

OLD TOWN DECORATIVE LIGHTING AGREEMENT

THIS OLD TOWN DECORATIVE LIGHTING AGREEMENT (“Agreement”) is entered into by and among the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager (“City”), Series 1A Series of Lizzie B Properties (“Owner”), and the Main & Mill Association, a domestic 501(c)(6) nonprofit organization (“Main & Mill Association”), collectively referred to as Parties (“Parties”).

W I T N E S S E T H:

WHEREAS, the City finds that the installation of decorative lighting improvements in certain areas of Old Town Lewisville would promote local economic development, stimulate business activity, and increase property values in the Old Town area, thereby directly establishing a public purpose; and

WHEREAS, the Owner currently owns the property including the building located at 119 Main Street Lewisville, TX 75057 (“Property”), which is more fully described in Attachment A, attached hereto and made a part hereof; and

WHEREAS, year-round decorative lighting in Old Town Lewisville will be a draw for both visitors and prospective tenants; and

WHEREAS, the current decorative lighting in the Old Town area was installed and maintained by the Old Town Business Association, whose responsibilities have been assumed by the Main & Mill Association; and

WHEREAS, the electricity costs for the current decorative lighting in the Old Town area are paid for by the Main & Mill Association; and

WHEREAS, the replacement of the current decorative lighting with LED lighting will significantly decrease electricity use, which is part of the City’s Big Move toward sustainability in the Lewisville 2025 plan; and

WHEREAS, the Main & Mill Association will continue paying the electricity costs associated with the Decorative Lighting Improvements, as hereinafter defined, and will benefit from decreased electricity costs and transferring of maintenance costs to the City; and

WHEREAS, the City considers the proposed Decorative Lighting Improvements to be a significant improvement to the character of the built environment in the Old Town area; and

WHEREAS, the Owner desires to have the Decorative Lighting Improvements installed and maintained on the Property.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, 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

This Agreement shall be effective upon execution by both Parties (“Effective Date”) and shall continue until the Decorative Lighting Improvements are at end of life and removed, unless terminated earlier in accordance with this Agreement.

ARTICLE II DEFINITIONS

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

“Agreement” has the meaning set forth in the introductory paragraphs of this Agreement.

“City” has the meaning set forth in the introductory paragraphs of this Agreement.

“Decorative Lighting Improvements” shall mean cloud controlled, color changing, LED architectural accent light strings of equal or better specifications as stated in Attachment D, attached hereto and incorporated herein, and any equipment needed for the operation or control of such light strings.

“Effective Date” shall mean the date established in Article I of this Agreement.

“Main and Mill Association” shall have the meaning set forth in the introductory paragraphs of this Agreement.

“Owner” shall have the meaning set forth in the introductory paragraphs of this Agreement.

“Property” shall have the meaning set forth in the introductory paragraphs of this Agreement.

ARTICLE III GENERAL PROVISIONS

As soon as practical after the Effective Date of this Agreement, the City shall commence installation of the Decorative Lighting Improvements on the Property in accordance with the designs and specifications included herein in Attachment B, including removal of the existing light strings and fasteners on the Property, if needed. The designs and specifications in Attachment B may be amended at any time without affecting this Agreement.

ARTICLE IV AGREEMENT CONDITIONS

4.1 Decorative Lighting Improvements. The City shall, at its own expense, design, purchase, install, and maintain, or cause to be designed, installed and maintained, the Decorative Lighting Improvements on the Property as shown in Attachment B. The City shall retain ownership of the Decorative Lighting Improvements.

4.2 Right of Entry. The Owner shall allow the City and its employees, agents, contractors, and subcontractors access to the exterior of the Property for purposes of design, installation, inspection, maintenance, and control of the Decorative Lighting Improvements under this Agreement. The City must give the Owner reasonable written notice, which may include notice by email, of any such entrance onto the Property, and a representative of the Owner shall have the right to accompany the agent or employee of the City who is accessing the Property for purposes of this Agreement. The City shall be responsible for any damage caused to the Property by the negligent acts of the City when exercising its right of entry and for reimbursing the Owner within sixty (60) days of receiving written notice and supporting documentation of the repair cost.

4.3 Maintenance and Compliance. The City shall be solely responsible for the maintenance of the Decorative Lighting Improvements and shall ensure that the Decorative Lighting Improvements conform with all ordinances, statutes, rules, orders and regulations of any authorized authority of the federal, state or city government.

