

**AGREEMENT BY AND AMONG
THE CITY OF TOMBALL, TEXAS;
TATAX INCREMENT REINVESTMENT ZONE NO. 3, CITY OF TOMBALL,
TEXAS; AND
TOMBALL BUSINESS IMPROVEMENT DISTRICT NO. 1**

**THE STATE OF TEXAS §
 § **KNOW ALL BY THESE PRESENTS:**
COUNTY OF HARRIS §**

THIS AGREEMENT (this “Agreement”), effective as of _____, 2024, is made by and between the **CITY OF TOMBALL, TEXAS**, a general law city in the State of Texas (the “City”); **TAX INCREMENT REINVESTMENT ZONE NUMBER 3, CITY OF TOMBALL, TEXAS**, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the “Zone”); and the **TOMBALL BUSINESS IMPROVEMENT DISTRICT NO. 1**, a municipal management district and political subdivision of the State of Texas (the “District”).

RECITALS

WHEREAS, by Ordinance No. 2021-39 (the “Designation Ordinance”), the City created the Zone pursuant to Chapter 311, Texas Tax Code (the “TIRZ Act”); and

WHEREAS, the Board of Directors of the Zone (“Zone Board”) and the city council of the City has each approved and adopted a Project Plan and a Reinvestment Zone Financing Plan, for the Zone; and

WHEREAS, by Resolution No. 2021-44, the City has consented to the creation of the District for the purpose of designing, constructing and financing certain public infrastructure and related functions and activities; and

WHEREAS, the City and the Zone Board have determined that, pursuant to Sec. 311.010(f), Texas Tax Code, it will be advisable to have the District assist the Zone Board in the implementation of the Project Plan and the Reinvestment Zone Financing Plan and provide the other services set forth in this Agreement, including the construction of improvements and the issuance of its bonds to facilitate the Plan;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the City, the Zone and the District agree as follows:

**I.
DEFINITIONS**

Definitions. The terms "Agreement," "District," "City," "Zone," and "Zone Board," have the meanings set forth in the preamble hereof, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

"Captured Appraised Value" shall mean the total appraised value of property in the Zone as of January 1 of any year less the Tax Increment Base of the Zone, all as defined in the TIRZ Act.

"City Council" shall mean the City Council of the City.

"City Manager" shall mean the city manager of the City, or such person as he or she shall designate.

"County" shall mean Harris County, Texas.

"Developer" shall mean a person who is developing, or proposes to develop, a TIRZ Project within the Zone and may include natural persons, private entities, public or private not-for-profit corporations, the City, a school district, a hospital, Harris County, the State of Texas, any other governmental bodies, or any other kind of person.

"Development Financing Agreement" shall mean an agreement between the District and a Developer relating to the development, construction, remodeling, or rehabilitation of a TIRZ Project.

"Financing Plan" shall mean the reinvestment zone financing plan for the Zone as amended from time to time pursuant to the TIRZ Act, as adopted by the Zone Board and approved by the City Council.

"District Obligations" shall mean the notes, bonds, or other contractual obligations that the District may incur from time to time pursuant to **Article III** hereof and includes, without limitation, Development Financing Agreements.

“Project Cost” shall mean those costs of public works and improvements and other costs for which payment can be made pursuant to the TIRZ Act that are identified in the TIRZ Plan.

“Project Plan” shall mean the project plan for the Zone as it may be amended from time to time pursuant to the terms of the TIRZ Act, as adopted by the Zone Board and approved by the City Council.

“Projects” shall mean any project for which moneys in the Tax Increment Fund can be used pursuant to the TIRZ Act and which has been approved in the TIRZ Plan.

“Tax Increment” shall mean the amount of property taxes collected each year by each Taxing Unit participating in the Zone (to the extent of their participation) on the Captured Appraised Value. The City’s Tax Increment participation rate is 75% of the property taxes collected each year on the Captured Appraised Value as set forth in the Designation Ordinance.

“Tax Increment Base” shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1, 2021, the year in which the Zone was effective and designated as a reinvestment zone, plus the total appraised value of all real property taxable by the City and the other Taxing Units participating in the Zone and annexed to the Zone determined as of January 1 of the year in which any future area is annexed to the Zone.

“Tax Increment Fund” shall mean the Tax Increment Fund created by the City for the Zone into which all Tax Increments shall be deposited by the City.

“Taxing Unit” shall mean the City and any other Taxing Unit that participates in the TIRZ.

“TIRZ Act” means Chapter 311, Texas Tax Code, as amended.

“TIRZ Revenue” shall mean the Tax Increments paid by the City to the District pursuant to this Agreement.

