES PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY P3WORKS, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH P3WORKS EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE§ 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO P3WORKS'S LIABILITY

P3Works's obligations under this section shall be limited to the limits of coverage of insurance maintained or required to be maintained by P3Works under this agreement. This provision shall survive the termination of this agreement.

5.8 All notices, requests, demands, and other communications which are required to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, postage prepaid thereon, as follows:

To P3Works:
Mary V. Petty
Managing Partner
P3Works, LLC
9284 Huntington Square, Ste. 100
North Richland Hills, Texas 76182

To City:
Mike Sims
City Manager
City of Terrell
201 East Nash St.
P.O. Box 310
Terrell, Texas 75160

5.9 This Agreement may be amended by the mutual written agreement of the Parties.

5.10 This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

5.11 The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

5.12 The parties hereby warrant that the persons executing this Agreement are authorized to execute this Agreement and are authorized to obligate the respective parties to perform this Agreement. A facsimile signature on this Agreement shall be treated for all purposes as an original signature.

Executed on this 24th day of May, 2022:

P3Works, LLC.

BY: 
Mary Petty
Managing Partner

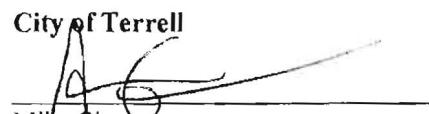
City of Terrell
BY: 
Mike Sims
City Manager

EXHIBIT A
TAX INCREMENT REINVESTMENT ZONE SERVICES TO BE PROVIDED

BASIC DISTRICT ADMINISTRATION SERVICES

Covering both TIRZ No. 1 and the Power Center Zone

Billed at P3Works' prevailing hourly rates, which are currently as follows:

<i>Title</i>	<i>Hourly Rate</i>
<i>Managing Partner</i>	<i>\$250</i>
<i>Vice President</i>	<i>\$185</i>
<i>Senior Associate</i>	<i>\$160</i>
<i>Associate</i>	<i>\$135</i>
<i>Administrative</i>	<i>\$100</i>

Preparation of the Annual Report to be filed with the Secretary of State and then presented to the TIRZ Board and City Council for approval.

See Section below related to "Consulting Services Relating to Future Improvement Areas and related Bond Issuance" for hourly fees if future TIRZ changes are contemplated.

Project Plan and Finance Plan Updates (as needed)

1. P3Works will prepare a Project and Finance Plan ("PFP") Update as needed for changes to the Projects as identified by staff or technical updates identified by P3Works as may be necessary for compliance purposes.
2. P3Works will review and comment on any TIRZ Agreement to be adopted by the TIRZ Board

Consulting Services Relating to Bond Issuance (as needed)

1. P3Works will coordinate with City's bond counsel, financial advisor, and the bond underwriter to ensure the Bonds and all related documents are in compliance with State Law.
2. P3Works will prepare any additional reports or analyses as needed to successfully issue the Bonds.

Prepare Annual Report

1. If possible, obtain updated construction cost estimates (or actual costs for completed facilities) for TIRZ improvements
2. Update Annual Report as necessary to account for any changes in development plan or land uses.
3. Identify parcel subdivisions, conveyance to owners' associations, changes in land use, and any other information relevant to anticipated estimate of Tax Increment to be generated.
4. Calculate annual TIRZ Credit for each parcel.
5. Present preliminary Annual Report to TIRZ Board. Upon approval by TIRZ Board, submit final Annual Report to the Texas Secretary of State.
6. This item includes overdue prior year reports and adjustments/corrections as may be needed to TIRZ financial reports.