4.4 Control. The City shall have full control of lighting choices involving the Decorative Lighting Improvements, including, but not limited to, programming of light colors and times of operation.

4.5 Easement. The Owner shall grant the City an easement over portions of the Property as the City deems necessary for the installation and maintenance of the Decorative

Lighting Improvements. Such executed easement is attached as Attachment C and shall be filed by the City in the deed records of Denton County, Texas.

4.6 Electricity Costs. The Main & Mill Association shall be solely responsible for the electricity costs for the Decorative Lighting Improvements.

4.7 Damage to Decorative Lighting Improvements. If the Decorative Lighting Improvements are damaged due to the actions of the Owner or his tenants, employees, agents, contractors, or subcontractors, the City shall repair, or cause to be repaired, the Decorative Lighting Improvements at the Owner's expense. The Owner shall be responsible for reimbursing the City within sixty (60) days of receiving written notice of the repair cost.

4.8 Property Improvements. In the event a permit is issued within the first twelve (12) months after the Effective Date for improvements to the Property that results in the need to relocate, temporarily remove, or alter the location of the Decorative Lighting Improvements then the City, at its own expense, shall relocate, temporarily remove, and/or alter the location of the Decorative Lighting Improvements. After the first twelve (12) months after the Effective Date, any such relocation, temporary removal or alteration of the location of the Decorative Lighting Improvements shall be the responsibility of the Owner; provided, however, that the Owner must obtain written permission from the City prior to any such relocation, temporary removal or alteration of the location.

ARTICLE V TERMINATION

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

5.1.1 By written agreement of the Parties; or

5.1.2 Expiration of the Term; or

5.1.3 By the City, if electric bills are not paid for in full each month or if reimbursements for repair of damage to the Decorative Lighting Improvements are not made as required by this Agreement.

5.2 The City may, at its sole discretion, terminate the Decorative Lighting Improvement program. In the event of such termination, all duties of the Parties outlined herein shall be immediately extinguished, and the easement required by section 4.5 will be abandoned by the City within sixty (60) days of termination of the program.

5.3 In the event of termination or at the end of Term, the City shall have the option of immediately removing the Decorative Lighting Improvements.

ARTICLE VI MISCELLANEOUS

6.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. In case of the sale of the Property, this Agreement shall be assigned by the Owner to the new owner of the Property, and any assignee must agree to be bound by all terms and conditions of this Agreement. If, at any point, the Property is leased to a third party, the Owner has the responsibility to ensure that the lessee understands and is willing to be bound by all terms and conditions of this Agreement. It is understood and agreed among the Parties that the Parties, in performing their obligations thereunder, are acting independently, and no party assumes responsibility or liabilities in connection therewith to third parties.

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

6.3 Notices required to be given to Parties to this Agreement shall be given (1) personally; (2) by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail; or (3) by email to the Party at its email address as set forth below:

For City by notice to:

City of Lewisville
Attn: Assistant City Manager
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057
cswann@cityoflewisville.com

For Owner by notice to:

Caroline Berend 214 563 2561
308 Highland Lake Dr ceberend@aol.com
Highland Village, TX 75077

For Main & Mill Association by notice to:

Main & Mill Business Association, Inc.

132 W. Main Street
Lewisville, TX 75057
mainandmillhistoricdistrict@gmail.com

The Parties may change the information related to the notices by giving the other Parties written notice in the manner provided in this paragraph.

6.4 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.

6.5 This Agreement may be modified or rescinded only by a written instrument signed by all of the Parties or their duly authorized agents.

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

6.7 THE OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD THE 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 THE OWNER'S BREACH OF THIS AGREEMENT OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE OWNER, ITS TENANTS, 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.

6.8 TO THE EXTENT ALLOWED BY LAW, THE CITY AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER 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 THE CITY'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE OWNER AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE OWNER'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CITY'S LIABILITY. 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.

6.9 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.

6.10 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.

6.11 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.

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

SIGNATURE PAGE(S) FOLLOW

DATED this the _____ day of _____, 2018.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED TO FORM:

Lizbeth Plaster, City Attorney

SERIES 1A SERIES OF LIZZIE B PROPERTIES

By: Caroline Berend
Name: Caroline Berend
Title: Owner

MAIN & MILL ASSOCIATION

By: Heather Ciavella
Name: HEATHER CIABELLO
Title: CO-CHAIR

Attachment "A"

LEGAL DESCRIPTION

Save and Except all property dedicated to the City of Lewisville and replatted as Lot 2, Block A of the Wayne Ferguson Plaza Addition:

All that certain tract or parcel of land situated in the City of Lewisville and part of the J. W. King Survey, Abstract 696, on the North side of Main Street, and more particularly described as follows:

BEGINNING at a corner in the North line of Main Street 12 inches West of the Southeast corner of the W. D. Milliken (or Hatcher) business lot;

THENCE North along the center of the brick wall between the store buildings of W. D. Milliken and the J. M. Fox lots 132 feet and continuing North 30 feet to the Northwest corner of a lot deeded by T. H. Jenkins and others to J. M. Fox as shown by deed of record in Volume 119, Page 545, Deed Records of Denton County, Texas;

THENCE East 20-1/2 feet a corner;

THENCE South along the center of brick wall 162 feet to Main Street;

THENCE West 20-1/2 feet to the place of beginning, and being the same property conveyed by J. L. Huffines, and wife, Jewell Huffines to Mrs. Lee E. Woods, by two deeds, one dated June 8, 1945, recorded in Volume 315, Page 454, Deed Records of Denton County, Texas, and the other dated September 6, 1946, recorded in Volume 329, Page 333, of said Deed Records.

Attachment "B"

DECORATIVE LIGHTING IMPROVEMENTS

Inception Permanent, Color Changing, Cloud-Controlled lights with customizable changing colors to be professionally installed on the top, front façade of the building. Location of lighting shall be installed as follows:



Example of finished installation is for illustrative purposes only:



Attachment "C"
EASEMENT

DECORATIVE LIGHTING EASEMENT

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

THAT Series 1A Series of Lizzie B Properties (whether one or more natural persons or legal entities (the “Grantor(s)”) for and in consideration of the sum of TEN (\$10.00) DOLLARS, to the undersigned in hand paid by the **City of Lewisville, Texas** of the County of Denton, State of Texas, a municipal corporation (the “Grantee”), the receipt of which is hereby acknowledged and confessed, and the further benefits to be derived by remaining property as a result of projected public improvements, has Granted, Sold and Conveyed, and by these presents does Grant, Sell and Convey, unto Grantee an easement for decorative lighting purposes, together with the customary uses attendant thereto, including installation, operation, maintenance, repair or enlargement/extension, over, under, through, across and along all that certain property situated in the County of Denton, State of Texas, and described as of follows, to-wit:

The Property generally described in Exhibit “A” and as shown more specifically on Exhibit “B”, both such Exhibits being attached hereto and made a part hereof for all purposes.

The Grantee is purchasing this decorative lighting easement for the purpose of erecting and maintaining thereon public decorative lighting improvements, including, but not limited to, UL-listed, commercial grade, weather-resistant light strings with replaceable bulbs, and any equipment needed for the operation and control of such light strings; and it reserves the right to make the improvements according to such plans and specifications, as will, in its opinion, best serve the public purpose. The Grantor also grants to Grantee the right of ingress and egress on Grantor’s property for these same purposes. The payment of the purchase price for the Decorative Lighting Easement herein conveyed shall be considered full compensation for same, and for any diminution in value that may result to remaining property by virtue of project proximity thereto.

Should one or more of the Grantor(s) herein be natural persons and not joined by the respective spouse, it is conclusively presumed that the land herein conveyed is not the residence or business homestead of such Grantor(s) and that the undersigned has the full authority to sign individually. Should one or more of the Grantor(s) herein be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of such party has been duly and legally authorized to so sign. **Prior to this Decorative Lighting Easement being submitted to the City, Grantor shall obtain consent from all lienholders/mortgagees. The lienholder/mortgagee shall provide their consent and subordination in writing below. If the lienholder signature block is left blank and no partial release is provided, the Grantor represents that, to the best of their knowledge, there are no lienholders or mortgagees on the property. Grantor also acknowledges that the City has relied upon such representation.**

TO HAVE AND TO HOLD the same, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the Grantee, its successors and assigns forever, and Grantor(s) is(are) hereby bound, together with all heirs, executors, administrators, lienholders, mortgagees, or successors, to Warrant and Forever Defend, all and singular the said Easement unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

EXECUTED this 19 day of March, 20 18.

Caroline Berend
Caroline Berend

INDIVIDUAL ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the 19th day of March, 20 18, by Caroline Berend.