“TIRZ Revenue Bonds” shall mean the bonds of the District secured and payable in whole or in part from a pledge of the TIRZ Revenue.

“TIRZ Plan” shall mean the Project Plan and the Financing Plan.

II.
SCOPE OF SERVICES BY DISTRICT

To the extent of available funds in the Tax Increment Fund (as further described in Article IV below) and subject to the limitations of this Agreement, the District shall assist the City by implementing the TIRZ Plan with respect to the District, including the financing and construction of the Projects and carrying out such other services related to the TIRZ as may be requested by the City Manager. Such services may include, without limitation, management and administration of the Zone, assistance with the enlargement of the Zone and amendments to the TIRZ Plan, preparation of tax rolls and documentation and coordination with other taxing units, construction and monitoring of infrastructure projects, purchase of equipment and supplies, and buying and selling real property as necessary to implement the Plans and as permitted by the TIRZ Act. The District may provide the services required by this Agreement through staff, subcontractors, and consultants. Actions of the District with respect to the Zone carried out prior to the date of this Agreement are hereby ratified and approved.

III.
POWERS OF THE DISTRICT

A. General Statement. The District has the authority to enter into District Obligations with Developers and enter into contracts with consultants and others to be paid from TIRZ Revenue pursuant to this Agreement, and further, the District may issue TIRZ Revenue Bonds; provided that nothing in this Agreement shall be construed to authorize the District to expend any of the TIRZ Revenue received pursuant to this Agreement for any costs other than Project Costs.

B. Power to Incur District Obligations. Subject to the provisions of this Article, the District shall have the power from time to time to issue and incur District Obligations and enter into contracts with consultants upon such terms and conditions as the District Board shall determine to be necessary or desirable to implement the TIRZ Plan. The District Obligations may be in the form of a Development Financing Agreement with the Developer who agrees to construct improvements or other facilities included in the TIRZ Plan in exchange for the obligation of the District to repay the Developer for such costs from Bond proceeds and future payments made by the City and the Zone to the District pursuant to this Agreement.

C. Approval of Bonds and Other Obligations. Provided that the District is in compliance with the terms and conditions of this Agreement, the District may issue TIRZ Revenue Bonds. Prior to the issuance of TIRZ Revenue Bonds, the District shall provide to the City documentation that such bonds are being issued

in compliance with the Finance Plan and list of approved projects. The approval by the City Council of the District's issuance TIRZ Revenue Bonds, which approval shall not be unreasonably withheld, conditioned or delayed, shall be delegated to the City Manager. TIRZ Revenue Bonds shall be deemed approved by the City after the expiration of 30 days from the submission of a District written request for approval to the City, unless the City objects in writing and absolves the District's failure to comply with the terms or conditions of this Agreement.

D. Use of Tax Increments. The District Tax Increment shall be applied in the following order of priority (i) City administrative costs, fees or services related to the administration of the Zone, in an amount not to exceed 5% of each year's Tax Increment; (ii) amounts pledged or required for the payment of outstanding TIRZ Revenue Bonds, including TIRZ Revenue Bonds in the process of issuance and refunding TIRZ Revenue Bonds, (iii) administrative costs of the District relating to the Zone, and (iv) payments of other District Obligations relating to the Zone.

E. Pledge of Revenue Fund. The District may pledge and assign all or a part of the Tax Increment to the owners and holders of TIRZ Revenue Bonds and to Developers pursuant to a Development Financing Agreement for Projects. Subject to paragraph C above, the Zone and the City consents to any assignment and pledge consistent with this Agreement and approves the terms and conditions of the instruments assigning or pledging the proceeds to be received by the District pursuant to this Agreement, as may have been previously or hereinafter entered into.

IV.

DUTIES AND RESPONSIBILITIES OF THE CITY AND THE ZONE

A. Tax Increment Fund. The City has established and will maintain a separate Tax Increment Fund in the City treasury into which Tax Increments attributable to the Zone shall be deposited. During the term of this Agreement, Tax Increments shall be paid to the District from the Tax Increment Fund as herein provided.

B. Collection and Payment of Tax Increments by the City and the Zone. In consideration of the services and Projects to be provided by the District, the City and the Zone covenant and agree that they will, as authorized under the TIRZ Act and other applicable laws, continuously collect the Tax Increments from the Taxing Units whose participation in the Zone is reflected in the TIRZ Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City and the Zone may legally do so, the City

and the Zone also covenant and agree that they will not permit a reduction in the Tax Increments paid by the Taxing Units except to the extent provided in the agreement with the Taxing Unit executed at the time the Taxing Unit agrees to participate in the Zone. In addition, the City covenants and agrees that it will not dissolve the District and that any repeal of the right and power to collect the Tax Increments will not be effective until all the TIRZ Revenue Bonds or other District Obligations have been paid in full or until they are legally defeased; provided, however, that no TIRZ Revenue Bonds, shall be issued with a maturity date later than December 31, 2052 . The City and the Zone further covenant and agree that they will make all payments as set forth in **Article V** below, without counterclaim or offset, minus any amount retained pursuant to the provisions set forth in **Article V** below. All such payments shall be in full compliance with the adopted Project/Finance Plan.

