

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (the "Agreement") is entered into by and between the City of Lewisville, Texas, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager, (hereinafter referred to as "City"); and FR Lewisville Midway, LLC (hereinafter referred to as "Owner") (hereinafter all shall collectively be referred to as the "Parties").

WITNESSETH:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Statute"), the City adopted a program for making economic development grants on June 20, 2016 (hereinafter referred to as "the Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the commercial economic and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, Owner owns all of that approximately 28.014 acre tract of land on Midway Road, in Lewisville, Texas, which is more particularly described by metes and bounds in "Attachment A" attached hereto (the "Land"); and

WHEREAS, Owner intends to construct certain Real Property Improvements (hereinafter defined) on the Land and to lease the Real Property Improvements; and

WHEREAS, Owner's development efforts described herein will create permanent new jobs in the City; and

WHEREAS, the contemplated use of the Land, the contemplated Real Property Improvements and the contemplated addition of Business Personal Property (hereinafter defined) on the Land in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Land in accordance with the purposes for its creation and are in compliance with the intent of the Statute and the Policy Statement and similar guidelines and criteria adopted by the City and all applicable law; and

WHEREAS, the City Council finds that the Real Property Improvements sought are feasible and practicable and would be of benefit to the Land and to the City after the expiration of this Agreement.

NOW THEREFORE, the City, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is Economic Development Agreement -- Page 1 of 15

hereby acknowledged, including the expansion of primary employment, the attraction of major investment on the Land, which contributes to the economic development of the City and the enhancement of the tax base in the City, the Parties hereto do mutually agree as follows:

ARTICLE I TERM

1.1 This term of this Agreement (“Term”) shall commence on the date this Agreement is executed by the City (“Effective Date”) and shall continue in effect until December 31 of the fifth (5th) full calendar year after the Owner receives a certificate of occupancy for the first Tenant in the Real Property Improvements, unless sooner terminated in accordance with the termination provisions in this Agreement. This agreement terminates automatically if a Tenant is not secured by December 31, 2023.

ARTICLE II DEFINITIONS

2.1 Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Agreement**” has the meaning set forth in the introductory paragraph of this document.

“**Appraised Value**” shall have the same meaning assigned by Section 1.04 of the TEX. TAX CODE, as amended.

“**Business Personal Property**” shall mean tangible personal property, equipment and fixtures, other than inventory or supplies, owned or leased by a Tenant that is added to the Real Property Improvements subsequent to the execution of this Agreement.

“**City**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“**Clawback Event**” means a failure by the Owner to meet a material term or condition of Article V of this Agreement after the expiration of any applicable Cure Period, which may create a requirement for repayment of a portion of the grants outlined herein.

“**Cure Period**” shall have the meaning given in Article VI of this Agreement.

“**Effective Date**” shall have the meaning given in Article I of this Agreement.

“**Event of Bankruptcy**” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the

commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of Owner, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of Owner), fire, explosion or flood, and strikes.

"Land" shall have the meaning set forth in the recitals to this Agreement.

"Owner" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Owner Grant" shall have the meaning set forth in Article IV of this Agreement.

"Real Property Improvements" shall mean an office/industrial facility constructed on the Land containing two buildings and other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with the City, as generally shown in the site plan attached hereto as Attachment B. The first building shall be a minimum of 219,800 square feet and the second building shall be a minimum of 125,200 square feet in size.

"Required Use" shall mean use of the Real Property Improvements for the continuous operation of office and warehouse facility, subject to temporary cessations of such operations as a result of a casualty or Force Majeure.

"Tenant" shall mean a user that will occupy the Real Property Improvements for a specific lease term.

"Tenant Grant" shall have the meaning set forth in Article IV of this Agreement.

"Term" shall have the meaning set forth in Article I of this Agreement.

ARTICLE III GENERAL PROVISIONS

3.1 As soon as practical after the Effective Date of this Agreement, Owner shall commence with improving the Land by constructing the Real Property Improvements at a minimum capital investment of thirteen million dollars (\$13,000,000). Owner shall substantially complete the Real Property Improvements by December 31, 2019. The date of substantial completion of the Real Property Improvements shall be defined as the date that Owner receives a final certificate of occupancy permit on the Real Property Improvements from the City. In the event of Force Majeure or if, in the reasonable opinion of the City, Owner has made substantial progress toward completion of the Real Property Improvements or is diligently pursuing completion of the Real Property Economic Development Agreement -- Page 3 of 15

Improvements, the City may grant additional time as may be required.