Jennifer L. Malone
Notary Public
State of Texas



My Commission Expires:

3/7/2021

CONSENT AND SUBORDINATION OF LIENHOLDER

The undersigned _____, being the owner and holder of an existing Deed of Trust lien or other lien upon and against the property described above as such mortgagee and lienholder, does hereby consent to the grant of said Decorative Lighting Easement and to the recording of same.

As part of this consent, the holder of the existing Deed of Trust lien or other lien upon and against the property described above subordinates its Deed of Trust lien or other lien upon the property described above to the rights and interests of the easements, such that a foreclosure of the lien(s) shall not extinguish the rights and interests of the easements.

Executed this _____ day of _____, 20__.

LIENHOLDER: _____

By: _____

Its: _____

LIENHOLDER ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the _____ day of _____, 20 ____, by _____ of _____ a _____ corporation on behalf of said corporation.

Notary Public
State of Texas

My Commission Expires:

Exhibit "A"

LEGAL DESCRIPTION

Save and Except all property dedicated to the City of Lewisville and replatted as Lot 2, Block A of the Wayne Ferguson Plaza Addition:

All that certain tract or parcel of land situated in the City of Lewisville and part of the J. W. King Survey, Abstract 696, on the North side of Main Street, and more particularly described as follows:

BEGINNING at a corner in the North line of Main Street 12 inches West of the Southeast corner of the W. D. Milliken (or Hatcher) business lot;

THENCE North along the center of the brick wall between the store buildings of W. D. Milliken and the J. M. Fox lots 132 feet and continuing North 30 feet to the Northwest corner of a lot deeded by T. H. Jenkins and others to J. M. Fox as shown by deed of record in Volume 119, Page 545, Deed Records of Denton County, Texas;

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THENCE South along the center of brick wall 162 feet to Main Street;

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Exhibit B
DECORATIVE LIGHTING IMPROVEMENTS

Inception Permanent, Color Changing, Cloud-Controlled lights with customizable changing colors to be professionally installed on the top, front façade of the building. Location of lighting shall be installed as follows:



Example of finished installation is for illustrative purposes only:



Attachment “D”
Inception Lighting Specifications



INCEPTION LIGHTING SPECIFICATIONS

LEARN ABOUT THE DETAILS OF OUR UNIQUE PRODUCT.

ITEM	SPECIFICATION	
LED LIGHT OUTPUT	BEAM ANGLE	120
	LUMENS	42 per source 10 inch spacing
	LED CHANNELS	Red/Blue/Green
	LUMEN MAINTENANCE	50,000 hours L70 @ 50°C
ELECTRICAL	INPUT VOLTAGE	24V
	POWER CONSUMPTION	.96 Watts Per Meter
CONTROL	LOCALIZED CONTROL	RF Pre-programmed DMX512
	APP-BASED CONTROL	Bluetooth and Wi-Fi Enabled
HOUSING	BASE & COVER DIMENSIONS (H X W X D)	2 x 48 x 1.5 inch
	BASE & COVER - WEIGHT	3 oz. per foot
	BASE & COVER MATERIAL	Base - UV Treated PVC Cover - Modified Acrylic
PHYSICAL	FIXTURE CONNECTIONS (LED STRIPS)	Integrated watertight 4-pin connectors
	TEMPERATURE RANGES	-40°F - 122°F Operating
	WATERPROOFING	IP65 (not submersible in water)
	MAXIMUM FIXTURES PER DATA/POWER SUPPLY	520 feet with localized control 260 feet with web-based control
	UV PROTECTION	10-Year Warranty

ITEM	TYPE		ITEM NUMBER
LED STRIPS	WHITE	Length .5 meter (18 in.)	IL501005W
		Length 1.5 meter (4.9 ft.)	IL501015W
		Length 5 meters (16.4 ft.)	IL501050W
	BLACK	Length .5 meter (18 in.)	IL501005B
		Length 1.5 meter (4.9 ft.)	IL501015B
		Length 5 meters (16.4 ft.)	IL501050B
BASE AND LID	1.2 METERS (4 FT.)	White	IL400340W
		Tan	IL400340T
		Dark Brown	IL400340B
CONTROLLER	LOCALIZED CONTROLLER	Max. 520 ft. of LED strips	IL301520C
	APP-BASED CONTROL	Max. 260 ft. of LED strips	IL301260C
EXTENDER CABLES	10 ft. length (black)		IL101010J
	25 ft. length (black)		IL101025J
SPLITTER	Y-CONNECTOR	1 female/male connects	IL102022J
END CAP	Clear		IL001001M



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