

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Lewisville, Texas, a home rule municipality duly acting by and through its City Manager ("City") and Michael & Hiyasim Noyes ("Owner"), collectively referred to as Parties ("Parties").

W I T N E S S E T H:

WHEREAS, the City finds that the administration of a program to install public and private fire suppression improvements in certain areas of Old Town Lewisville, hereinafter referred to as "Program," would promote local economic development, stimulate business activity, and increase property values in the Old Town area and would further constitute historical preservation activities by significantly increasing the protection of the historic buildings which are a signature of the Old Town area from destruction by fire, thereby directly establishing a public purpose; and

WHEREAS, the City has determined that said Program contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Program; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 20, 2016, and as amended (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 Chapter 380; and

WHEREAS, in order to maintain and/or enhance the commercial economic 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, the City Council of the City of Lewisville, Texas authorized this Agreement pursuant to Chapter 380; and

WHEREAS, the Owner currently owns the property including the building located at 127 Main Street Lewisville, TX 75057 (“Property”), which is more fully described in Attachment A, attached hereto and made a part hereof; and

WHEREAS, the close placement and connection of the buildings in Old Town Lewisville and the historic nature of the buildings makes those structures more susceptible to fire that can spread quickly from building to building; and

WHEREAS, containing a large structure fire to a single building in Old Town Lewisville with manual firefighting only would be both dangerous to firefighters and unlikely to succeed, thus endangering an entire quadrant of historic buildings; and

WHEREAS, fire suppression improvements, including fire alarms and fire suppression sprinklers, can greatly reduce the risk of a fire in one building spreading to closely-spaced adjacent or connected buildings, thus protecting the historic buildings in Old Town Lewisville and the businesses operating therein; and

WHEREAS, the cost of retrofitting existing historic buildings in Old Town Lewisville with fire suppression improvements, including fire sprinklers, is a barrier to property redevelopment and revitalization in that area, and installation of fire suppression improvements under this Agreement will foster reinvestment and business growth in the area; and

WHEREAS, the City desires to see the Property and other Old Town Lewisville properties and the businesses operating therein protected from destruction by fire through the installation and maintenance of public and private fire suppression improvements, in order to maintain the commercial economic base of the City; and

WHEREAS, the Owner desires to have improvements installed for fire protection purposes on the Property; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to Chapter 380; and

WHEREAS, the City desires to grant to the Owner, pursuant to Chapter 380, the Private Improvements, hereinafter defined, to the Property in order to protect the City and other businesses and historical structures in Old Town Lewisville; and

WHEREAS, the City desires to enhance and preserve Old Town Lewisville by protecting historic Old Town properties; and

WHEREAS, the City finds that the administration of an economic development agreement to install the Private Improvements on the Property would promote local economic development

and stimulate business and commercial activity within the municipality and would directly establish a public purpose; and

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Agreement.

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, including the protection and preservation of the historic buildings of Old Town Lewisville and the businesses therein, 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 all requirement of this Agreement have been fulfilled as provided herein, 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.

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

“Fire Suppression Improvements” shall mean both Public Improvements, as more specifically defined in Attachment B, and Private Improvements, as more specifically defined in Attachment C.

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

“Private Improvements” shall mean a commercial fire suppression sprinkler system, as shown generally in Attachment C. Detailed plans and specifications for the Private Improvements

shall be available during business hours in the Fire Marshal's Office, located in Lewisville City Hall.

"Program" 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.

"Public Improvements" shall mean an underground water main, a transmission/bulk main, control/isolation valve, waterflow device, all associated conduit/wiring/panels for fire alarm system, and all components sufficient for future extension of a sprinkler system, as more specifically described in Attachment B.

"Substantial Completion" shall mean the completion of the Fire Suppression Improvements, as determined by the City.

ARTICLE III GENERAL PROVISIONS

As soon as practical after the Effective Date of this Agreement, the City shall commence construction of the Fire Suppression Improvements on the Property in accordance with the designs and specifications included herein in Attachment B and as generally shown in Attachment C. The designs and specifications may be amended at any time without affecting this Agreement.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVE

The City shall, at its own expense, design and install, or cause to be designed and installed, the Fire Suppression Improvements on the Property as shown in Attachment B and as shown generally in Attachment C, with complete plans for the Private Improvements available at the Fire Marshal's office located in Lewisville City Hall. At the time of Substantial Completion, the City shall grant ownership of the Private Improvements, as shown generally in Attachment C, to the Owner.

ARTICLE V AGREEMENT CONDITIONS

5.1 Right of Entry.

5.1.1 The Owner shall allow the City and its employees, agents, contractors, and subcontractors access to the Property for purposes of (a) design and construction of the Fire Suppression Improvements; (b) maintenance and inspection of the Public Improvements; and (c) inspection of the Private Improvements.

a. For entry not due to emergency, the City must give the Owner reasonable prior telephone or 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.

b. For entry due to an emergency, including but not limited to a line break, substantial leak, or alarm system failure, the City and its employees, agents, contractors, or subcontractors shall have immediate access to the Property in order to access the Public Improvements without the requirement to give prior notice. In order to facilitate entry for emergency maintenance, the City may install a Knox Box or similar device on the Property, and the Owner shall provide to the City a key to the Property which can be used to access the Public Improvements, and shall ensure that this key is replaced as needed.

5.2 Inspection. The annual inspection of the Fire Suppression Improvements shall be coordinated and paid for by the City. Any repairs or other work required on the Private Improvements as a result of the annual inspection shall be the responsibility of the Owner.

5.3 Maintenance and Compliance. The Owner shall be solely responsible for the maintenance of the Private Improvements. The Owner shall ensure that the Private Improvements conform with all ordinances, statutes, rules, orders and regulations of any authorized authority of the federal, state or city government, including but not limited to, the International Fire Code and permits required therein.

5.4 Easement. The Owner shall grant the City an easement over portions of the Property as the City deems necessary for the construction, inspection and maintenance of the Public Improvements and for the construction (but not the maintenance) of the Private

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

5.5 Termination of Program. The City may, at its sole discretion, terminate the Program before the start of construction of the Fire Suppression Improvements. In such case, all duties of the Parties outlined in this Agreement shall be immediately extinguished, and the easement required by section 5.4 will be abandoned by the City within sixty (60) days of termination of the Program.

ARTICLE VI TERMINATION

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

6.1.1 By written agreement of the Parties;

6.1.2 Expiration of the Term;

6.1.3 By either Party in the event the other Party breaches any of the terms or conditions of this Agreement, and such breach is not cured within sixty (60) days after written notice thereof, unless another cure period is specified;

6.1.4 By the City, if the Owner suffers an Event of Bankruptcy;

6.1.5 By the City, if any taxes, assessments or payments owed to the City or the State of Texas on the Property become delinquent and are not cured within sixty (60) days after written notice thereof (provided, however the Owner retains the right to timely and properly protest and contest any such taxes or assessments);

6.1.6 By the City, if the Owner violates any state or federal law or regulation or City of Lewisville ordinance, including but not limited to, regulations regarding fire suppression sprinklers or fire alarms, and such violation is not cured within sixty (60) days after written notice thereof, unless another cure period is specified; and

6.1.7 As otherwise stated within this Agreement.

6.2 In the event the Agreement is terminated by the City pursuant to Sections 6.1.3, 6.1.4, 6.1.5, or 6.1.6 of this Article, the Owner shall reimburse the City, within sixty (60) days of receiving written notice from the City, for all City funds expended for the design, installation, and inspection of the Private Improvements up to the date of termination.

ARTICLE VII MISCELLANEOUS

7.1 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 between the Parties that the Parties, in performing their obligations thereunder, are acting independently, and neither party assumes responsibility or liabilities in connection therewith to third parties.

7.2 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.

7.3 Notices required to be given to either Party 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: Economic Development Director
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057
[Insert email]

For Owner by notice to:

[Include email]

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

7.4 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.

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

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

7.7 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.

7.8 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.

7.9 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.

7.10 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.

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

7.12 None of the City's obligations herein shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

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

DATED this the 12th day of July, 2018.

CITY OF LEWISVILLE, TEXAS

Donna Barron, City Manager

ATTEST:

Julie Worster, City Secretary

APPROVED TO FORM:

Lizbeth Plaster, City Attorney

[OWNER]

By: 
Name: HYASMIN NOYES
Title: OWNER

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 of land situated in the J. W. King Survey, Abstract No. 696, Denton County, Texas and being a part of Block 6 of The Original Town of Lewisville, Denton County, Texas according to the Plat thereof recorded in Volume 75, Pages 158 through 163, Deed Records, Denton County, Texas, and being the same tract as described in the Deed dated December 21, 1945, from J. H. Cobb and wife, Fredrica Cobb to Margaret Alicia Cobb and husband Joe C. Cobb, recorded in Volume 322, Page 43 of the Deed Records of Denton County, Texas; the subject tract being more particularly described as follows:

BEGINNING at the southwest corner of the tract being described herein at a "x" set scribed in concrete in the north line of Main Street and the south line of said Block 6, at the southwest corner of said Cobb tract, from which a building corner at the southwest corner of said Block 6, bears west a distance of 110.14 feet;

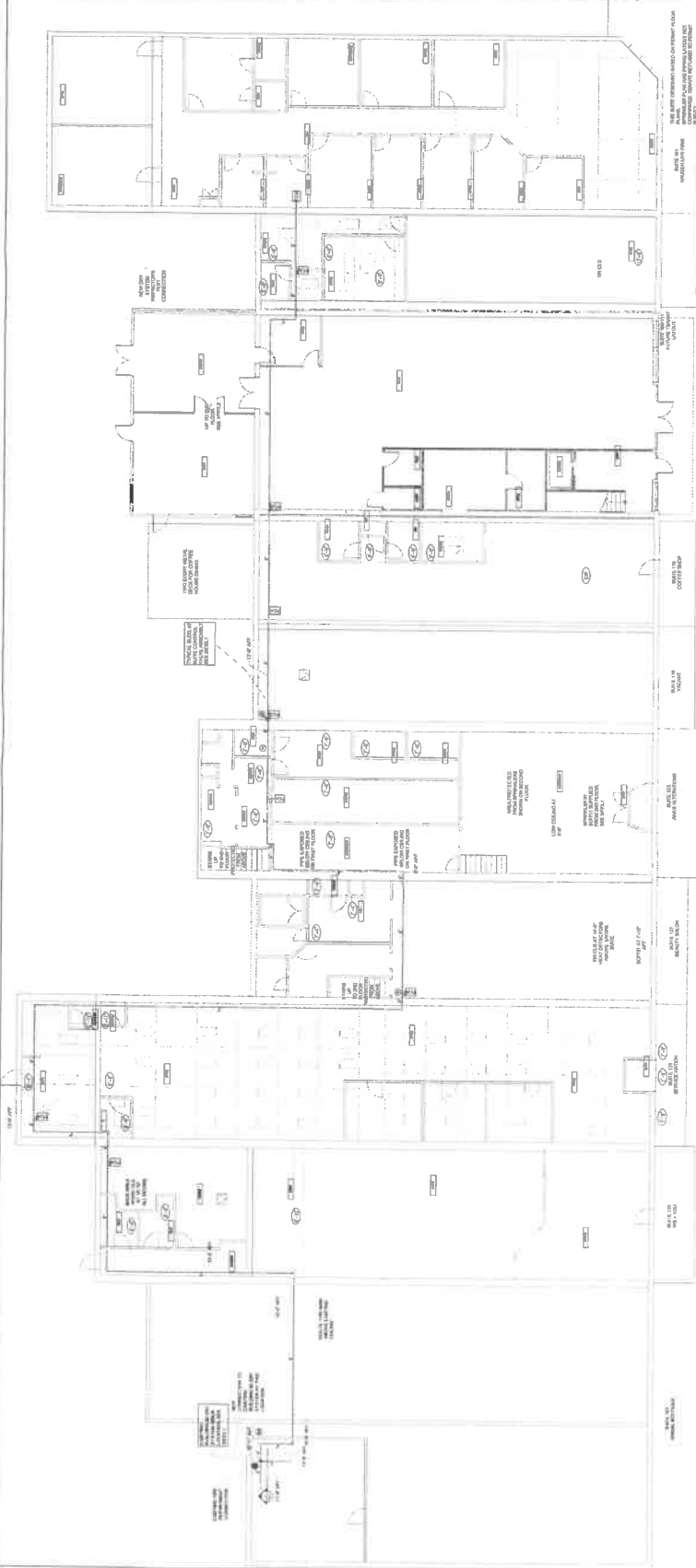
THENCE North 00° 08' 00" East a distance of 162.00 feet to a capped iron rod set for corner;

THENCE East a distance of 25.00 feet to a capped iron rod set for corner;

THENCE South 00° 08' 00" West a distance of 162.00 feet to a "x" set scribed in concrete in the north line of Main Street and the south line of said Block 6;

THENCE West a distance of 25.00 feet to the PLACE OF BEGINNING.

Attachment “B”
PUBLIC IMPROVEMENTS – DESIGNS AND SPECIFICATIONS

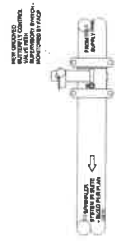


 1
E 32.5'

**BUILDING #2 FIRST FLOOR FIRE SPRINKLER
MAIN EASEMENT PLAN**



2 BUILDING #2 EXISTING DRY SYSTEM RISER DETAIL
E22.1 NO SCALE



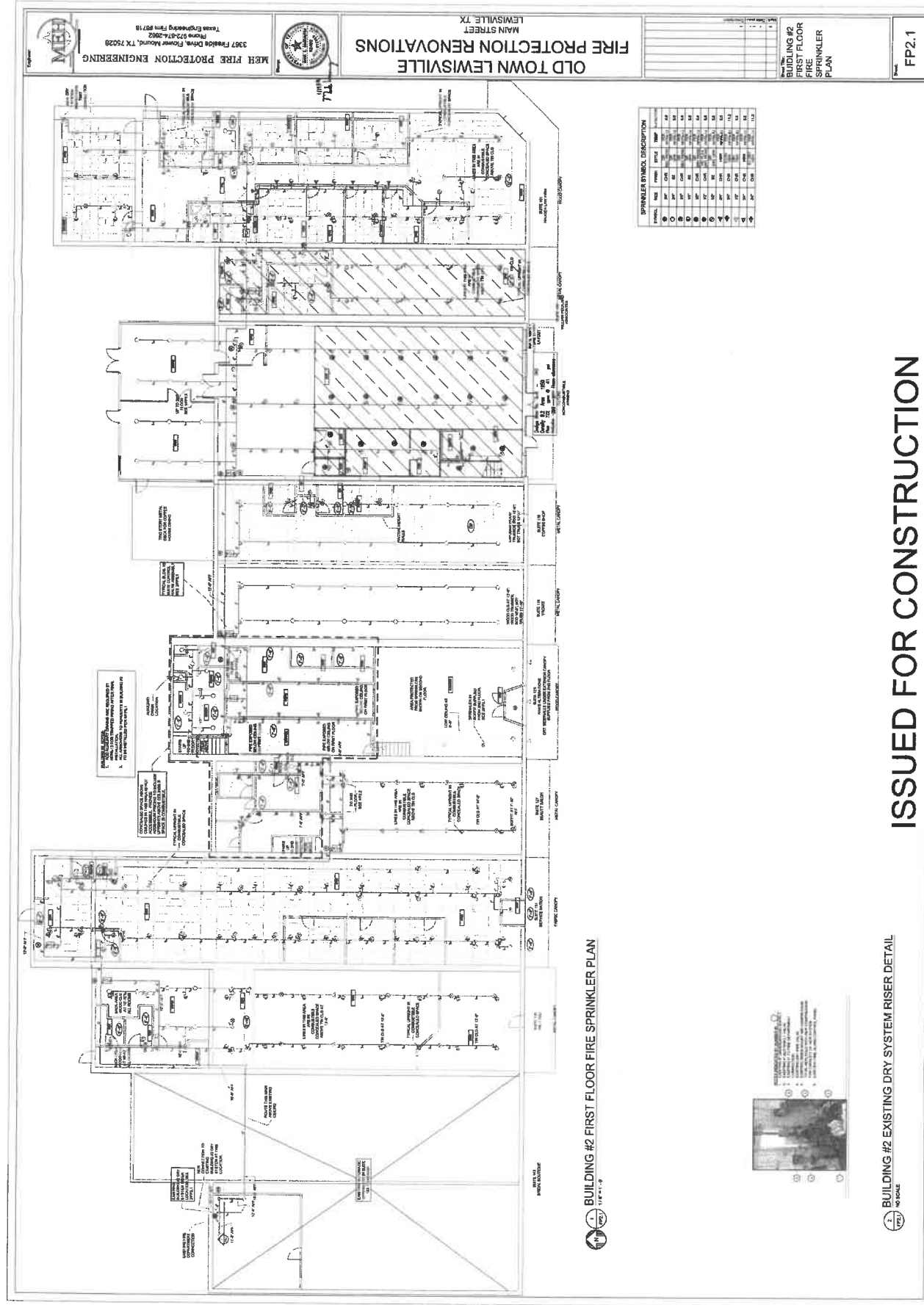
3
252.1

NOT FOR CONSTRUCTION

Attachment “C”