3.2 During the Term of this Agreement, Owner shall be subject to all applicable City taxation not specifically abated or exempted, including but not limited to, sales tax and ad valorem taxation on land, inventory and supplies.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES

4.1 Owner Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide to Owner an economic development grant in an amount equal to a portion of ad valorem property taxes paid to the City (the "Owner Grant"). The Owner Grant shall be calculated upon a percentage of the taxes assessed and paid on the Real Property Improvements in accordance with the terms of this Agreement and all applicable state and local regulations or valid waiver thereof. Owner shall pay all applicable taxes in accordance with the state and local regulations. Owner will be paid the Owner Grant by the City in accordance with this Agreement on an annual basis subject to the timing referenced in Section 4.2. The Owner Grant shall be in an amount equal to fifty percent (50%) of the value of property taxes on the Real Property Improvements paid to the City. The Owner Grant shall be available subject to the terms and conditions of this Agreement during the Term, beginning on January 1 of the year following the date that a certificate of occupancy is issued to the first Tenant in the Real Property Improvements. **Land value shall not be taken into account when calculating the Owner Grant.**

4.2 Timing of Grant. Owner and/or Tenant acknowledge that this Agreement makes an allowance for an economic development grant to be paid on an annual basis. Each year during the Term, prior to payment of such grant, Owner and/or Tenant shall submit to the City, no later than February 15 for each year in which the grant is to be paid, all of the following: (1) proof of payment of its real property tax liability; (2) its Annual Compliance Report shown on "Attachment C"; and (3) a letter of request for payment. Subject to the satisfactory receipt of these items by February 15 of each year, the City agrees, subject to the terms and conditions of this Agreement, that the grant will be paid in full for the previous calendar year to Owner and/or Tenant prior to March 30 or within forty-five (45) days of satisfactory receipt of the above listed items.

4.3. Tenant Grant. Subject to the terms and conditions of this Agreement, the City also agrees to give to any single Tenant that occupies ninety percent (90%) or more of the square footage within a single building of the Real Property Improvements (not including the parking lots and other outdoor and other ancillary facilities), and has a minimum of five (5) million dollars (\$5,000,000) in Business Personal Property value, an economic development grant in an amount equal to a portion of

ad valorem property taxes paid to the City (the "Tenant Grant"). Said grant shall be calculated upon a percentage of the taxes assessed and paid on the Business Personal Property of the Tenant located within the Real Property Improvements in accordance with the terms of this Agreement and all applicable state and local regulations or valid waiver thereof. The Tenant shall pay all applicable taxes in accordance with the state and local regulations. Tenant will be paid the grant by the City in accordance with this Agreement on an annual basis subject to the timing referenced in Section 4.2. Said grant shall be an amount equal to fifty percent (50%) of the value of Business Personal Property taxes on the Business Personal Property in the Real Property Improvements paid to the City. The Tenant Grant shall be available subject to the terms and conditions of this Agreement during the Term, beginning on January 1 of the year following the date that a certificate of occupancy is issued to the Tenant in the Real Property Improvements. In order to receive said grant, **Tenant shall execute a separate grant agreement with the City prior to occupying the Real Property Improvements.**

4.4 Community Support. Any Tenant eligible to receive a Tenant Grant in accordance with this Agreement shall support a community event or economic development activity with a minimum contribution of \$5,000 a year to the City for the Term of this Agreement. The actual amount of contribution will be negotiated at the time of execution of an agreement with the Tenant based on the value of the grant provided to the Tenant by the City. The City shall not require community support in excess of \$15,000 a year.

ARTICLE V AGREEMENT CONDITIONS

5.1 Minimum Use Condition. During the Term of this Agreement following the date upon which the Owner receives a certificate of occupancy for the first Tenant in the Real Property Improvements, the Real Property Improvements shall not be used for any purpose other than the Required Use, except in connection with and to the extent of an event of a casualty or Force Majeure.

