

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING AN AMENDMENT TO THE AGREEMENT WITH KAUFMAN COUNTY, TEXAS, TO PARTICIPATE IN REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS), RELATING TO THE INCREASE IN THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF MESQUITE, TEXAS (SPRADLEY FARMS) FROM SEVEN (7) MEMBERS TO NINE (9) MEMBERS WITH THE TWO (2) ADDITIONAL MEMBERS TO BE DESIGNATED BY KAUFMAN COUNTY, TEXAS (“AMENDMENT”); AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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 (the “**TIRZ Board**”) 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; 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, 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 City and the County have 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, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Tax Participation Agreement; and

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

WHEREAS, on December 7, 2020, the City Council adopted Ordinance No. _____ (“**City Ordinance No. ____**”) amending City 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 of the TIRZ Board shall be representatives designated by the County; 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. _____; and

WHEREAS, the City and the County desire to amend the Tax Participation Agreement to evidence the City’s compliance with the Notice Requirement and to approve City Ordinance No. ____ as an amendment to the Tax Participation Agreement; and

WHEREAS, the amendment to the Tax Participation Agreement attached hereto as Exhibit A and made a part hereof for all purposes (the “**Amendment**”), 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 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 the City Council hereby approves the Amendment and hereby authorizes the Mayor to execute the Amendment, a true and correct copy of said Amendment 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, and the approval by the City Council of the Amendment as set forth herein, are expressly conditioned upon the County approving the Amendment.

SECTION 5. That this Resolution shall take effect immediately upon the execution by the County of the Amendment.

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

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:



Sonja Land
City Secretary

David L. Paschall
City Attorney

EXHIBIT A

Amendment to
Agreement to Participate in
Tax Increment Reinvestment Zone Number Thirteen
City of Mesquite, Texas
(Spradley Farms)

**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. _____ (“**City Ordinance No. ____**”) 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. ____ 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. _____; and

WHEREAS, City Ordinance No. ____ 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. _____. The City Council and the Commissioners Court hereby approve City Ordinance No. ____ 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. _____. 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. ____, 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. ____ 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,
City Secretary

By: _____
Name: BRUCE ARCHER
Title: Mayor

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

DAVID L. PASCHALL, City Attorney

COUNTY:

KAUFMAN COUNTY, TEXAS

By: _____
HAL RICHARDS, County Judge

Date: _____

ATTEST:

By _____
LAURA HUGHES, County Clerk

Date: _____

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