



**CITY OF DENISON  
CITY COUNCIL MEETING  
AGENDA**

**Monday, June 3, 2024**

After determining that a quorum is present, the City Council of the City of Denison, Texas will convene in a Regular Meeting on **Monday, June 3, 2024, at 6:00 PM** in the Council Chambers at City Hall, 300 W. Main Street, Denison, Texas at which the following items will be considered:

**1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE**

**2. PUBLIC COMMENTS**

Citizens may speak on items listed on the Agenda. A “Request to Speak Card” should be completed and returned to the City Clerk upon arrival, prior to the Council reaching the Public Comment section of the agenda. Citizen comments are limited to three (3) minutes, unless otherwise required by law. Comments related to the Public Hearings listed below, will be heard when the specific hearing starts.

**3. CONSENT AGENDA**

- A. Receive a report, hold a discussion and take action on approving the Minutes from the Regular City Council Meeting held on May 20, 2024.
- B. Receive a report, hold a discussion, and take action on a Written Services Agreement (Contract No. 2024-0072) to allow services for a Voluntary Annexation Petition for property containing approximately 52.52 acres, more commonly known as being located at the northwest corner of Texoma Drive and State Highway 91, GCAD Property ID Nos. 109713, 109718, and 439828.
- C. Receive a report, hold a discussion, and take action on an agreement with Garver LLC to provide professional software services for the Denison CIP portal in the amount of \$195,000, (Contract No. 2024-0075) and authorize the Interim City Manager to execute all related documents.
- D. Receive a report, hold a discussion, and take action on a Development Agreement between Wright Construction and Development, LLC and the City of Denison for abandoning a fifteen (15) foot alley and a thirty (30) foot wide strip of right-of-way (Contract Number 2024-0074).
- E. Receive a report, hold a discussion, and take action on entering into an agreement with Denison Youth Sports for the 2024 fall and 2025 spring youth recreational baseball

league provider at Texoma Health Foundation Park and Waterloo Baseball Fields (Contract Numbers 2024-0070 and 2024-0071) and authorize the Interim City Manager to execute the same.

F. Receive a report, hold a discussion, and take action on entering into an agreement with Boys and Girls Club of Denison for the 2024 fall and 2025 spring youth recreational softball league provider at Texoma Health Foundation Park and Culpepper Softball Fields (Contract Numbers 2024-0068 and 2024-0069) and authorize the Interim City Manager to execute the same.

G. Receive a report, hold a discussion, and take action on awarding a proposal and entering into a General Construction Services Agreement with Piazza Construction, LLC (Contract No. 2024-0079) for the 2024 THF Park Parking Improvements, and authorize the Interim City Manager to execute the same.

#### 4. EXECUTIVE SESSION

Pursuant to Chapter 551, *Texas Government Code*, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting to receive legal advice from its attorney on any posted agenda item as permitted by law or to discuss the following:

**A. Consult with attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter and/or consult with attorney about pending or contemplated litigation or contemplated settlement of the same. Section 551.071.**

1. Confer with City Attorney regarding *Swope v. City of Denison*, Case No. CV-22-0254, Grayson County.

2. Confer with City Attorney regarding *City of Denison vs. AB Sherman Holding Company, LLC*, as to the properties located at 1527 S. Austin Avenue, Cause No. CV-23-0583, and 2824 W. Crawford, Cause No. CV-23-0582, 15th Judicial District, Grayson County, Texas.

3. Confer with City Attorney regarding Fannin Road.

B. Discuss the possible purchase, exchange, lease or sale value of real property (public discussion of such would not be in the best interests of the City's bargaining position). Section 551.072.

C. Discuss negotiated gifts or donations to the City (public discussion at this stage would have a detrimental effect on the City's bargaining position). Section 551.073.

D. Discuss the appointment, employment, evaluation, reassignment of duties, discipline, or dismissal of or to hear a complaint against a public officer or employee. Section 551.074.

E. Discuss the commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a

facility, or for incentives the City is willing to extend, or financial information submitted by the same. Section 551.087.

F. Discuss the deployment or specific occasions for implementation of security personnel or devices. Section 551.076.

G. Deliberations regarding economic development negotiations pursuant to Section 551.087.

Following the closed Executive Session, the Council will reconvene in open and public session and take any such action as may be desirable or necessary as a result of the closed deliberations.

#### CERTIFICATION

I do hereby certify that a copy of this Notice of Meeting was posted on the front window of City Hall readily accessible to the general public at all times and posted on the City of Denison website on the 31<sup>st</sup> day of May 2024, before 6:00 PM.

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Christine Wallentine, City Clerk

In compliance with the Americans With Disabilities Act, the City of Denison will provide for reasonable accommodations for persons attending City Council meeting. To better serve you, requests should be received 48 hours prior to the meetings. Please contact the City Clerk's Office at [903-465-2720](tel:903-465-2720), Ext: 2437.



**CITY OF DENISON  
CITY COUNCIL MEETING  
MINUTES**

**Monday, May 20, 2024**

Announce the presence of a quorum.

Mayor Robert Crawley called the meeting to order at 6:00 p.m. Council Members present were Mayor Pro Tem Teresa Adams, Michael Courtright, James Thorne, Spence Redwine and Aaron Thomas. Council Member Joshua Massey was absent. Staff present were Interim City Manager, Bobby Atteberry, Assistant City Manager, Renee Waggoner, City Attorney, Julie Fort, City Clerk, Christine Wallentine and Deputy City Clerk, Karen Avery. Department Directors were also present.

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Rodney Ward, Pastor of Harless Memorial United Methodist Church of Denison gave the invocation which was followed by the Pledge of Allegiance and Texas Pledge led by Texoma Women’s Roller Derby Members, Lindsey Manley, Kathy Tynan, Briana Rolan and Cheyenne Garcia.

2. PROCLAMATIONS AND PRESENTATION

A. Mental Health Awareness Month Proclamation.

Mayor Crawley presented a proclamation to Texoma Behavioral Health Board Members, Chief Mike Gudgel and Dr. Jeremy McMillen. Mental health is an essential part of overall well-being, impacting individuals, families and communities across Denison, Texas. One in five American adults experiences a mental health condition each year and everyone faces challenges in life that can impact their mental health. Despite its prevalence, mental health remains shrouded in stigma, preventing many from seeking help. Early intervention and access to quality care are crucial for managing mental health conditions and improving quality of life. May is recognized nationally as Mental Health Awareness Month, providing an opportunity to raise awareness, combat stigma and promote mental health resources. Mayor Crawley then proclaimed the month of May as “Mental Health Awareness Month” in the City of Denison and urged all citizens to educate themselves and others about mental health conditions, treatment options and available resources; challenge stigma by speaking respectfully and inclusively about mental health; seek help if they are struggling with their mental health and encourage others to do the same; support organizations that provide mental health services and advocacy; and create safe and supportive environments for open conversations about mental health. Together, we can create a community where everyone feels empowered to prioritize their mental well-being and seek help when needed.

Following presentation of the proclamation, Dr. Jeremy McMillen addressed the Council to share the appreciation of the Behavioral Health Leadership Team for the support of the City. Dr. McMillen also recognized members of the Texoma Community Center who serve on the Board and serve the community as the local mental health authority. Texoma Behavioral Health

Leadership Team was established seven or eight years ago to focus on reducing stigma, increasing access to care, providing jail diversion, which has a huge impact on the City of Denison. Taking someone that has behavioral health challenges and providing them with services, as opposed to just placing them in jail, and then recently trying to expand the mental health workforce. So, we have true access to care within our community. You heard some facts earlier, but Dr. McMillen wanted to share some things about Texas and the prevalence of mental health and also our community. Texas is number one in the United States with the highest prevalence of mental health needs and has the lowest access to care. Grayson County experiences 13% Higher poor mental health days than the US average. Suicide rates in Texoma have increased 38% since the year 2000, and then also we know that generational poverty heightens stress and restricts access to resources, with 11% of that being experienced in Grayson County. The things done at this council help in a lot of ways to meet the needs of the community to create a community where they do have access to care.

### 3. PUBLIC COMMENTS

Mayor Crawley called for any public comments at this time and reminded those wanting to comment of the guidelines established by the City Council. Christine Wallentine, City Clerk, confirmed no Request to Speak Cards were received at this point in the meeting. Therefore, no public comments were received.

### 4. CONSENT AGENDA

- A. Receive a report, hold a discussion and take action on approving the Minutes from the Regular City Council Meeting held on May 6, 2024, and the Special Called Meeting held on May 13, 2024.
- B. Receive a report, hold a discussion, and take action on entering into an agreement with Chris Lambka & Associates, LLC (Contract No. 2024-0060) for Construction Administration Services-Phase Two of Downtown Denison (D3) and Heritage Park project in the amount of \$145,750.00, and authorize the Interim City Manager to execute the same.
- C. Receive a report, hold a discussion, and take action on entering into a contract with Purkeypille Consulting, LLC., (Contract No. 2024-0059) for Professional Engineering Services: Engineering Analysis & Design of Improvements to Loy Lake Dam, and authorize the Interim City Manager to execute the same.
- D. Receive a report, hold a discussion, and take action on an agreement with Plummer Associates Inc. for engineering and construction administration for the City Generators Project in the amount of \$78,405.00, (Contract No. 2024-0062) and authorize the Interim City Manager to execute all related documents.
- E. Receive a report, hold a discussion, and take action on the approval of the purchase of a LeeBoy brand asphalt maintenance equipment package, with a total purchase amount of \$242,944.26, from Romco Equipment Co., and authorize the Interim City Manager to execute any associated documents.
- F. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Robert D. Sholl and Patsy Sholl for property located at 1085 Davy Lane, Denison, Texas more particularly described as G-0062 Bennett D W & HRS A-G0062, acres 10.0, GCAD Property ID No. 113432.

- G. Receive a report, hold a discussion, and take action on a Written Services Agreement to allow services for a Voluntary Annexation Petition for property containing approximately 2.539 acres, legally described as GCAD Property ID No. 436967, being a part of the M.C. Davis Survey, Abstract No. 336 conveyed to Citrus Equities, LLC, by deed recorded in document No. 2021-22302, Official Public Records, Grayson County; located west of property commonly known as 3621 Pottsboro Road for the expansion of a warehouse (mini)/self-storage facility.
- H. Receive a report, hold a discussion and take action on adoption of a resolution declaring official intent to reimburse costs of construction at 321 W Main Street out of tax-exempt bond proceeds.

Council Action

On motion by Mayor Pro Tem Adams, seconded by Council Member Courtright, the City Council unanimously approved Resolution No. 4157. “RESOLUTION TO DECLARE OFFICIAL INTENT TO REIMBURSE COSTS OF IMPROVEMENT AND EQUIPMENT PROJECTS”; and the rest of the Consent Agenda as presented.

5. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance for a Conditional Use Permit for a tract of land legally described as being a part of the Collins A R 1st Addition, Block 4, Lot 12, and being approximately 0.1722-acres; being commonly known as 517 W. Hull Street, GCAD Property ID No. 145804 to allow for an Accessory Dwelling Unit within the Two-Family (2F) Duplex Residential District. (Case No. 2024-018CUP).

Council Action

Dianne York, Planner, reported the applicant is seeking approval for a Conditional Use Permit in order to allow the operation of an Accessory Dwelling Unit (“ADU”) at the property. Ms. York provided a site plan provided by the applicant showing the two structures at 517 W. Hull Street. Pursuant to the use regulation chart in the zoning ordinance, an ADU is allowed within the 2F Zoning District with an approved conditional use permit. The applicant states within their project narrative that they wish to remodel. The applicant will remodel the space above an existing two car garage into an ADU. The remodel will include the construction of a small kitchen, the addition of a shower to an existing bathroom and the construction of a bedroom. The applicant also stated within their project narrative that they have completed a minor remodel of the interior of the main structure which is located in the front of the property. The applicant is proposing to provide parking for the residents of both the ADU and the existing main structure by way of the garage for the residents of the ADU, and the driveway to the right of the main structure for the residents that inhabit the main structure. Due to the rising cost of housing, ADU’s have become a popular option for generating extra income or for finding an affordable housing unit. While the zoning district supports the use of an accessory dwelling unit. Staff has concerns about the lack of information about the potential remodels for both the ADU and the existing structure. The 500 block of Hull street has seen significant new development and redevelopment with five new single-family homes being built as well as some homes that have been remodeled. Given this, staff recommends that a condition be placed on the approval requiring the applicant submit a full scope of what is to be remodeled to the main structure as well as the ADU to ensure the quality product is consistent with the

neighborhood. Ms. York added that with the addition of the kitchen and the bathroom, the applicant, upon approval of the conditional use permit, will most likely have to pull a building permit. There are just some concerns about what if there is any remodeling done to the existing structure, and without that being provided within the project narrative. Staff wants to make sure it is consistent with how the block currently looks. The subject property has been provided the designation of Neighborhood per the Future Land Use Plan and per the Comprehensive Plan. These areas should be developed by way of many residential types, not limited to, but including, single family detached townhomes, duplexes, and accessory dwelling units. For this reason, staff does recommend approval of the conditional use permit with the condition that a full scope of the remodel for both the main structure and the ADU be provided to staff. The Planning and Zoning Commission recommended approval at their meeting held on May 14, 2024.

Council Member Thomas asked if this property was owner occupied. Ms. York replied that it is not. It was stated within the project narrative that the applicant intends to remodel both structures and then sell the property. Council Member Thomas then asked if this property would require two separate meters for water and electric. Ms. York responded that we lack some standards for accessory dwelling units within our ordinance, so there is not a requirement they have separate electrical meters. However, this is a requirement of Oncor. They will be billed at two units for water sewer and refuse within the utility billing office. Council Member Thomas asked if the ADU would have their own recycling and trash carts. Ms. York confirmed this was the case.

There was no further discussion or questions from Council.

Mayor Crawley then asked if there was anyone else present who wished to speak to this agenda item, to which there were none. With that, the Mayor closed the public hearing.

On motion by Mayor Pro Tem Adams, seconded by Council Member Thorne, the City Council unanimously approved, with the condition that a remodel scope be provided to staff for both the accessory dwelling unit and the main structure, Ordinance No. 5347, "AN ORDINANCE OF THE CITY OF DENISON, TEXAS, PROVIDING FOR SPECIFIED CHANGES IN THE OFFICIAL ZONING MAP OF THE CITY OF DENISON, TEXAS; PROVIDING FOR A CONDITIONAL USE PERMIT FOR AN ACCESSORY DWELLING IN THE TWO-FAMILY (DUPLEX) RESIDENTIAL DISTRICT BEING LEGALLY DESCRIBED AS LOT 12, BLOCK 4 OF THE A.R. COLLINS FIRST ADDITION IN GRAYSON COUNTY, TEXAS, AND MORE COMMONLY KNOWN AS 517 W. HULL STREET, CITY OF DENISON, GRAYSON COUNTY, TEXAS; PROVIDING A PENALTY CLAUSE; PROVIDING REPEALER, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE."

- B. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance annexing approximately 2.539 acres legally described as GCAD Property ID No. 436967, being a part of the M.C. Davis Survey, Abstract No. 336 conveyed to Citrus Equities, LLC, by deed recorded in document No. 2021-22302, Official Public Records, Grayson County; located west of property commonly known as 3621 Pottsboro Road for the expansion of a warehouse (mini)/self-storage facility. (Case No. 2024-027A)

### Council Action

Dianne York, Planner, introduced this agenda item. This is a request for voluntary annexation to bring the subject property consisting of 2.539 acres into the Denison city limits. The applicant is requesting annexation of the subject property in order to expand their current operations of a warehouse/mini self-storage facility known as Five Star Storage. Ms. York provided an aerial map of the subject property. The existing facility is to the east of the outlined parcel. Along with the voluntary annexation petition, the applicant has submitted a zoning application requesting the initial zoning of Commercial for the subject property as well as an application to amend an active Conditional Use Permit for allowing for the use of a warehouse/mini self-storage facility. Both of these requests are companion items on this agenda. The Future Land Use Plan designates this area to be developed in a mixed commercial manner. Approval of the annexation for the use of a warehouse/ mini self-storage complies with this designation.

There was no discussion or questions from Council.

Mayor Crawley then asked if there was anyone else present who wished to speak to this agenda item, to which there were none. With that, the Mayor closed the public hearing.

On motion by Mayor Pro Tem Crawley, seconded by Council Member Thomas, the City Council unanimously approved Ordinance No. 5348, “AN ORDINANCE OF THE CITY OF DENISON, TEXAS, ADOPTING THE ANNEXATION OF CERTAIN TERRITORY LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DENISON, TEXAS, TO WIT: BEING AN APPROXIMATELY 2.54 ACRE TRACT OF LAND IN THE M.C. DAVIS SURVEY, ABSTRACT NO. 336, GRAYSON COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED AND GRAPHICALLY DEPICTED IN EXHIBIT “A”, PROVIDING FOR INCORPORATION OF PREMISES, AMENDING OF THE OFFICIAL CITY MAP, AND ACKNOWLEDGING A WRITTEN SERVICE AGREEMENT; REQUIRING THE FILING OF THIS ORDINANCE WITH THE COUNTY CLERK; PRESCRIBING FOR EFFECT ON TERRITORY, GRANTING AS APPROPRIATE TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF THE CITY OF DENISON, TEXAS; PROVIDING CUMULATIVE REPEALING, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE”.

- C. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to initially zone approximately 2.539 acres legally described as GCAD Property ID No. 436967, being a part of the M.C. Davis Survey, Abstract No. 336 conveyed to Citrus Equities, LLC, by deed recorded in document No. 2021-22302, Official Public Records, Grayson County; being located west of the property commonly known as 3621 Pottsboro Road to the Commercial (C) District to allow for the use of a warehouse (mini)/self-storage facility. (Case No. 2024-028Z)

### Council Action

Dianne York, Planner, stated now that the subject property has been annexed, it needs initial zoning. The applicant is requesting the initial zoning of Commercial Zoning District for the subject property. The adjacent property where Five Star Storage currently is in



operation is also zoned Commercial. As was mentioned before, along with the zoning application, the applicant has submitted a conditional use permit application to amend the active CUP for the operation of the mini warehouse facility known as Five Star Storage. As previously stated, the Future Land Use Plan designates this area to be developed in a mixed commercial manner. Initially zoning the subject property to Commercial complies with the Future Land Use Plan. For this reason, staff recommends approval of the request, as did the Planning and Zoning Commission at their meeting held on May 14, 2024.

There was no discussion or questions from the Council.

Mayor Crawley then asked if there was anyone else present who wished to speak to this agenda item, to which there were none. With that, the Mayor closed the public hearing.

On motion by Council Member Redwine, seconded by Mayor Pro Tem Adams, the City Council unanimously approved Ordinance No. 5349, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF DENISON, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF COMMERCIAL DISTRICT (C) WITHIN THE HIGHWAY ORIENTED AND CORRIDOR DISTRICT WITH A CONDITIONAL USE PERMIT FOR A WAREHOUSE (MINI)/SELF-STORAGE, BEING LEGALLY DESCRIBED AS AN APPROXIMATELY 2.54 ACRE TRACT OF LAND IN THE M.C. DAVIS SURVEY, ABSTRACT NO. 336, GRAYSON COUNTY, TEXAS; AND MORE COMMONLY KNOWN AS 3621 POTTSBORO ROAD, CITY OF DENISON, GRAYSON COUNTY, TEXAS; PROVIDING THAT THE OFFICIAL ZONING MAP OF THE CITY SHALL REFLECT THE COMMERCIAL DISTRICT (C) WITHIN THE HIGHWAY ORIENTED AND CORRIDOR DISTRICT WITH A CONDITIONAL USE PERMIT FOR A WAREHOUSE (MINI)/SELF-STORAGE FOR THE PROPERTY; PROVIDING THAT THE PROPERTY SHALL BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY; PROVIDING REPEALING, SEVERABILITY, AND SAVINGS CLAUSES; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED SHALL BE OPEN TO THE PUBLIC AS REQUIRED BY LAW”.

- D. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to amend a Conditional Use Permit allowing the use of a warehouse (mini)/self-storage facility to include a tract of land legally described as being a part of the M.C. Davis Survey, Abstract No. 336 and being all of an approximately 2.539-acre tract of land conveyed to Citrus Equites, LLC., by deed recorded in document No. 2021-22302, Official Public Records, Grayson County; located west of property commonly known as 3621 Pottsboro Road, GCAD Property ID No. 436967. (Case No. 2024-033CUP)

#### Council Action

Dianne York, Planner, also presented this agenda item. In addition to the voluntary annexation petition, and the initial zoning request, the applicant has submitted a conditional use permit application to amend an active CUP for the operation of Five Star Storage which

is a warehouse/mini self-storage facility. The existing conditional use permit was approved by the City Council on May 5, 2021. The applicant wishes to expand their operations by including the 2.539 acres annexed this evening. The additional acreage will allow for the applicant to construct storage units to include personal storage, business storage, temperature-controlled storage, as well as RV, boat and car storage. As mentioned previously, per the Future Land Use Plan, the subject property is designated to be developed in a mixed commercial manner. The use of warehouse/mini self-storage complies with this designation. Staff does not have any additional conditions to place on this or within this permit, as this is just to include the acreage. All other conditions that were listed in the previous conditional use permit will apply. Staff recommends approval of the request and the Planning and Zoning Commission recommended approval of the request at their meeting held on May 14, 2024.

There was no discussion or questions from the Council.

Mayor Crawley then asked if there was anyone else present who wished to speak to this agenda item, to which there were none. With that, the Mayor closed the public hearing.

On motion by Council Member Thomas, seconded by Council Member Redwine, the City Council unanimously approved amending the Conditional Use Permit for Five Star Storage to allow an additional 2.539 acres.

## 6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion, and take action on an amendment to the Construction Manager at Risk contract with Archer Western for the Northwest Denison Development Utilities and Rylant Water Treatment Plant Expansion Phase 2 for a Guaranteed Maximum Price of \$89,584,203, and authorize the Interim City Manager to execute all related documents.

### Council Action

Ronnie Bates, Public Works Director, reminded the City Council they awarded the Construction Manager at Risk (CMaR) contract for the Northwest Denison Development Project and the Rylat plant expansion in November of 2023 to Archer Western. For consideration before the City Council tonight is approval of an amendment to the CMaR Contract for the Guaranteed Maximum Price (GMP) on this multi-year project. The GMP presented by Archer Western is \$89,584,203.00. This price is the total price for both projects. The GMP is within the projected budget of both projects and funding will be available in utility CIP funds. The following is a breakdown of the two projects. Approximately \$82,171,203 is for the construction of approximately 23,000 linear feet of 24-inch water line, 27,000 linear feet of 36-inch wastewater line, a sanitary sewer trucking receiving station, fiber optics, cabling, a lift station and dual force mains. The second project comes in at \$7,413,000 and is for phase two of the Rylant Water Treatment Plant expansion, which includes the procurement and installation of two standalone micro filtration skids. This will add an additional 4 million gallons of treatment capacity at the plant. The City, Plummer Engineering along with our CMaR contractor, Archer Western, developed a detailed plan to expand the utility service to all Denison's northwest quadrant, which includes Preston harbor, and it will help us meet our contract requirements for Preston Harbor. This will also increase the treatment capacity at Rylant Water Treatment Plant for Denison's continued growth.

Mayor Crawley asked how many years this project will take. Mr. Bates responded we can speed up the timeline or slow it down depending on how the sales go with houses and how fast development moves. So, if they go fast, it would be up to four years. If it goes slower, it could be eight or nine years.

There was no further discussion or questions from the Council.

On motion by Council Member Courtright, seconded by Council Member Thorne, the City Council unanimously approved an amendment to the Construction Manager at Risk contract with Archer Western for the Northwest Denison Development Utilities and Rylant Water Treatment Plant Expansion Phase 2 for a Guaranteed Maximum Price of \$89,584,203, and authorized the Interim City Manager to execute all related documents.

## 7. PROJECT UPDATES

- A. Receive a report and hold a discussion regarding the quarterly budget update from the Denison Arts Council.

### Council Action

Rachel Reinert, Tourism Manager, reported that the City of Denison has a funding agreement with the Denison Arts Council which states that 14% of our collected hotel occupancy taxes go to the Denison Arts Council. Specifically, for the use of arts promotion, and attracting overnight stays for arts tourism. As part of this, we get a budget update from our Denison Arts Council President. Ms. Reinert then introduced Denison Arts Council President, Cindy Salem, to provide an update on all the great things the Denison Arts Council is doing.

Ms. Salem came forward and provided a fiscal year to date update, which includes October through April. So, it is about a seven-month report. As Mr. Reinert stated, they receive 14% and it comes on the first of each month. In addition, this year when they started their fiscal year, they had a pretty substantial carryover. It wasn't their intention to do this. They started with \$16,000 in the grant account. The budgeted amount coming forward is \$89,000 and they received about \$56,000. So, they are running 8% over what the budget is. Ms. Salem then explained the carryover, as it is pretty substantial. It wasn't intentional, but there are reasons for it. First of all, their biggest event is the Fall Festival and they budgeted about \$40,000. With the festival being November 2<sup>nd</sup>, they have all the carryover totals that are going to come up in October, and November. So, they needed to have this money in there and this will happen again this year. They will need to carry over between \$20,000 and \$25,000 of their budget. We knew we had a lot of money. So, they put extra money toward some of the performers, but a substantial amount of money toward their marketing. The second thing they did was put \$10,000 toward the public art installation. As you may remember from years before, they had the color condition. What they did this year was put out a bid throughout the state of Texas and received almost 10 artists, most of which are not from Denison. Unfortunately, most of them just kind of wanted to paint a canvas and stick it on the back of the park, which we didn't think was such a great idea. Our own homegrown Cassi Studio, without a doubt, came out with the best. So, they received \$10,000 to do a very large installation which was here for four different festivals in town. Next, they gave to support public art in the amount of \$4,200 for one of the murals in town. They have a grant process where applicants can ask for money, which is approved through the design committee. Something they were able to add this year again, because

we knew we had the carryover is the loft and home tour, which we all know brings in a lot of people and really didn't have an advertising budget. So, Ms. Salem spoke with the event organizers and asked if they could do a reach out. The donut they try to go to is between a 250- and 300-mile circle. They did some very specific GEO advertising in order to support this and then also gave TV and radio advertising. Which they had never had. It resulted in a huge number of people coming to that particular event. So, it was very exciting to be able to support this very specific goal of bringing people in. They also were able to purchase pages in the Lake Texoma Visitor's Guide and also gave a performing art grant to the Performing Arts and Jazz Festival. The key items in the budget, and this is all for the tax code, are permitted expenses. Another one is the Fall Festival. With regard to advertising, they could tell by their numbers their media wasn't hitting outside of the County. So, they went and did a lot of extra work on their website design, social media campaigns and what actually works. Finally, public art as we all know, and we should all be very proud compared to most cities, we have extraordinary public art. November 3<sup>rd</sup> was the Fall Festival. Fortunately, placer AI does give us some numbers and we had over 10,000 people that came to that festival, with over 40% coming from outside the Grayson County area. So, being able to actually see these numbers was pretty exciting. Another one was the North Texas Art Festival in the Spring. Again, we had almost 10,000 people in the community, and again over 40% from outside our city in our specific area. The Loft and Home Tour, this was the best attendance they'd had before, and the numbers showed that over 60% came from outside Grayson County. Ms. Salem said she is very, very proud of these numbers and the cooperation and collaboration between all these people that work together.

No action taken. Informational presentation only.

There being no further business to come before the Council, the meeting was adjourned at 6:36 p.m.

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ROBERT CRAWLEY, Mayor

ATTEST:

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Christine Wallentine, City Clerk

# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on a Written Services Agreement (Contract No. 2024-0072) to allow services for a Voluntary Annexation Petition for property containing approximately 52.52 acres, more commonly known as being located at the northwest corner of Texoma Drive and State Highway 91, GCAD Property ID Nos. 109713, 109718, and 439828.

## Staff Contact

Dianne York, Planner  
dyork@denisontx.gov  
903-465-2720

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## Summary

- The applicant is requesting the annexation of approximately 52.52 acres for property located at the northeast corner of Texoma Drive (FM 84) and State Highway 91 (SH 91).
- The applicant is seeking annexation in order to move forward with developing a mixed-use development.

## Staff Recommendation

City staff recommends approval Written Services Agreement.

## Recommended Motion

"I move approve the proposed Written Services Agreement."

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## Background Information and Analysis

The applicant has submitted a Voluntary Annexation Petition to bring the subject property, consisting of approximately 52.52 acres, into the Denison City limits. The applicant is requesting annexation of the subject property in order to develop the property into a mixed-use development. In addition to the Voluntary Annexation Petition, the applicant has submitted a Planned Development Zoning Application requesting the initial zoning of Planned Development to accommodate both residential uses within the interior of the property and commercial and light industrial uses along SH 91. The Future Land Use Plan designates this area to be developed in a "Neighborhood" manner.

The Written Services Agreement outlines Solid Waste, Wastewater Facilities, Water Facilities, Road and Street Environmental Health and Code Enforcement, Planning and Zoning, Parks, Libraries, and other services which can be provided by the City of Denison.

## Financial Considerations

N/A

## Prior Board or Council Action

## Alternatives

The City Council may conditionally approve, table or deny the request.

## Written Service Agreement

The undersigned parties have negotiated, and now enter into, this Written Service Agreement for C-3 Annexed Property (“Agreement”) pursuant to the authority provided by Section 43.0672, Texas Local Government Code (“LGC”). Pursuant to Section 43.056(l) of the LGC, this Agreement shall have a term of ten (10) years beginning on the date approved by the City Council of Denison. This Agreement is for the property described in Exhibit A and depicted in Exhibit B, each attached hereto and incorporated as if fully set forth herein.

NOW THEREFORE, for and in consideration received and the mutual benefits contained herein, the undersigned parties agree to the following Service Plan:

### **A) SERVICE PLAN GENERALLY**

- 1) **This service plan has been prepared in accordance with the Texas Local Government Code (“LGC”), Sections 43.003, 43.056(b)-(o) and 43.0672. Municipal facilities and services to the annexed area will be provided or made available on behalf of the City of Denison in accordance with the following plan. The City of Denison shall provide the annexed tract the levels of service, infrastructure, and infrastructure maintenance that are comparable to the levels of service, infrastructure, and infrastructure maintenance available in other parts of the City of Denison with similar topography, land use, and population density.**
- 2) For purposes of this service plan, to “provide” services includes having services provided by any method or means by which the City provides municipal services to any other areas of the City, and may include causing or allowing private utilities, governmental entities and other public service organizations to provide such services by contract or right, in whole or in part, and may include certain duties on the part of the private landowner with regard to such services.

### **B) EMERGENCY SERVICES**

- 1) Police Protection
  - a) Police protection from the City of Denison shall be provided to the annexed area at a level consistent with current methods and procedures presently provided to similar areas within the City on the effective date of the annexation ordinance. Some of these services include:
    - i) Normal patrol and responses;
    - ii) Handling of complaints and incident reports;
    - iii) Special units, such as traffic enforcement and investigations; and
    - iv) Coordination with other public safety support agencies.
  - b) As development commences in the annexed area, sufficient police protection, including personnel and equipment will be provided to furnish the area with the level of police services consistent with the characteristics of topography, land utilization and population density of similar areas within the City.

- c) Upon ultimate development, police protection will be provided at a level consistent with other similarly situated areas within the City limits.

## 2) Fire Protection

- a) The City of Denison will provide emergency and fire prevention services to the annexed area at a level consistent with current methods and procedures presently provided to similar areas within the City on the effective date of the annexation ordinance. These services include:
  - i) Fire suppression and rescue;
  - ii) Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
  - iii) Hazardous materials response and mitigation;
  - iv) Emergency prevention and public education efforts;
  - v) Technical rescue response; and
  - vi) Construction Plan Review and required inspections.
- b) As development commences in the annexed area, sufficient, fire protection, including personnel and equipment will be provided to furnish the area with the level of services consistent with the characteristics of topography, land utilization and population density of similar areas within the City. It is anticipated that the current fire protection contract will be sufficient to provide coverage for the annexed area.
- c) Upon ultimate development, fire protection will be provided at a level consistent with similarly situated areas within the City limits.

## 3) Emergency Medical Services

- a) The City of Denison will provide emergency and safety services (EMS) to the annexed area at a level consistent with current methods and procedures presently provided to similar areas of the City of Denison on the effective date of the annexation ordinance. These services include:
  - i) Emergency medical dispatch and pre-arrival First Aid instructions;
  - ii) Pre-hospital emergency Advanced Life Support (ALS) response and transport; and
  - iii) Medical rescue services.
- b) As development commences in the annexed area, sufficient EMS, including personnel and equipment, will be provided to furnish the area with the level of services consistent with the characteristics of topography, land utilization and population density of the similar areas within the City.
- c) Upon ultimate development, EMS will be provided at a level consistent with similarly situated areas within the City limits.

## **C) SOLID WASTE**

- 1) Solid Waste and Recycling Collection Services will be provided to the annexed area immediately upon the effective date of the annexation at a level consistent with current



methods and procedures presently provided to similar areas within the City. Private solid waste collection service providers operating in the affected area immediately prior to annexation and currently providing customers with service may continue to provide their existing service for up to two (2) years.

#### **D) WASTEWATER FACILITIES**

- 1) As development commences in these areas, sanitary sewer mains as defined by the Certificate of Convenience and Necessity (CCN) Number 20077, as issued by the Texas Commission on Environmental Quality (TCEQ) will be extended in accordance with the provisions of the City's codes, ordinances, regulations and policies. City participation in the costs of these extensions shall be in accordance with applicable City codes, ordinances, regulations and policies. Capacity and extensions shall be provided consistent with the characteristics of topography, land utilization and population density of the areas. If the annexed area is in the CCN of another provider, wastewater service shall be provided in accordance with the policies of the CCN holder. In some instances, the City might acquire the CCN rights and become the new wastewater provider, in time.
- 2) Sanitary sewer mains and lift stations installed or improved to City standards, and accepted by the City, within the annexed area which are located within dedicated easement, rights-of-way, or any other acceptable location approved by the City Manager or his designee, shall be maintained by the City on the effective date of this ordinance.
- 3) Operation and maintenance of wastewater facilities in the annexed area that are within the certificated service area of another wastewater utility will be the responsibility of that utility. Operation and maintenance of private wastewater facilities in the annexed area will be the responsibility of the owner.

#### **E) WATER FACILITIES**

- 1) Connections to existing City of Denison water distribution mains for water service as defined by Certificate of Convenience and Necessity (CCN) Number 10204, as issued by the Texas Commission on Environmental Quality (TCEQ) will be provided in accordance with existing City codes, ordinances, regulations and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance. If the annexed area is in the CCN of another provider, water service shall be provided in accordance with the policies of the CCN holder. In some instances, the City might acquire the CCN rights and become the new water provider, in time.
- 2) As development commences in these areas, water distribution mains will be extended in accordance with City of Denison codes, ordinances, regulations and policies. City participation in the costs of these extensions shall be in accordance with the City of Denison's codes, ordinances, regulations and policies. Water service extensions and capacity shall be provided consistent with the characteristics of topography, land utilization and population density of the area.
- 3) Operation and maintenance of existing water facilities in the annexed area that are within the service area of another water utility will be the responsibility of that utility. Operation and maintenance of private water facilities in the annexed area will be the responsibility of

the owner.

**F) ROAD AND STREETS**

- 1) Emergency street maintenance shall be provided within the annexed area on the effective date of the applicable ordinance of acceptance. Routine maintenance will be provided within the annexed area and will be scheduled as part of the City's annual program and in accordance with the City's current codes, ordinances, regulations, policies and procedures defined therein and/or as established by the City Council.
- 2) Any construction or reconstruction will be considered within the annexed area on a City-wide basis and within the context of the City's Capital Improvement Plan and/or yearly fiscal budgetary allotments by the City Council. As development, improvement or construction of streets to City standards commences within this property, the policies of the City of Denison with regard to participation in the costs thereof, acceptance upon completion and maintenance after completion shall apply.
- 3) Roadway signage and associated posts will be replaced in priority of importance starting with regulatory signs, then warning signs, then informational signs and in conformance with fiscal allotments by the City Council. If a sign remains, it will be reviewed and placed on the City's inventory listed for routine re-placement. All existing signs will be reviewed for applicability and based upon an engineering study. New signs will be installed when necessary and based upon an engineering study.
- 4) Routine maintenance of road/street markings will be placed on a priority listing and scheduled within the yearly budgetary allotments by the City Council.
- 5) The City will coordinate any request for improved road and street lighting with the local electric provider. Any and all road and street lighting will be pursuant to the rules, regulations and fees of such electric utility and shall be maintained by the applicable utility company.

**G) ENVIRONMENTAL HEALTH, INSPECTIONS AND CODE ENFORCEMENT SERVICES**

- 1) Enforcement of the City's environmental health ordinances and regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicle ordinances and animal control ordinances, shall be provided within the annexed area within sixty (60) days of the effective date of the annexation ordinance. These ordinances and regulations will be enforced through the use of existing personnel.
- 2) Inspection services including the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical and electrical work to ensure compliance with City codes and ordinances will be provided within sixty (60) days of the effective date of the annexation ordinance. Existing personnel will be used to provide these services.
- 3) The City's zoning, subdivision, sign and other ordinances shall be enforced in this area beginning upon the effective date of the annexation.

- 4) All inspection services furnished by the City of Denison, but not mentioned above, will be provided to the annexed area beginning within sixty (60) days of the effective date of the annexed ordinance.
- 5) As development and construction commence in the annexed area, sufficient resources will be provided to furnish this area with the same level of environmental health, inspection and code enforcement services as are furnished throughout similar areas within the City.

#### **H) PLANNING AND ZONING SERVICES**

- 1) The planning and zoning jurisdiction of the City will extend to the annexed area upon the effective date of the annexation ordinance. City planning will thereafter encompass this property, and it shall be entitled to consideration for zoning in accordance with the City's Zoning Ordinance and Comprehensive Plan.

#### **I) PARKS, PLAYGROUNDS, LIBRARIES, SWIMMING POOLS**

- 1) Residents within the annexed area may utilize all existing park and recreation facilities owned by the City beginning on the effective date of this ordinance. Fees for such usage shall be in accordance with current fees established by ordinance.
- 2) As development commences in the annexed area, additional park and recreation facilities shall be constructed based on park policies defined in the Parks and Trails Master Plan and as specified in the City's Subdivision Regulations. The general planned locations and classifications of parks will ultimately serve residents within the current City limits.

#### **J) PUBLICLY OWNED FACILITIES**

- 1) Any publicly owned facility, building, or service located within the annexed area, and not otherwise owned or maintained by another governmental entity, shall be maintained by the City of Denison on the effective date of the annexation ordinance.

#### **K) OTHER SERVICES**

- 1) Other services that may be provided by the City of Denison, such as municipal and general administration will be made available on the effective date of the annexation. The City of Denison shall provide levels of service, infrastructure, and infrastructure maintenance to the annexed area that are comparable to the levels of services, infrastructure, and infrastructure maintenance available in other parts of the City of Denison with similar topography, land use, and population density.

#### **L) UNIFORM LEVEL OF SERVICES IS NOT REQUIRED**

- 1) Nothing in this Service Plan shall require the City of Denison to provide a uniform level of full municipal services to each area of the City, including the annexed areas, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service. The City Council finds and determines that this Service Plan will not provide any fewer services, and it will not provide a lower level

of services, than were in existence in the annexed area at the time immediately preceding the annexation process.

- 2) The City of Denison's codes, ordinances, regulations and policies that apply throughout the City may be reviewed at City Hall and at <http://www.cityofdenison.com>.

[Signatures on Following Page]

Entered into this 22nd day of May, 2024.


**CITY OF DENISON**

By: \_\_\_\_\_

Printed Name: Bobby Atteberry

Title: Interim City Manager

**OWNER: DENISON LAND HOLDINGS, LLC**

By:  \_\_\_\_\_

Name: Pawan Bagaria  
\_\_\_\_\_

Representative

**Exhibit "A"**  
**LEGAL DESCRIPTION OF AREA**

Situated in the County of Grayson, State of Texas, being a part of the F. G. Tarkington Survey, Abstract No.1277, the L. H. Ruthrauff Survey, Abstract 1056, the A. J. Newman Survey, Abstract No. 913 and the J. J. Huckaby Survey, Abstract No. 561 and being all of that called 0.038 acre tract conveyed to Frank M. Halley, Trustee of the Frank M. Halley Revocable Trust as recorded in Document No. 2018-17207, all of that 112.716 acre tract of land conveyed to Gary Skibiicki, Successor Trustee of the Frank M. Halley Revocable Trust as recorded in Document No. 2019-54, all of that 28.56 acre tract of land conveyed to Gary Skibiicki, Successor Trustee of the Frank M. Halley Revocable Trust as recorded in Document No. 2019-56, all of that called 2.0+/- acre tract of land conveyed to Gary Skibiicki, Successor Trustee of the Frank M. Halley Revocable Trust as recorded in Document No. 2019-59 and a part of that 104.545 acre tract of land conveyed to Gary Skibiicki, Successor Trustee of the Frank M. Halley Revocable Trust as recorded in Document No. 2019-55, all recorded in the Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:

Beginning at a set 1/2" steel rod at the southeast corner of said 104.454 acre tract in the north right-of-way of F. M. Highway 84; Thence with said north right-of-way line the following calls and distances:

South 41°33'28" West, a distance of 128.80 feet to a set 1/2" steel rod,  
with a non-tangent curve to the right having a radius of 5,609.83 feet, (chord bears South 54°01'55" West, 587.19 feet) an arc length of 587.46 feet to a set 1/2" steel rod,  
South 49°20'42" West, a distance of 198.61 feet to a set 1/2" steel rod,  
with a non-tangent curve to the right having a radius of 5,639.84 feet, (chord bears South 60°31'55" West, 295.27 feet) an arc length of 295.30 feet to a set 1/2" steel rod,  
South 75°57'23" West, a distance of 201.17 feet to a set 1/2" steel rod,  
South 64°46'55" West, a distance of 146.47 feet to a set 1/2" steel rod,  
South 59°41'09" West, a distance of 371.81 feet to a set 1/2" steel rod from which a concrete monument bears South 81°11'50" West, a distance of 0.49 feet,  
South 69°17'20" West, a distance of 1,574.37 feet to a found spike nail,  
South 72°09'05" West, a distance of 100.13 feet to a set 1/2" steel rod,  
South 69°17'20" West, a distance of 100.00 feet to a set 1/2" steel rod,  
South 57°58'44" West, a distance of 101.99 feet to a set 1/2" steel rod,  
South 69°17'20" West, a distance of 183.95 feet to a set 1/2" steel rod,  
South 87°29'42" West, a distance of 216.93 feet to a set 1/2" steel rod,  
South 74°36'36" West, a distance of 95.46 feet to a set 1/2" steel rod,  
South 54°01'34" West, a distance of 104.15 feet to a set 1/2" steel rod,  
with a non-tangent curve to the right having a radius of 2,774.92 feet, (chord bears South 79°06'36" West, 145.28 feet) an arc length of 145.29 feet to a set 1/2" steel rod,

North 81°55'18" West, a distance of 125.29 feet to a set 1/2" steel rod,  
with a non-tangent curve to the right having a radius of 2,739.92 feet, (chord bears South 86°56'58" West, 366.93 feet) an arc length of 367.20 feet to a set 1/2" steel rod,

South 80°05'17" West, a distance of 296.23 feet to a set 1/2" steel rod,

North 89°12'40" West, a distance of 290.01 feet to a set 1/2" steel rod at the beginning of a right-of-way flare in the east right-of-way of State Highway 91, from which a concrete monument bears South 76°00'49" West, a distance of 1.01 feet;  
Thence with said east right-of-way line the following calls and distances:

North 37°17'21" West, a distance of 162.28 feet to a found concrete monument,

North 03°55'10" West, a distance of 547.40 feet to a set 1/2" steel rod,

North 01°57'14" East, a distance of 247.61 feet to a set 1/2" steel rod,

North 23°14'51" West, a distance of 93.95 feet to a set 1/2" steel rod,

North 01°57'13" East, a distance of 563.86, to a found concrete monument at the southwest corner of an unrecorded TXDOT Right-of-Way parcel,

Thence South 88°02'47" East, with the south line of said TXDOT parcel a distance of 20.00 to a set 1/2" steel rod,

Thence North 01°57'13" East, with the east line of said Right-of-Way parcel a distance of 477.54 feet to a set 1/2" steel rod in the south Right-of-Way of the M.K.T. Railroad,

Thence with said south right-of-way line the following calls and distances:

Thence with a non-tangent curve to the right having a radius of 1,859.86 feet, (chord bears North 83°21'38" East, 441.43 feet) an arc length of 422.34 feet to a set 1/2" steel rod,

South 89°35'22" East, a distance of 2,221.60 feet to a set 1/2" steel rod,

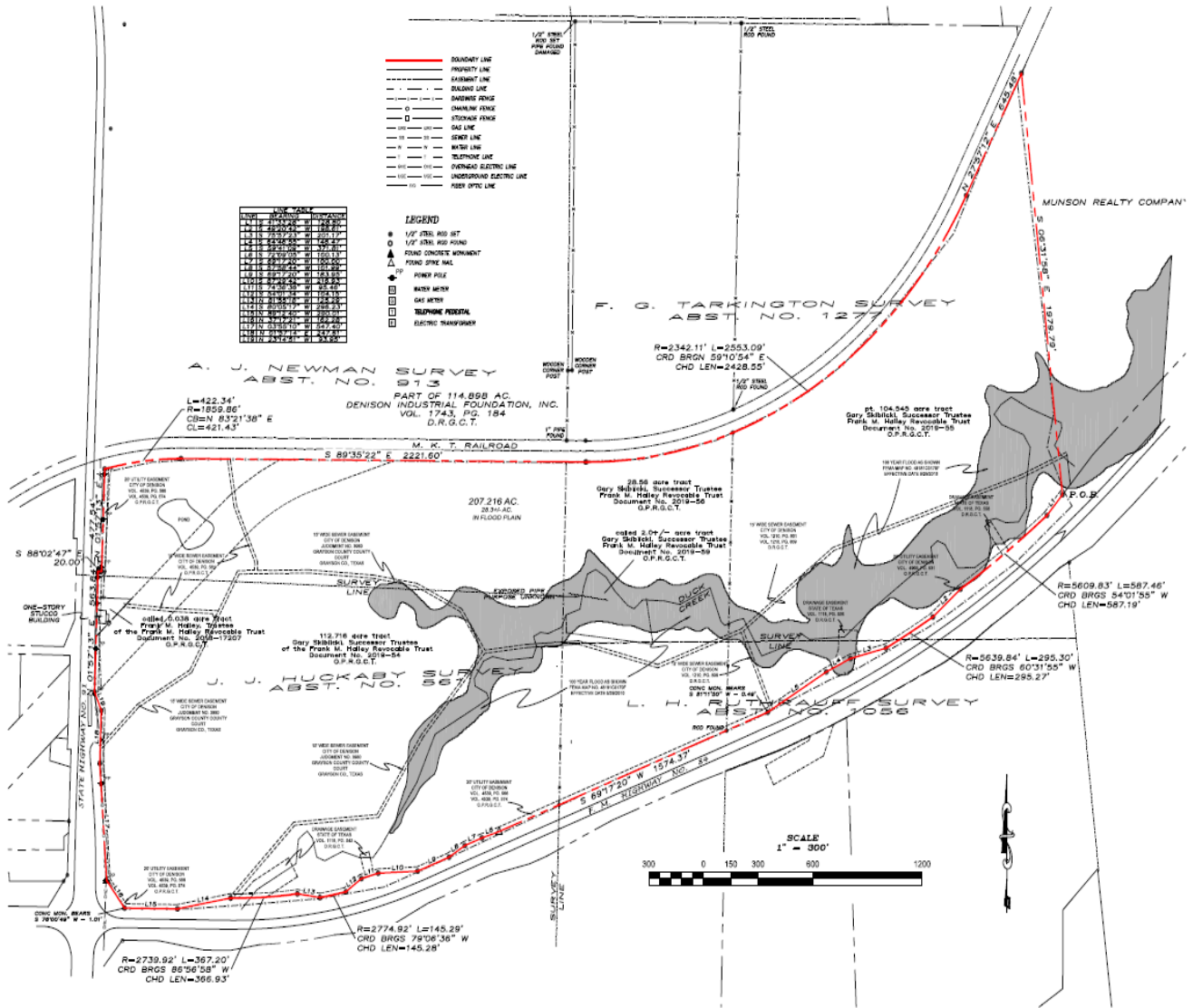
with a non-tangent curve to the left having a radius of 2,342.11 feet, (chord bears North 59°10'54" East, 2,428.55 feet) an arc length of 2,553.09 feet to a set 1/2" steel rod,

North 27°57'12" East, a distance of 645.48 feet to a set 1/2" steel rod at the intersection of said south right-of-way line and the east line of said 104.545 acre tract,

Thence South 06°31'58" East with said east line, a distance of 1,979.79 feet to the Point of Beginning and containing 207.216 acres of land.

## Exhibit "B"

# DEPICTION OF AREA





# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on an agreement with Garver LLC to provide professional software services for the Denison CIP portal in the amount of \$195,000, (Contract No. 2024-0075) and authorize the Interim City Manager to execute all related documents.

## Staff Contact

Fanchon Stearns, CIP/Engineering Manager

[fstearns@denisontx.gov](mailto:fstearns@denisontx.gov)

903-465-2720 Ext. 2085

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## Summary

- The Capital Improvements Program (CIP) has grown substantially in recent years and plans, manages, and supports prioritization of projects related to growth.
- The proposed CIP Portal will include a financial planning module, where scenarios can be created and edited based on changing priorities and revenue forecasting for water, wastewater, drainage, streets, and facilities projects.
- The Portal will also include project management software to track budget, contractor performance, inspection reports, scheduling, and all other project aspects for water, wastewater, drainage, streets, and facilities projects.

## Staff Recommendation

Staff recommends approval of the item.

## Recommended Motion

“I move to approve the agreement with Garver LLC to provide professional software services for the Denison CIP portal in the amount of \$195,000, (Contract No. 2024-0075) and authorize the Interim City Manager to execute all related documents.”

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## Background Information and Analysis

The Capital Improvements Program has grown substantially in recent years and manages projects related to growth. The proposed CIP Portal will include WISE, a financial planning module, where scenarios can be created and edited based on changing priorities and revenue forecasting for water, wastewater, drainage, streets, and facilities projects. The Portal will also include project management software to track budget, contractor performance, inspection reports, scheduling, and all other project aspects for water, wastewater, drainage, streets, and facilities projects. Implementation will also include the creation of construction conference documents and inspection reports templates so all staff and inspectors are using forms that can be queried and used to generate reports. Currently, project records are stored in folders with data that must be manually input at every point, including contracts, change orders, invoices, requests for information and responses. The Denison CIP portal will automate the process and give multiple users access to reporting and financial forecasting. The contract includes the WISE Implementation Fee and 3-year subscription, Portal and Reporting Development, and Construction Document Controls. These services include:

Data Discovery and Processing, Software Configuration and Administrator Training, Software Finalization, Maintenance and Support, Portal and Reporting Development, Portal Creation and Configuration, Report Development, Data Extraction and Transformation, Data Modeling, Training and Implementation, Maintenance and Support, and Creation of standard documents

**Financial Considerations**

The CIP portal is \$195,000 for implementation, which also covers the first 3-years for WISE, and will be paid out of the Utility CIP.

**Prior Board or Council Action**

None.

**Alternatives**

Council may choose to modify, deny, or table the item.



**Agreement  
For  
Planning Services  
City of Denison, Texas  
Project No. 2400788**



## Contents

RECITALS .....	1
1. DEFINITIONS .....	1
2. PAYMENT .....	1
3. GENERAL REQUIREMENTS .....	2
4. DISPUTE RESOLUTION.....	5
5. TERMINATION .....	6
6. MISCELLANEOUS .....	7
7. EXHIBITS .....	9



**THIS PLANNING SERVICES AGREEMENT** (“**Agreement**”) is made as of the Effective Date by and between the **City of Denison, Texas** (hereinafter referred to as “**Owner**”), and **Garver, LLC** (hereinafter referred to as “**Garver**”). Owner and Garver may individually be referred to herein after as a “**Party**” and/or “**Parties**” respectively.

## RECITALS

**WHEREAS**, Owner intends to implement a capital management software for planning their capital improvement program, implement a web-based portal, develop reporting, and implement construction document controls (the “**Project**”).

**WHEREAS**, Garver will provide professional Software Services related to the Project as further described herein.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### 1. DEFINITIONS

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section:

“**Effective Date**” means the date last set forth in the signature lines below.

“**Damages**” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“**Personnel**” means affiliates, directors, officers, partners, members, employees, and agents.

### 2. PAYMENT

2.1. Fee. For the Software Services described under Section 3.1, Owner will pay Garver in accordance with this Section 2 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.

2.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. The Owner’s terms and conditions set forth in a purchase order (or any similar document) are expressly rejected.

2.3. Payment.

2.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.



2.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Software Services under this Agreement without penalty.

2.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

### 3. GENERAL REQUIREMENTS

3.1. Software Services. Owner hereby engages Garver to provide the Internet-based software planning services specified in Exhibit A attached to this Agreement (“**Software Services**”). This Agreement governs the provision of the Software Services by Garver and the access to, and usage of Software Services by Owner.

#### 3.1.1. Use of Software Services.

3.1.1.1. Owner Owned Data. All electronic data and information authorized by Owner to be uploaded by the Software Services (“**Owner Data**”) remains the property of Owner, as between Garver and Owner. Owner grants Garver the right to use the Owner Data solely for purposes of performing under this Agreement. Owner may export its Owner Data as allowed by functionality within the Software Services.

3.1.1.2. Owner Responsibilities. Owner (i) will keep its passwords secure and confidential and use industry-standard password management practices; (ii) is primarily responsible for Owner Data and all activity in its Software Services accounts; (iii) will use commercially reasonable efforts to prevent unauthorized access to its account and notify Garver promptly of any such unauthorized access; and (iv) may use the Software Services only in accordance with the Software Services’ technical documentation and applicable law.

3.1.1.3. Garver Support. Garver will provide Owner support for the Software Services under the terms of Garver’s Owner Support Policy (“**Support**”), which is attached hereto as Exhibit C. Garver will provide Owner with thirty (30) days’ advanced written notice prior to making any change to Garver’s Owner Support Policy.

#### 3.1.2. Warranty.

3.1.2.1. Warranty. Garver warrants to Owner that the Software Services will perform as described in the Software Services’ technical documentation. Owner’s exclusive remedy and Garver’s sole obligation for Garver’s breach of the warranty shall be as described in the “Termination for Material Breach” and “Effect of Termination” sections below.

3.1.2.2. DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SOFTWARE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND GARVER DISCLAIMS IN THEIR ENTIRETY ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



GARVER DOES NOT WARRANT OR GUARANTEE THAT SOFTWARE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR INVULNERABLE. The Software Services may include gateways, links or other functionality that allows Owner to access third-party services, content, and material. Garver does not supply and is not responsible for any third-party services, content, or material, which may be subject to their own license, end-user agreements, privacy and security policies and terms of use. ALL THIRD-PARTY SERVICES, CONTENT, AND MATERIALS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND FROM GARVER.

3.1.2.3. OWNER ACKNOWLEDGES AND AGREES THAT GARVER DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (i) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIREABLE DATA OR SOFTWARE; OR (ii) UNAUTHORIZED THIRD PARTIES (e.g. HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE OWNER’S DATA, WEBSITES, COMPUTERS OR NETWORKS. GARVER WILL NOT BE LIABLE FOR SUCH ACTIVITIES NOR WILL SUCH ACTIVITIES CONSTITUTE A BREACH BY GARVER OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

3.1.3. Confidentiality. Owner and Garver shall consider: (i) all information provided by the other Party that is marked as “Confidential Information” or “Proprietary Information” or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Garver’s performance of Services to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a “need to know basis” with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include and nothing herein shall limit either Party’s right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving Party or its Personnel; (ii) was or becomes available to the receiving Party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes.

3.1.4. Data Security. Garver will (i) implement and maintain appropriate security measures, including, without limitation, technical, physical, administrative and organizational controls, designed to maintain the confidentiality, security, and integrity of Owner’s Confidential Information, including Owner Data; (ii) implement and maintain systems and procedures for detecting, preventing and responding to attacks, intrusions, and system failures, and regularly test and monitor the effectiveness of such systems and procedures (including through vulnerability scans and penetration testing); (iii) designate employees to coordinate implementation and maintenance of its security; and (iv) identify internal and external risks to the security, confidentiality, and integrity of Owner Data that could result in the unauthorized disclosure, misuse, alteration,



destruction, or other compromise of Owner's Confidential Information, including Owner Data, and assess the sufficiency of systems and procedures in place to control these risks (collectively, "Security Measures"). More information on Garver's security practices and policies is set forth in Exhibit D attached hereto.

3.1.5. Data Breach. If Garver becomes aware that Owner Data was accessed or disclosed in breach of this Agreement, Garver will so notify Owner without undue delay, promptly act to mitigate the breach and preserve forensic evidence, and provide information to Owner regarding the nature and scope of the breach.

3.1.6. Garver Property

3.1.6.1. Reservation of Rights. Garver and its licensors are and remain the sole owners of the Software Services and their underlying software, including all intellectual property rights therein. Owner may not remove or modify any proprietary marking or restrictive legend in the Software Services. Garver reserves all rights not expressly granted in this Agreement.

3.1.6.2. Hosting. To the extent set forth in the Software Services, Garver shall host the Software Services for the benefit of the Owner on servers owned, controlled, leased, or otherwise licensed by Garver. In such event, Owner is solely responsible for connection of Owner's system to a telecommunication service that provides Internet access for purposes of Garver's access and use of the Software Services.