C. Limitation of Source of Payment. The City and the Zone shall have no financial obligation to the District other than as provided in this Agreement or in other agreements between the City, the Zone and the District. **THE OBLIGATION OF THE CITY AND THE ZONE TO THE DISTRICT UNDER THIS AGREEMENT IS LIMITED TO THE TAX INCREMENTS THAT ARE ACTUALLY COLLECTED BY THE CITY. THIS AGREEMENT SHALL CREATE NO OBLIGATION ON THE CITY OR THE ZONE THAT IS PAYABLE FROM TAXES OR OTHER MONEYS OF THE CITY OTHER THAN THE TAX INCREMENTS THAT ARE ACTUALLY COLLECTED BY THE CITY.** The obligation of the City and the Zone to the District under this Agreement shall be subject to the rights of any of the holders of TIRZ Revenue Bonds or other obligations that have heretofore or are hereafter issued by the City, the County, the District, and any other Taxing Units that are payable from or secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the City, the County, and the other Taxing Units.

D. Obligations of City and the Zone to be Absolute. The obligation of the City and the Zone to make the payments set forth in this Agreement shall be absolute and unconditional, and until such time as this Agreement, TIRZ Revenue Bonds, and the contractual obligations of the District incurred pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with their terms (or, with respect to the Tax Increments, the date of expiration of the Zone, if earlier), the City and the Zone will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the failure of the District to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement except as provided in **Article XVII**. Nothing contained in this section shall be construed to release the District from

performance of any of the agreements on its part contained in this Agreement, and in the event the District shall fail to perform any such agreement on its part, the City may institute such action against the District as the City may deem necessary to compel performance so long as this action does not abrogate the obligations of the City and the Zone to make the payments set forth in this Agreement to pay the TIRZ Revenue Bonds or to meet its District Obligations to Developers.

**V.
CITY PAYMENT TO DISTRICT**

The City, on behalf of itself and the Zone, will pay the District, not later than the first business day of each calendar quarter during the term of this Agreement, all monies then available in the Tax Increment Fund, subject to the retention by the City of an amount equal to the City's direct administrative costs connected with the Zone and as provided in the TIRZ Plan, not to annually exceed five percent (5%) of each year's annual Tax Increment Revenue. The District shall deposit the payments received pursuant to this Section into a separate District account and use the monies in the such account for payment of its TIRZ-related costs, its obligations to the holders of its TIRZ Revenue Bonds, its obligations to Developers pursuant to a Development Financing Agreement, or its other contractual obligations. Tax Increment revenues not received by the City in any particular calendar year after payment to the District will be held by the City and included in the following year's payment. Likewise, any reduction in Tax Increment revenues realized in any particular year as a result of property value reductions in the Zone will be deducted in the following year's payment. The obligation to make these payments shall survive a termination of this Agreement as provided by **Article XVII** hereof.

**VI.
ACCOUNTING AND AUDITS**

A. Accounts, records, and accounting reports. The District will maintain books of records and accounts in which full, true, and proper entries will be made on all dealings, transactions, business, and matters that in any way affect or pertain to the operation of the Zone, and the allocation and application of funds provided hereunder. All such records shall be maintained in accordance with accounting generally accepted principles and shall be clearly identified and readily accessible. The District shall provide free access to the books and records at all times to the City and the Zone or their representatives and shall permit them to examine and audit the same and make copies thereof. The District shall further allow the City and the Zone and their representatives to make inspections of all work data, documents, proceedings, and activities related to this Agreement. Such

right of access and audit shall continue for a period of three years from the date of final payment under this Agreement.

B. Audit. At the end of the District's fiscal year (beginning with the fiscal year or fraction thereof during which this Agreement is executed), the District will have an audit prepared by an independent Certified Public Accountant for that fiscal year that shall be submitted to the District, the Zone and the City. The District shall furnish copies of the audit to the City Manager and the Zone Board within 135 days after the end of the District's fiscal year.