PRIVATE IMPROVEMENTS – GENERAL DESIGN

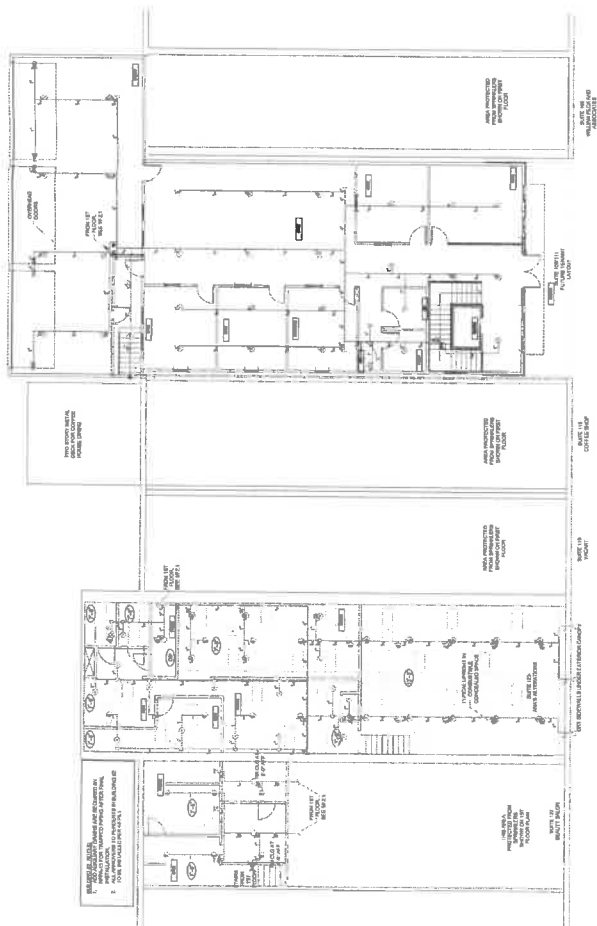
Actual specifications and design documents may be reviewed during business hours in The Fire Marshal's office in Lewisville City Hall



MAIN STREET
LEWISVILLE, TX

**BUILDING #2
SECOND
FLOOR FIRE
SPRINKLER
PLAN**

FP2.2

[illegible]

BUILDING #2 SECOND FLOOR FIRE SPRINKLER PLAN

ISSUED FOR CONSTRUCTION

**Attachment “D”
EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

PUBLIC FIRE SUPPRESSION IMPROVEMENT EASEMENT

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

THAT Michael & Hiyasim Noyes (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 fire suppression improvement purposes, together with the customary uses attendant thereto, including construction, operation, maintenance, repair or enlargement, 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 described in Exhibit "A" and as shown on Exhibit "B", both such Exhibits being attached hereto and made a part hereof for all purposes.

The Grantee is purchasing this fire suppression improvement easement for the purpose of erecting thereon public fire suppression improvements and maintaining those improvements, including, but not limited to: a transmission/bulk main, control/isolation valve, waterflow device, all associated conduit/wiring/panels for fire alarm system, and all components sufficient for future extension of a sprinkler system; and it reserves the right to make the improvements on such grade and 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 adjacent to this easement for these same purposes. The payment of the purchase price for the Fire Suppression Improvement 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, grade, alignment, or the alteration of drainage patterns and facilities.

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,

After recording return to:

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 Fire Suppression Improvement 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.

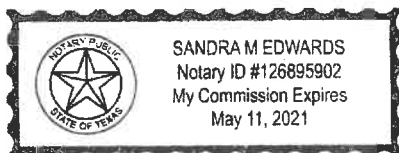
EXECUTED this 12th day of July, 20 18.

H. Hayes

INDIVIDUAL ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the 12th day of July, 20 18, by HIRASHIN NOYES.



Sandra Edwards
Notary Public
State of Texas

My Commission Expires:

May 11, 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 Fire Suppression Improvement 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 of land situated in the J. W. King Survey, Abstract No. 696, Denton County, Texas and being a part of Block 6 of The Original Town of Lewisville, Denton County, Texas according to the Plat thereof recorded in Volume 75, Pages 158 through 163, Deed Records, Denton County, Texas, and being the same tract as described in the Deed dated December 21, 1945, from J. H. Cobb and wife, Fredrica Cobb to Margaret Alicia Cobb and husband Joe C. Cobb, recorded in Volume 322, Page 43 of the Deed Records of Denton County, Texas; the subject tract being more particularly described as follows:

BEGINNING at the southwest corner of the tract being described herein at a "x" set scribed in concrete in the north line of Main Street and the south line of said Block 6, at the southwest corner of said Cobb tract, from which a building corner at the southwest corner of said Block 6, bears west a distance of 110.14 feet;

THENCE North 00° 08' 00" East a distance of 162.00 feet to a capped iron rod set for corner;

THENCE East a distance of 25.00 feet to a capped iron rod set for corner;

THENCE South 00° 08' 00" West a distance of 162.00 feet to a "x" set scribed in concrete in the north line of Main Street and the south line of said Block 6;

THENCE West a distance of 25.00 feet to the PLACE OF BEGINNING.

Exhibit B
PUBLIC IMPROVEMENTS – DESIGNS AND SPECIFICATIONS

