

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING AN AGREEMENT WITH KAUFMAN COUNTY, TEXAS, TO PARTICIPATE IN REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS) (“AGREEMENT”); AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 16, 2019, the City Council of the City of Mesquite, Texas (the “**City Council**”) adopted Ordinance No. 4713 designating 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 of Mesquite (the “**City**”) in Kaufman County, Texas (the “**County**”), as Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) (the “**Zone**”); and

WHEREAS, designation of the Zone will enable development of property in and around 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, 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” (the “**Master Development Agreement**”); 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 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 (the “**Amended and Restated Master Development Agreement**”); 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, the amended project plan and reinvestment zone financing plan for the Zone anticipates participation by the City at sixty percent (60%) of the City’s incremental ad valorem tax for forty-five (45) years and participation by the County at fifty-five percent (55%) of the

County's Maintenance and Operations incremental ad valorem tax for thirty-five (35) years for a combined contribution to the Tax Increment Fund not to exceed \$159,000,000; and

WHEREAS, pursuant to Section 311.013(f) of the Texas Tax Code, 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; as such, the County wishes to enter into such an agreement with the City; and

WHEREAS, the City and the County desire the TIRZ Board to be comprised of two (2) County representatives and the remaining seven (7) members of the TIRZ Board to be designated by the City Council; and

WHEREAS, the City Council hereby finds and determines that the Agreement to Participate in Tax Increment Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) (the "**Agreement**"), is in the best interests of the citizens of the City.

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

SECTION 1. That the statements, facts, findings and recitals set forth above are hereby found and declared to be true and correct and are incorporated into this Resolution and adopted as part of this Resolution for all purposes.

SECTION 2. That in accordance with Sections 311.008 and 311.013 of the Texas Tax Code, the City Council hereby approves the Agreement and hereby authorizes the Mayor to execute the Agreement, a true and correct copy of said Agreement being attached hereto as Exhibit A, and incorporated herein for all purposes.

SECTION 3. That it is hereby declared to be the intent of the City Council that the sections, articles, paragraphs, sentences, clauses, phrases and words of this Resolution are severable and if any section, article, paragraph, sentence, clause, phrase or word in this Resolution, or the application thereto to any persons or circumstances, shall be held invalid or unconstitutional by a final judgment or decree of any Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Resolution; and the City Council hereby declares it would have passed such remaining sections, articles, paragraphs, sentences, clauses, phrases or words of this Resolution, and the City Council hereby declares it would have passed this Resolution without the incorporation of any such invalid or unconstitutional section, article, paragraph, sentence, clause, phrase or word and such remaining sections, articles, paragraphs, sentences, clauses, phrases and words shall remain in full force and effect.

SECTION 4. That this Resolution shall take effect immediately upon passage of this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of September 2020.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:



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Sonja Land  
City Secretary

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David L. Paschall  
City Attorney

**EXHIBIT A**

**Tax Participation Agreement  
between the City of Mesquite, Texas, and Kaufman County, Texas,  
to Participate in  
Tax Increment Reinvestment Zone Number Thirteen, City of Mesquite, Texas  
(Spradley Farms)**

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

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This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS)** (“**Agreement**”) is entered into by and between the CITY OF MESQUITE, TEXAS (the “**City**”) and KAUFMAN COUNTY, TEXAS (the “**County**”).

The City and the County hereby agree that the following statements are true and correct and constitute the basis upon which the City and the County have entered into this Agreement:

- A. On September 16, 2019, the City Council of the City of Mesquite, Texas (the “**City Council**”) adopted City Ordinance No. 4713 designating 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 Ordinance No. 4713 and depicted on the map attached as Exhibit “B” to Ordinance No. 4713, as Tax Increment Reinvestment Zone Number Thirteen, City of Mesquite, Texas (Spradley Farms) (the “**Zone**”). The Zone is informally known as “Spradley Farms” and the “Spradley Farms TIRZ”.
- B. On November 4, 2019, the Board of Directors for the Zone (“**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.
- C. 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, incorporated herein by reference.
- D. Designation of the Zone will enable development of property in and around 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.
- E. Pursuant to Section 311.013(f) of the Texas Tax Code, 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; as such, the County wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the County do hereby contract, covenant and agree as follows:

**1. INCORPORATION OF RECITALS.**

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

**2. DEFINITIONS.**

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

**Act** means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

**Captured Appraised Value** in a given year means the total appraised value of all real property taxable by the County and located in the Zone for that year less the Tax Increment Base, as defined by Chapter 311.012 (b), Texas Tax Code.

**County Roll Back Tax** is additional tax that is imposed when a property owner changes the use of a property from Agricultural to any other use – excluding building a house for a personal homestead. The Rollback Tax recoups the tax the owner would have paid if his or her land had been taxed at Market Value for the years covered in the Rollback, pursuant to Section 23.55 of the Texas Property Tax Code.

**Debt Service Tax Rate** means that portion of the County’s tax rate that is levied for payment of debt service.

**Material Breach** means any material failure to follow the terms of this Agreement, the Project Plan, or the Amended and Restated Master Development Agreement.

**Project Plan** means the amended and restated project plan for the development and/or redevelopment of the Zone, as adopted by the TIRZ Board and approved by the City Council on July 6, 2020 by Ordinance No. 4790, attached hereto as **Exhibit 2**.

**Road & Bridge Tax Rate** means the tax rate the County levies under Article VIII, Sec. 1(a) and Article VIII, Sec. 9, Texas Constitution.

**TIRZ Board** means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

**Tax Increment** in a given year means the amount of property taxes levied and collected by the County for that year on the Captured Appraised Value of real property taxable by the County and located in the Zone pursuant to the terms of Section 3 of this Agreement.

**Tax Increment Base** means the total appraised value as of January 1, 2019, of all real property taxable by the County and located in the Zone.

**Tax Increment Fund** means that fund created by the City pursuant to Section 311.014 of the Act and by City Ordinance No. 4713, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the County, and (ii) all accrued interest earned on the cash balance of the fund.

**TIRZ Ordinance** means City Ordinance No. 4713, adopted on September 16, 2019, attached hereto as **Exhibit 1**.

**Zone** means the certain real properties and boundaries as described in City Ordinance No. 4713 adopted on September 16, 2019.

### **3. DEPOSIT OF TAX INCREMENT.**

#### **3.1 Tax Increment Participation.**

During the term of this Agreement, the County agrees to deposit each year for a period of thirty-five (35) years beginning with the 2020 tax year, fifty-five percent (55%) of its tax rate (not including the Road & Bridge Tax Rate or Debt Service Tax Rate) attributed to the County's Captured Appraised Value into the Tax Increment Fund; provided, however, any County Roll Back Taxes shall not be paid into the Tax Increment Fund and shall remain with the County. In no event shall the County's and City's combined contribution to the Tax Increment Fund exceed \$159,000,000. Upon reaching the total contribution of \$159,000,000 or the expiration of the term, whichever occurs first, the participation of the County in this Agreement shall terminate unless the County by official action of the Commissioners' Court agrees in writing to extend this agreement.

The County is not obligated to pay the County's Tax Increment from any source other than taxes collected on the Captured Appraised Value; not including taxes collected resulting from the Road & Bridge Tax Rate or the Debt Service Tax Rate. Furthermore, the County has no duty or obligation to pay the County's Tax Increment from any other County taxes or revenues or until the County's Tax Increment in the Tax Increment Fund is actually collected.

#### **3.2 Billing Procedures.**

The calculation to determine the dollar amount of the County's Tax Increment to be deposited shall be made by the City based upon valuations provided by the Kaufman County Appraisal District ("KCAD") for each year and such deposits shall be made in accordance with the County's standard administrative procedures, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year. Any

disputes regarding the monthly billing contribution shall be subject to Section 4.7 of this Agreement. The County's obligation to the Tax Increment Fund is complete after making the deposits required herein.

The obligation to pay the County's Tax Increment accrues as the County collects taxes representing the County's Tax Increment, and payment shall be due on the first day of each calendar month when any eligible taxes from the Zone are collected upon receipt of a bill from the City as set forth above. No interest or penalty will be charged to the County for any late payment received from the County; provided, however, the penalty and interest received by the County on any delinquent taxes from the County's Tax Increment shall be paid to the Tax Increment Fund less any collection fees. Any penalty and interest on delinquent taxes received subsequent to the annual billing by the City shall be paid to the City as received. Any portion of the taxes representing the County's Tax Increment that are paid to the County and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the Tax Increment Fund.

#### **4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.**

This Agreement is based on the following conditions, and the City agrees and acknowledges the County's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied:

##### **4.1. Funds Limited to Infrastructure Improvements.**

The tax increment deposited into the Tax Increment Fund by the County shall be used to pay project costs for infrastructure improvements or other public improvements as set forth and identified in the Project Plan and the Amended and Restated Master Development Agreement, and shall not include any costs for administration, overhead, or management of the Zone, or costs for municipal or educational facilities.

##### **4.2. Amendments to TIRZ Ordinance.**

The TIRZ Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIRZ Ordinance is amended, such amendment 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 this Agreement. The City shall provide County at least 30-day's notice of any proposed amendments to the TIRZ Ordinance. Failure to provide notice constitutes a Material Breach of this Agreement.

**4.3. Payment of Project Costs; Amendments to Project Plan.**

The Tax Increment deposited into the Tax Increment Fund by the County shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All TIRZ Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIRZ Board in accordance with the Project Plan. If the Project Plan as approved by the City Council on July 6, 2020, is amended, such amendment shall only be effective if the amendment is approved by the governing body of the County as an amendment to this Agreement.

- 4.4.** The Commissioners Court may review and comment upon any proposed amendment to the Project Plan prior to its approval by the City Council. The City agrees to provide the County with any proposed amendments to the Project Plan at least thirty (30) days prior to their submission to the City Council for approval. Failure to provide notice constitutes a Material Breach of this Agreement.

**4.5. Zone Expansion.**

As defined, the Zone shall include real properties located within the boundaries as described in the TIRZ Ordinance. If the Zone is expanded, the County is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of the County as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the County may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of the County as an amendment to this Agreement.

**4.6. TIRZ Board Membership.**

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. The governing body of the County shall provide the name and address of their designated representative to the City Council for appointment to the TIRZ Board. The City Council shall appoint the designated representative to the TIRZ Board. If the designated representative is not appointed to the TIRZ Board or the TIRZ Board does not consist of the representative stated above, or his or her successor, the County may suspend payment into the TIRZ Fund as described in Section 3 until such time that the requirements above are satisfied. Notwithstanding the foregoing, the County's failure or refusal to designate its representative to the TIRZ Board shall not constitute a basis for suspending payment into the TIRZ Fund.

**4.7. Term.**

This Agreement shall take effect on the date as of which both Parties have executed it and shall expire on the earlier of (i) the termination date of the Zone or (ii) when the County's obligation to the Tax Increment Fund under section 3 of this Agreement is complete.

**4.7 Termination for Cause.**

The following shall be considered a Material Breach with respect to this Agreement:

- a) Amendment of the City's ordinance creating the TIRZ without approval of the County pursuant to Section 4.2.
- b) Amendment of the Project and Finance Plan without approval of the county pursuant to Section 4.3.
- c) Failure of the County to make payment of the amounts due pursuant to this Agreement.
- d) Failure of the City to provide the report required by Section 5 herein.
- e) Failure of the City to provide for two (2) County representatives on the Board of Directors.

If either party materially breaches this Agreement, the non-breaching Party will deliver written notice of such material breach to the breaching Party. Such notice will specify the nature of the material breach and inform the breaching Party that unless the breach is cured within thirty business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching Party begins a good faith attempt to cure the material breach within thirty business days, then and in that instance, the thirty business-day period may be extended by the non-breaching Party, so long as the breaching Party continues to pursue a cure diligently to completion and continues to make a good faith attempt to cure the material breach. If, in the opinion of the non-breaching Party, the breaching Party does not cure the breach within thirty business days or otherwise fails to make any diligent attempt to correct the material breach, the breaching Party will be deemed to be in breach and the non-breaching Party may, in addition to seeking the remedies available under this Agreement and the law, terminate this Agreement. Written notice, sent pursuant to Section 7 of this Agreement, is required for any party desiring to terminate.

Upon termination of this Agreement, the obligation of the County to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations

of the City, the Zone or any related redevelopment authority shall survive such termination.

**5. TIF FUND ACCOUNTING AND AUDITING.**

No later than July 1 of each year following execution of this Agreement, the City shall submit to the Kaufman County Judge, other taxing jurisdictions and the State of Texas Comptroller, a report of the status of the Zone. The contents of the report must contain all information required under section 311.016 of the Texas Tax Code. Further, City agrees to provide to County a copy of: (1) all five-year District Improvements Budgets received by City, including any requests to amend/change the budget; and (2) all reports upon completion received from Developer.

When all obligations of the Zone have been fulfilled pursuant to the provisions of the Project Plan, or upon the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

**6. RESPONSIBILITY FOR ACTS.**

The City and the County shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the County, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

**7. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party may subsequently designate in writing, by certified mail, postage prepaid, or by hand delivery:

City:  
City of Mesquite  
Attn: City Manager  
P.O. Box 850137  
Mesquite, TX 75185-0137

Kaufman County:  
Kaufman County, Texas  
Attn: County Judge  
100 W. Mulberry  
Kaufman, TX 75142

*with copies to:*  
City of Mesquite  
Attn: City Attorney  
P.O. Box 850137

*with copies to:*  
Kaufman County DA's Office  
Attn: Civil Dept.  
100 W. Mulberry

**8. NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**9. VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Kaufman County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

**10. NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and the County and are not intended to create any rights, contractual or otherwise, to any other person or entity; provided however, the City is specifically authorized to enter into an agreement with the Spradley Farms Improvement District of Kaufman County ("**District**") pursuant to which the amounts deposited to the Tax Increment Fund are dedicated, pledged and otherwise available to the District to pay or reimburse the costs of certain public improvements within the District and to secure the District's bonds to finance the public improvements set forth in the Project Plan.

**11. FORCE MAJEURE.**

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to *force majeure* or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, pandemics, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

**12. INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**13. CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**14. ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and the County as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the governing bodies of the parties in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**15. COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the later date below:

KAUFMAN COUNTY, TEXAS

By: \_\_\_\_\_  
HAL RICHARDS, County Judge

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
LAURA HUGHES, County Clerk

CITY OF MESQUITE, TEXAS

By: \_\_\_\_\_  
BRUCE ARCHER, Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
SONJA LAND, City Secretary

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
DAVID PASCHALL, City Attorney

**EXHIBIT 1**

ORDINANCE NO. 4713 OF THE CITY OF MESQUITE, TEXAS  
ESTABLISHING REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE,  
TEXAS (SPRADLEY FARMS), AND ALL ASSOCIATED EXHIBITS

**EXHIBIT 2**

ORDINANCE NO. 4790 OF THE CITY OF MESQUITE, TEXAS  
APPROVING AN AMENDED PROJECT PLAN AND REINVESTMENT ZONE FINANCING  
PLAN FOR REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS  
(SPRADLEY FARMS), AND ALL ASSOCIATED EXHIBITS