C. District Depository. Any moneys received from investing and reinvesting the moneys paid by the City and the Zone to the District shall remain in the same account as the TIRZ Revenue until used by the District for one of the purposes permitted by this Agreement and may be commingled with other moneys of the District; provided that these funds shall be accounted for separately. Such funds shall be invested and reinvested by the District only in investments that would be eligible for investment by the City pursuant to the provisions of the Public Funds Investment Act (Chapter 2256, Texas Government Code). Such funds will be secured by the depository bank in the same manner as City funds are required to be secured at the City depository and in accordance with applicable law and City procedures.

**VII.
RIGHT OF OWNERSHIP
CONVEYANCE OF THE PROJECT**

Upon request of the City, the District agrees to execute and deliver such instruments as the City shall reasonably request to convey to the City the legal title to and the beneficial possession and use of the completed portions of the Project. All Projects purchased by or constructed by or on behalf of the District which are not conveyed to the City shall be maintained by the District throughout the term of this Agreement and the District may lease, sell or otherwise dispose of such property upon such terms and conditions as the City and the Zone deems desirable; provided that, pursuant to a Development Financing Agreement with a Developer constructing Projects, title to such improvements may remain with such Developer until reimbursed by the District.

On the date of conveyance of any portion of the Project, the District shall assign to the City its right to all warranties and guarantees which may have been made by a seller, contractor, subcontractor, materialman, supplier, engineer or architect as to the portion of the Project being conveyed. Upon termination of this Agreement and dissolution of the District and the Zone, title to all property funded with revenues from the Tax Increment Fund not previously conveyed to the City shall immediately vest in the City without the need for further action on the part of the City.

**VIII.
PERSONAL LIABILITY OF PUBLIC OFFICIALS**

To the extent permitted by State law, no director of the District, nor any employee or agent of the District, no director of the Zone, nor any employee or agent of the Zone, and no employee of the City, nor any agent of the City, shall be personally responsible for any liability arising under or growing out of the Agreement, or operations of the District under the terms of this Agreement.

**IX.
CITY AND ZONE NOT LIABLE FOR DELAY**

It is expressly agreed that in no event shall the City or the Zone be liable or responsible to the District or any other person for or on account of, any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which the City or the Zone has no control.

**X.
INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that the District shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City or the Zone; that except as herein provided, the District shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between the City or the Zone and the District, its officers, agents, employees, contractors, and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City or the Zone and the District. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant, or employee of the City or the Zone.

**XI.
INSURANCE**

The District shall obtain and maintain insurance coverage continuously during the term of this Agreement, and the District shall contract with each contractor engaged by it hereunder to maintain (and cause each of its subcontractors to maintain) insurance coverage during the term of its contract, in substance and amount as may be agreed upon by the District and the Contractor.

**XII.
ADDRESS AND NOTICE**

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

TOMBALL BUSINESS IMPROVEMENT DISTRICT NO. 1
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Jessica B. Holoubek

CITY OF TOMBALL, TEXAS
401 Market Street

Tomball, Texas 77375
Attn: City Manager

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the District, the Zone, or the City, as the case may be.

**XIV.
APPLICABLE LAWS**

This Agreement is made subject to the Constitution and laws of the State of Texas and the Charter of the City.

**XV.
CAPTIONS**

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, or part of this Agreement.

**XVI.
SUCCESSORS AND ASSIGNS**

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the City, of the Zone or of the District.

**XVII.
TERM AND TERMINATION, DISSOLUTION OF District**

A. In general. This Agreement shall become effective, and its initial term shall begin, on the date first set forth above, and end upon the termination of the Zone.

B. Termination for cause. A party may terminate its performance under this Agreement only upon default by the other party. Default by a party

shall occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to terminate all or part of its duties under this Agreement as of the 90th day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (i) such termination shall be ineffective if within said 90-day period the defaulting party cures the default, or (ii) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default. No termination of this Agreement will affect the obligation of the City and the Zone to pay an amount that will permit the District to pay its TIRZ Revenue Bonds or other District Obligations issued or incurred pursuant to and consistent with this Agreement prior to termination.

C. Dissolution of District. The City agrees not to dissolve the District or the Zone unless it makes satisfactory arrangements to provide for the payments of the District's TIRZ Revenue Bonds or other District Obligations incurred prior to the District's dissolution.

XVIII. AMENDMENT OR MODIFICATIONS

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

[EXECUTION PAGES FOLLOW]

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District, the Zone and the City effective as of the date first above written.

CITY OF TOMBALL, TEXAS

ATTEST/SEAL:

City Secretary

TOMBALL BUSINESS IMPROVEMENT DISTRICT NO. 1

President, Board of Directors

ATTEST:

Secretary, Board of Directors

**TAX INCREMENT REINVESTMENT ZONE NO. 3,
CITY OF TOMBALL, TEXAS**

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors