APPROVED BY CITY COUNCIL
DATE 12.7.2020
AGENDA ITEM NO. 16

AMENDMENT TO
AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTEEN,
CITY OF MESQUITE, TEXAS
(SPRADLEY FARMS)

This AMENDMENT TO AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS) (this "**Amendment**"), is between the CITY OF MESQUITE, TEXAS (the "**City**"), and KAUFMAN COUNTY, TEXAS (the "**County**"). The City and the County may hereinafter sometimes be individually referred to as a "**Party**" and sometimes collectively referred to as the "**Parties**."

WHEREAS, the City established Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) (the "**Zone**"), to promote development or redevelopment in the Zone pursuant to Ordinance No. 4713 approved by the City Council of the City (the "**City Council**") on September 16, 2019 ("**City Ordinance No. 4713**"), in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311; and

WHEREAS, the Zone consists of approximately 652 acres of undeveloped property generally located between FM 2757 and IH-20 and North of IH-20 East of FM 740 within the corporate limits of the City in Kaufman County, Texas, the boundaries of the Zone being more particularly described in Exhibit "A" attached to City Ordinance No. 4713 and depicted on the map attached as Exhibit "B" to City Ordinance No. 4713; and

WHEREAS, City Ordinance No. 4713 has previously been amended by Ordinance No. 4790 approved by the City Council on July 6, 2020 ("**City Ordinance No. 4790**"); and

WHEREAS, the City and the County entered into that certain Agreement to Participate in Tax Increment Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms), executed by the County on August 25, 2020, and executed by the City on September 22, 2020 (the "**Tax Participation Agreement**"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Tax Participation Agreement; and

WHEREAS, the Tax Participation Agreement was approved by the Commissioners Court of Kaufman County, Texas (the "**Commissioners Court**") on August 25, 2020 and was approved by the City Council on September 21, 2020, pursuant to Resolution No. 43-2020; and

WHEREAS, pursuant to City Ordinance No. 4713, the City Council created a board of directors for the Zone (the "**TIRZ Board**") consisting of seven members all appointed by the City Council; and

WHEREAS, pursuant to the Tax Participation Agreement, the Parties agreed that during the term of the Zone, the TIRZ Board shall include two County representatives and the remaining members of the TIRZ Board shall be designated by the City Council; and

WHEREAS, on December 7, 2020, the City Council adopted Ordinance No. 4833 ("**City Ordinance No. 4833**") amending City Ordinance No. 4713 to increase the number of members on the TIRZ Board from seven members to nine members and to provide that the additional two members of the TIRZ Board shall be representatives designated by the County, a true and correct copy of City Ordinance No. 4833 being attached hereto as **Exhibit 1-A** and made a part hereof for all purposes; and

WHEREAS, the Tax Participation Agreement provides that the City shall provide the County at least 30-day's notice of any proposed amendments to City Ordinance No. 4713 (the "**Notice Requirement**") and further provides that any amendment to City Ordinance No. 4713 shall only be effective as to the County's Tax Increment if the amendment is approved by the governing body of the County as an amendment to the Tax Participation Agreement; and

WHEREAS, by letter dated October 22, 2020, the City provided the County with notice of the proposed amendments to City Ordinance No. 4713 and further provided the County with a copy of proposed City Ordinance No. 4833; and

WHEREAS, City Ordinance No. 4833 complies with the agreement of the Parties as set forth in the Tax Participation Agreement, facilitates County representation on the TIRZ Board, and is the best interest of the City and the County and their citizens; and

WHEREAS, the Parties desire to set forth their agreement with respect to the matters set forth herein.

NOW, THEREFORE, for and in consideration of the covenants and agreements of the Parties as set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

1. Compliance with Notice Requirement. The County hereby acknowledges that the City has satisfied the Notice Requirement.

2. Approval of City Ordinance No. 4833. The City Council and the Commissioners Court hereby approve City Ordinance No. 4833 as an amendment to the Tax Participation Agreement.

3. Amendment to TIRZ Ordinance. All references in the Tax Participation Agreement to "TIRZ Ordinance" shall be amended to refer to City Ordinance No. 4713, as amended by City Ordinance No. 4790, and as amended by City Ordinance No. 4833. Accordingly, effective as of the Effective Date, the definition of "TIRZ Ordinance" on Page 3 of the Tax Participation Agreement shall be deleted and replaced with the following: "TIRZ Ordinance means City Ordinance No. 4713, adopted on September 16, 2019, attached hereto as Exhibit 1, as amended by City Ordinance

No. 4790, adopted on July 6, 2020, attached hereto as Exhibit 2, and as amended by City Ordinance No. 4833, adopted on December 7, 2020, attached hereto as Exhibit 3".

4. Addition of Exhibit 3 to the Tax Participation Agreement. The Tax Participation Agreement is hereby amended by attaching City Ordinance No. 4833 as Exhibit 3 to the Tax Participation Agreement.

5. Recitals. The recitals contained in this Amendment are true and correct and reflect the intent of the Parties regarding the subject matter of this Amendment. In the event it becomes necessary to interpret any provision of this Amendment, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Amendment and the recitals are hereby incorporated into this Amendment and shall be considered part of the covenants, consideration and promises that bind the Parties.

6. Effect of Amendment. This Amendment amends the Tax Participation Agreement in no other manner except as expressly set forth herein. In the event there is any conflict between this Amendment and the Tax Participation Agreement, the terms and provisions of this Amendment shall control.

7. Modification. This Amendment may only be revised, modified or amended by a written document signed by the City and the County. Oral revisions, modifications or amendments are not permitted.

8. Severability. The sections, paragraphs, sentences, clauses and phrases of this Amendment are severable and, if any phrase, clause, sentence, paragraph or section of this Amendment should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Amendment and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Amendment.

9. Counterparts. This Amendment may be executed in any number of original, facsimile or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

10. Entire Agreement. This Amendment sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature relating to the subject matter of this Amendment are entirely superseded hereby and extinguished by the execution of this Amendment.

11. Authority. Each Party represents that it has the full power and authority to enter into and fulfill its obligations under this Amendment and that the person signing this Amendment on behalf of such Party has the authority to sign this Amendment and bind such Party.

12. Effective Date. The Effective Date of this Amendment shall be the last date on which the authorized representatives of both Parties have signed this Amendment.

13. Law Governing. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of Texas. The Parties agree that venue of any suit to construe or enforce this Amendment shall lie exclusively in state courts in Kaufman County, Texas.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized agents, officers and/or officials on the dates set forth below.

CITY:

ATTEST:

CITY OF MESQUITE,
a Texas home rule municipality

By: Sonja Land
SONJA LAND,
City Secretary

Date: 1.24.2021

By: _____
Name: BRUCE ARCHER
Title: Mayor

Date: 1/24/21

APPROVED AS TO LEGAL FORM:

DAVID L. PASCHALL, City Attorney

COUNTY:

KAUFMAN COUNTY, TEXAS

By: Hal Richards
HAL RICHARDS, County Judge

Date: 1/12/2021

ATTEST:

By Laura Hughes
LAURA HUGHES, County Clerk

Date: 1/12/2021

EXHIBIT 1-A

Copy of City Ordinance No. 4833

ORDINANCE NO. 4833

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING ORDINANCE NO. 4713, PREVIOUSLY APPROVED BY THE CITY COUNCIL ON SEPTEMBER 16, 2019, TO INCREASE THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS), FROM SEVEN (7) MEMBERS TO NINE (9) MEMBERS AND TO PROVIDE THAT THE TWO (2) ADDITIONAL MEMBERS WILL BE DESIGNATED BY KAUFMAN COUNTY, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite, Texas (**"City"**), established Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) (the **"Zone"**), and established a Board of Directors for the Zone to promote development or redevelopment in the Zone pursuant to Ordinance No. 4713 approved by the City Council of the City (the **"City Council"**) on September 16, 2019 (**"Ordinance No. 4713"**), in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 (the **"Act"**); and

WHEREAS, the Zone consists of approximately 652 acres of undeveloped property generally located between FM 2757 and IH-20 and North of IH-20 East of FM 740 within the corporate limits of the City in Kaufman County, Texas (the **"County"**), the boundaries of the Zone being more particularly described in Exhibit "A" attached to Ordinance No. 4713 and depicted on the map attached as Exhibit "B" to Ordinance No. 4713; and

WHEREAS, on November 4, 2019, the City Council adopted Resolution No. 74-2019, approving a Master Development Agreement between the City, the Board of Directors of the Zone (the **"TIRZ Board"**), and Spradley Farms, Ltd., regarding the development of approximately 622 acres of land within the Zone as a mixed use planned development consisting of residential and commercial components and other associated uses, and being commonly referred to as "Spradley Farms"; and

WHEREAS, on November 4, 2019, the TIRZ Board prepared and adopted a project plan and reinvestment zone financing plan for the Zone, which was subsequently approved by the City Council on November 4, 2019, pursuant to Ordinance No. 4734; and

WHEREAS, on July 6, 2020, the City Council by Resolution No. 25-2020 authorized the City Manager to finalize and execute an Amended and Restated Master Development Agreement, dated July 6, 2020, between the City, the TIRZ Board and Spradley Farms, Ltd., regarding the development of Spradley Farms; and

WHEREAS, on July 6, 2020, the TIRZ Board prepared and approved an amended project plan and reinvestment zone financing plan for the Zone, which was subsequently approved by the City Council on July 6, 2020, pursuant to Ordinance No. 4790; and

WHEREAS, Ordinance No. 4790 approved by the City Council on July 6, 2020, amended Ordinance No. 4713; and

WHEREAS, the amended project plan and reinvestment zone financing plan for the Zone anticipates participation by the City at 60 percent of the City's incremental ad valorem tax for 45 years and participation by the County at 55 percent of the County's Maintenance and Operations incremental ad valorem tax for 35 years for a combined contribution to the tax increment fund of the Zone not to exceed $159,000,000; and

WHEREAS, pursuant to Section 311.013(f) of the Act, the County is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City; and

WHEREAS, the County's participation in the Zone will enable development of property in the Zone to occur that would not occur otherwise in the foreseeable future and it is anticipated that other complementary development in the Zone will follow such that this overall development will result in increased tax revenues and other public benefits for both the City and the County; and

WHEREAS, the County's participation in the Zone will benefit the City and its citizens; and

WHEREAS, the City and the County entered into that certain Agreement to Participate in Tax Increment Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) executed by the County on August 25, 2020, and executed by the City on September 22, 2020 (the **"Tax Participation Agreement"**); and

WHEREAS, the Tax Participation Agreement was approved by the Commissioners Court of Kaufman County, Texas, on August 25, 2020, and was approved by the City Council on September 21, 2020, pursuant to Resolution No. 43-2020; and

WHEREAS, pursuant to the Tax Participation Agreement, the City and the County agreed that during the term of the Zone, the TIRZ Board shall include two (2) County representatives and the remaining members of the TIRZ Board shall be designated by the City Council; and

WHEREAS, pursuant to City Ordinance No. 4713, the TIRZ Board consists of seven (7) members all appointed by the City Council; and

WHEREAS, the City Council desires to amend Ordinance No. 4713 to increase the number of members on the TIRZ Board from seven (7) members to nine (9) members and to provide that the two (2) additional members on the TIRZ Board shall be representatives designated by the County; and

WHEREAS, increasing the number of members on the TIRZ Board from seven (7) members to nine (9) members and providing that the two (2) additional members of the TIRZ Board shall be representatives designated by the County facilitates the agreement of the City and the County as set forth in the Tax Participation Agreement and is the best interest of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated and adopted as part of this ordinance for all purposes.

SECTION 2. That the TIRZ Board is hereby increased from seven (7) members to nine (9) members. The two (2) additional members of the TIRZ Board shall be appointed by the City Council but shall be designated by Kaufman County, Texas. Accordingly, effective as of the date of this ordinance, Section 4(a) of Ordinance No. 4713 is hereby amended by:

(i) deleting the words "consisting of seven (7) members all appointed by the City Council" and replacing those words with "consisting of nine (9) members all appointed by the City Council provided, however, Kaufman County, Texas (the "County") shall designate two (2) County representatives to serve on the Board and the City Council shall appoint the two (2) representatives designated by the County to serve as members of the Board"; and

(ii) adding "Members of the Commissioners Court of Kaufman County, Texas, may serve as Board members."

SECTION 3. That Ordinance No. 4713 shall further be amended by:

(i) deleting the words "The City Council may remove and replace Board members at any time during a term" in Section 4(e) of Ordinance No. 4713; and

(ii) replacing those words with the following "The City Council may remove and replace Board members at any time during a term provided, however, the City Council shall not remove and replace any Board member appointed to the Board who was designated by the County to serve on the Board unless requested by the County to do so."

SECTION 4. That Ordinance No. 4713 will remain in full force and effect, save and except as expressly amended by Ordinance No. 4790 and this ordinance.

SECTION 5. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 6. That should any word, sentence, clause, paragraph, section or provision of this ordinance be held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 7. That this ordinance, and the amendments to Ordinance No. 4713 set forth herein, are expressly conditioned upon the County approving this ordinance as an amendment to the Tax Participation Agreement.

SECTION 8. That this ordinance shall take effect immediately upon the execution by the City and the County of an amendment to the Tax Participation Agreement approving this ordinance as an amendment to the Tax Participation Agreement.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of December 2020.

Bruce Archer
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

David L. Paschall
City Attorney