5.2 Minimum Investment Condition. To be eligible for the Owner Grant under this Agreement, Owner shall invest a minimum of thirteen million dollars (\$13,000,000) for Real Property Improvements on the Land. This investment shall be made no later than December 31, 2019. Owner shall maintain a minimum investment of at least thirteen million dollars (\$13,000,000) subject to depreciation in accordance with generally accepted accounting practices or applicable tax regulations and tables. City and Owner understand that the Appraised Value of the Real Property Improvements will be determined by the Denton Central Appraisal District on an annual basis or as otherwise

required by law. Owner agrees to allow reasonable access to the Land and Real Property Improvements as required by law so the Denton Central Appraisal District can make accurate appraisals of the Real Property Improvements and, if necessary, Business Personal Property. In the event of Force Majeure, the Appraised Value of the Improvements shall be set by the Denton County Appraisal District on January 1 of the year immediately following the issuance of certificate of occupancy by the City. Owner shall render a minimum value of \$13,000,000 on Real Property Improvements for the first year following completion of construction.

5.3 Certification. Owner and/or Tenant must certify annually to the governing body of the City through the City's Director of Economic Development as to its attainment of the stated performance measures described in this Article V by submitting an Annual Compliance Report (Attachment C) and appropriate support documentation, no later than February 15 of each year after, for the Owner Grant, the issuance of the certificate of occupancy for the Real Property Improvements, or, for the Tenant Grant, the issuance of a certificate of occupancy to the Tenant, and continuing until the expiration of the Term.

ARTICLE VI TERMINATION

6.1 This Agreement may be terminated upon any one of the following:

- (a) by written agreement of the Parties;
- (b) expiration of the Term;
- (c) by either the Owner or the City if the other party breaches any material terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof (the "Cure Period") or so long as the breaching party commences curative action within such 60-day period and diligently pursues such curative action to a satisfactory completion;
- (d) by City, if Owner suffers an Event of Bankruptcy; and
- (e) by City, if any impositions owed to the City or the State of Texas by Owner shall remain delinquent after the Cure Period; and
- (f) by Owner upon sixty (60) days prior written notice to the City.

6.2 Refund of Grant. In the event the Agreement is terminated by the City pursuant to Section 6.1(c), (d), (e), or (f), a Clawback Event shall have been deemed to occur, and Owner shall, as the City's sole remedy, immediately pay the City, within sixty (60) days of notice from the City, an amount equal to a proportional amount of the grant received by Owner for the applicable tax year when the Clawback Event occurs.

ARTICLE VII MISCELLANEOUS

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by the City, which consent shall not be unreasonably withheld, so long as Owner's assignee agrees to be bound by all terms and conditions of this Agreement.

7.2 It is understood and agreed between the Parties that Owner, in performing its obligations thereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties.

7.3 Owner further agrees that the City, its agents and employees, shall have reasonable rights of access to the Land and Real Property Improvements as required by law to inspect the Improvements in order to ensure that the construction of the Real Property Improvements is in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to Owner's reasonable security, health and safety requirements, to inspect the Real Property Improvements up to twice in any year during the Term of this Agreement to ensure that the Real Property Improvements are maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (i) the City must give the Owner reasonable prior written notice no less than two (2) days prior to any such inspection, and (ii) a representative of Owner shall have the right to accompany the agent or employee of the City who is conducting such inspection.

7.4 The City represents and warrants that the Land does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.5 Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by certified mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For City by notice to:

City of Lewisville
Attn: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Owner by notice to:

FR Lewisville Midway LLC
2475 Merritt Drive
Garland, TX, 75041

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

7.6 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.7 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

7.8 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.9 This Agreement was authorized by action of the City Council, authorizing the City Manager to execute the Agreement on behalf of the City.

7.10 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.11 This Agreement may be modified or rescinded only by a writing signed by both of the Parties or their duly authorized agents.

7.12 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

7.13 OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY OWNER'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT COMMITTED BY OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE

BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.14 Nothing contained in this Agreement shall constitute a waiver of the City's governmental immunity.

7.15 This Agreement shall be considered drafted equally by both the City and Owner.

DATED this the _____ day of _____, 2018.

(EXECUTION PAGE FOLLOWS)

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

OWNER:

FR Lewisville Midway, LLC, a Delaware limited liability company

By: First Industrial, L.P., a Delaware limited partnership, its sole member

By: First Industrial Realty Trust, Inc., a Maryland corporation, its sole general partner

By: 

Name: Robert Allen

Its: Regional Manager

ATTACHMENT A

Legal Description:

DESCRIPTION OF PROPOSED LOTS 1 & 2, Block A, First Park 121 Addition

DESCRIPTION of a 28.014 acre tract of land situated in the Samuel M. Hayden Survey, Abstract No. 537, Denton County, Texas; said tract being part of that certain tract of land described in Warranty Deed to FR Lewisville Midway, LLC recorded in Document No. 2018-8990 of the Official Public Records of Denton County, Texas; said 28.014 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod with "HALFF ASSOC INC." cap found for corner in the south right-of-way line of Midway Road (a variable width right-of-way); said point being the northeast corner of Lot 1, Block A, Coyote Theater Addition, an addition to the City of Lewisville, Texas according to the plat recorded in Document No. 2016-32 of said Official Public Records;

THENCE, North 89 degrees, 17 minutes, 00 seconds East, along the said south line of Midway Road, a distance of 1,129.24 feet to a 1/2-inch iron rod with "B.H. & C" cap found for corner; said point being the northwest corner of Lot 1, Block A, Midway Pump Station Addition, an addition to the City of Lewisville, Texas according to the plat recorded in Volume 2009, Page 126 of the Deed Records of Denton County, Texas;

THENCE, South 00 degrees, 32 minutes, 51 seconds East, departing the said south line of Midway Road and along the west line of said Lot 1, Block A, Midway Pump Station Addition, passing at a distance of 451.94 feet, a 1/2-inch iron rod with "B.H. & C" cap found for the southwest corner of said Lot 1, Block A, Midway Pump Station Addition, continuing for a total distance of 664.55 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

THENCE, Due West, a distance of 532.72 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

THENCE, Due South, a distance of 838.16 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

THENCE, Due West, a distance of 564.19 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

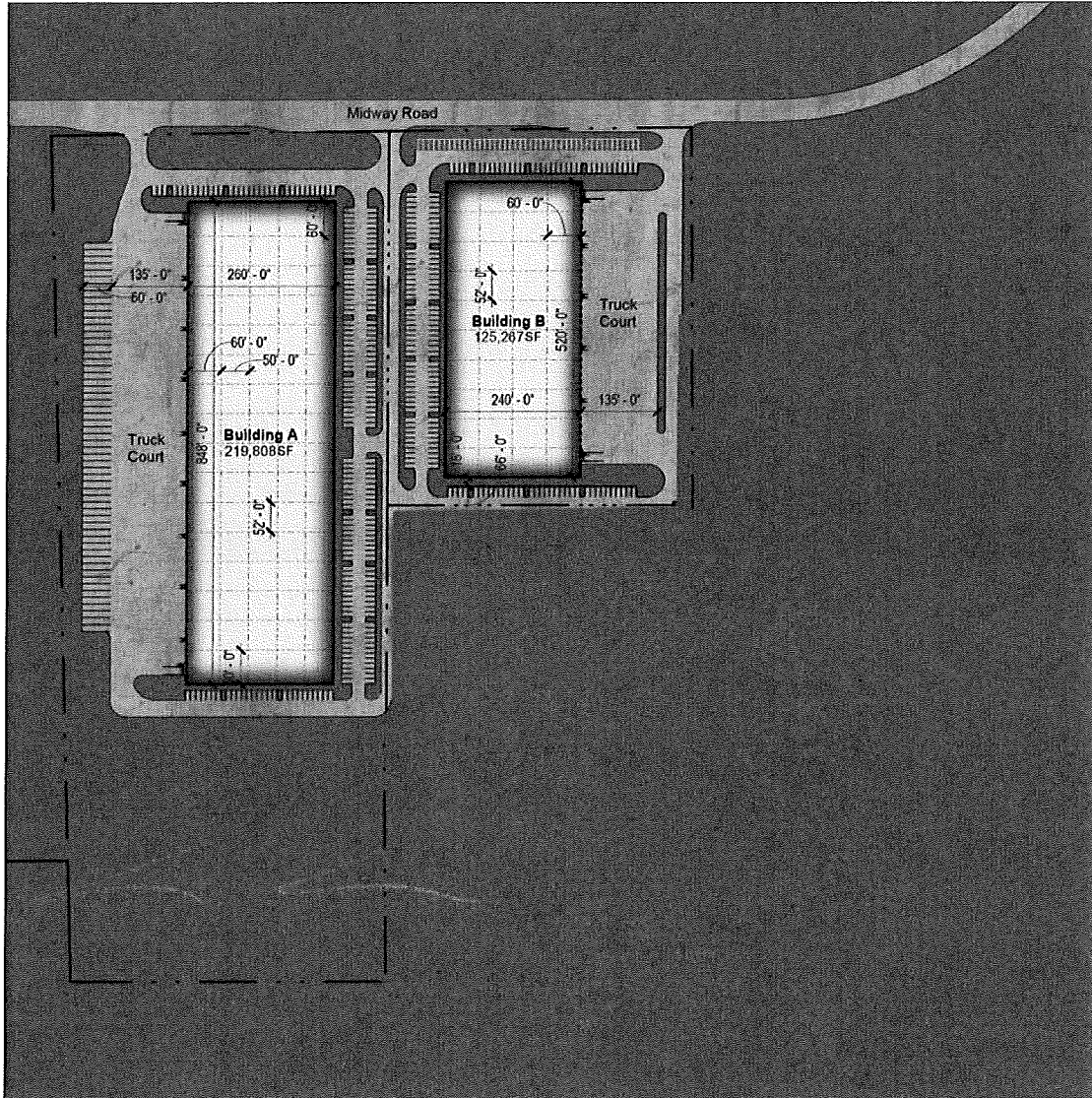
THENCE, North 01 degrees, 13 minutes, 19 seconds West, a distance of 213.42 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner, said point being the southeast corner of said Lot 1, Block A, Coyote Theater Addition and being an ell corner of said FR Lewisville Midway, LLC Tract;

THENCE, North 01 degrees, 31 minutes, 44 seconds West, along the east line of said Lot 1, Block A, Coyote Theater Addition, a distance of 1,275.64 feet to the POINT OF BEGINNING;

CONTAINING: 1,220,257 square feet or 28.014 acres of land, more or less.

ATTACHMENT B

Conceptual Site Plan – Phase 1 – Buildings A & B only



ATTACHMENT C
Annual Compliance Report

City of Lewisville
ANNUAL COMPLIANCE REPORT

Company Name	
Company Address	
Name of Certifying Officer	
Title of Certifying Officer	
Telephone	
Fax	
E-Mail	

Agreement conditions

Capital Investment Value – 1 st Year (documentation required)	
Capital Investment Value – Reporting Year (documentation required)	
Date on which Certificate of Occupancy was received	
Donation Amount in Support of a City Sponsored Event or Program Annually	

Membership in the Lewisville Chamber of Commerce N/A ☐ Yes ☐ No ☐

PROPERTY VALUE

Please list the actual dollar amount for the following:

Current Year Appraised Real Property Value – Land	Current Year Appraised Real Property Value - Improvements
Current Year Appraised Business Property Value – Machine, Equipment, Other BPP	Current Year Appraised Inventory Value

	Property Taxes Paid
Real Property	
Business Personal Property	
Inventory Tax	

payroll information

Please provide a copy of your Quarterly Payroll Report along with the following information:

	Part Time	Full Time
Total Current Employees at End of Reporting Period		
Number of New Employees Added During Reporting Period		
Annual Payroll During Reporting Period		
Average Salary During Reporting Period		

Construction

Has construction/installation of planned improvements commenced? N/A ☐ Yes ☐ No ☐

Has construction/installation of planned improvements been completed? N/A ☐ Yes ☐ No ☐

Construction Dollars Spent This Reporting Period:

required documentation to be attached:

- ☐ Quarterly Payroll Report
- ☐ Capital Investment supporting documents
- ☐ Brief Narrative Highlighting the Progress of the project
- ☐ If Applicable, a Statement Addressing any Failure to Meet Requirements of the Economic Development Agreement
- ☐ Letter of Request re: the Economic Development Agreement Rebate plus supporting documents

I certify that, to the best of my knowledge, the information and attachments provided herein are true and accurate and in compliance with the terms of the Economic Development agreement with the City of Lewisville.

Signature of Certifying Officer

Date