3.1.6.3. Restrictions. Owner may not (i) sell, resell, rent, transfer, assign, or lease the Software Services or use them in a service provider capacity, (ii) use the Software Services in a manner that violates applicable law, rules, regulations and/or ordinances, (iii) to store or transmit infringing, unsolicited marketing emails, libelous, unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iv) interfere with or disrupt the integrity or performance of the Software Services, (v) attempt to gain unauthorized access to the Software Services or their related systems or networks, (vi) reverse engineer, disassemble, or decompile the Software Services except as otherwise required by law, (vii) allow others to use the Software Services for the benefit of any third party, or (viii) access the Software Services to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. Garver may suspend Software Services to Owner if Garver believes in good faith that Owner's use of the Software Services poses an imminent threat to the security, availability, or legality of the Software Services; in such event, Garver will work with Owner to address the issue and restore Software Services as quickly as possible.

3.1.6.4. Statistical Information. Garver may compile statistical information related to the performance of the Software Services, and may make such information publicly available so long as such information is aggregated and anonymized and provides no means to identify or re-identify Owner, any individual or any Owner Confidential Information, including any Owner Data. Garver retains all intellectual property rights in such information.

3.1.7. Liability Limits. In addition to the liability limits otherwise provided for in this Agreement, the following provisions shall apply to the Software Services.





3.1.7.1. TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE SOFTWARE SERVICES (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED AND SHALL NOT EXCEED THE AMOUNT PAID BY OWNER TO GARVER FOR THE SOFTWARE SERVICES ONLY WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY. NOTHING IN THIS "LIABILITY LIMIT" SECTION WILL LIMIT OWNER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

3.1.7.2. EXCEPTIONS. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 3.1.6.1 DO NOT APPLY TO A CLAIM BY A PARTY BASED ON GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OF THE OTHER PARTY.

3.1.8. THIRD-PARTY CLAIMS FOR INFRINGEMENT. Should the Software Services become, or be likely to become in Garver's reasonable opinion, the subject of any claim that infringes, violates, or constitutes a wrongful use of intellectual property rights, Garver will, at its option: (i) procure for Owner the necessary rights to continue to use the infringing material, or (ii) replace or modify the potentially infringing material to make them non-infringing, but functionally equivalent. If Garver determines that none of these options are reasonably available, then Garver may terminate the Software Services and refund any prepaid and unused fees. **Exclusions.** Garver has no obligation to the extent a claim arises from: Garver's compliance with Owner's specifications; a combination of the Software Services with other technology or aspects where the infringement would not occur but for the combination; Owner Data; or technology or aspects not provided by Garver. THIS SECTION CONTAINS OWNER'S EXCLUSIVE REMEDIES AND GARVER'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

#### 4. DISPUTE RESOLUTION

4.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

4.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

4.1.2. Arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.



- 4.1.3. The site of the arbitration shall be Denison, Texas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.
- 4.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.
- 4.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.
- 4.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

## 5. TERMINATION

### 5.1. Termination/Suspension of Software Services:

- 5.1.1. Term of this Agreement. The term of this Agreement begins on the Effective Date and continues until June 30, 2027, unless earlier terminated as provided below.
- 5.1.2. Term of Order. Unless otherwise stated in Exhibit A, (i) the Software Services and all subscriptions made a part of it will automatically renew for additional one-year periods unless a Party notifies the other in writing of non-renewal thirty (30) or more days before the renewal date, and (ii) the automatically renewing Software Services will remain unchanged from the prior term except for any pricing increase of which Garver has notified Owner sixty (60) or more days before the renewal date.
- 5.1.3. Termination for Material Breach. If either Party is in material breach of this Agreement, the other Party may terminate this Agreement at the end of a written thirty (30) day notice/cure period, if the breach has not been cured.
- 5.1.4. Return of Owner Data. Within fifteen (15) days after termination, upon written request, Garver will make the Software Services available for Owner to export Owner Data. After such fifteen (15) day period, Garver has no obligation to maintain the Owner Data and may destroy the Owner Data after termination unless otherwise required by law.
- 5.1.5. Effect of Termination. If this Agreement is terminated for Garver's breach, Garver will refund Owner fees prepaid for the remainder of the term after the termination effective date. If this Agreement is terminated for Owner's breach, Owner will pay



any unpaid fees through expiration of the term as may be extended. Upon request following any termination of this Agreement, each Party will destroy or return all the other Party's property that it holds, subject to the "Return of Owner Data" section above. The foregoing remedies are in addition to, and not in limitation of, any other remedy or right available to the non-breaching Party at law or in equity.

5.1.6. Suspension of Access to Hosted Services. Garver may suspend Owner's access to the hosted Software Services (in whole or in part) for any of the following reasons: (i) Owner is past due in making any payments due hereunder, (ii) to prevent damage to or degradation of the hosted Software Services systems; (iii) to comply with any law, court order, or other governmental request; (iv) to otherwise protect the Software Services from potential legal liability, (v) if Owner violates the terms of the Agreement and fails to remedy such breach within the time set forth herein. Garver shall use reasonable efforts to notify Owner before or promptly following suspension of access to the hosted Software Services.

5.2. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

## 6. MISCELLANEOUS

6.1. Governing Law. This Agreement is governed by the laws of the State of Texas, without regard to its choice of law provisions.

6.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.

6.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Software Services under this Agreement.

6.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.

6.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.

6.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.



- 6.7. Export Compliance. The Software Services and Confidential Information may be subject to export laws and regulations of the United States, including but not limited to, U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Asset Controls, and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list, including but not limited to the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. Neither Party will permit its personnel or representatives to access any Software Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- 6.8. Anti-Corruption. The Parties shall comply with all applicable laws relating to anti-bribery and anti-corruption. Each Party represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction provided other restrictions may apply.
- 6.9. Money Damages Insufficient. Any breach by a Party of this Agreement or violation of the other Party's intellectual property rights could cause irreparable injury or harm to the other Party. The other Party may seek a court order to stop any breach or avoid any future breach.
- 6.10. No Additional Terms. Garver rejects additional or conflicting terms of any Owner form-purchasing document.
- 6.11. Survival of Terms. Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections of this Agreement, will survive (including, without limitation, the confidentiality and ownership terms within this Agreement). The UN Convention on Contracts for the International Sale of Goods does not apply.
- 6.12. Feedback. If Owner provides feedback or suggestions about the Software Services, then Garver (and those it allows to use its technology) may use such information without obligation to Owner.
- 6.13. Notices. Notices under this Agreement will be written and be effective on (i) personal delivery, (ii) confirmed delivery by nationally recognized courier service, or (iii), except for notices of breach or an indemnifiable claim, the day sent by email.

Notices to Owner will be addressed to,

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Notices to Garver will be addressed to,

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6.14. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

## 7. EXHIBITS

7.1. The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A – Scope of Services
- Exhibit B – Compensation Schedule
- Exhibit C – Garver Software Support Policy (if any)
- Exhibit D – Security Practices for Software Services (if any)

If there is an express conflict between the provisions of this Agreement and any Exhibit hereto, the terms of this Agreement shall take precedence over the conflicting provisions of the Exhibit.

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to Garver for our records.

*[Signatures Follow]*



**IN WITNESS WHEREOF**, Owner and Garver have executed this Agreement effective as of the date last written below.

**City of Denison, TX**

**Garver, LLC**

By: \_\_\_\_\_  
*Signature*

By: Jerry D. Holder, Jr.  
*Signature*

Name: \_\_\_\_\_  
*Printed Name*

Name: Jerry D. Holder, Jr.  
*Printed Name*

Title: \_\_\_\_\_

Title: Sr. Vice President

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

Date: 05.21.2024

Attest: \_\_\_\_\_

Attest: [Signature]



## **EXHIBIT A (SCOPE OF SERVICES)**

1.1 Garver shall provide the following Services:

### **1.1.1 WISE Planning Software**

#### 1.1.1.1 Data Discovery and Processing

- 1.1.1.1.1 Garver will deploy a WISE software unique database for the Owner.
- 1.1.1.1.2 Garver will provide the Owner with project and funding data templates to populate required fields in WISE.
- 1.1.1.1.3 Garver will work with the Owner to populate the data templates with up to fifty (50) projects. Data templates will include key project and funding fields that are required to run the WISE software. The Owner has the option to include ten (10) additional unique data points as part of their project details data. For each data field identified Garver and the Owner will document the update frequency, dataflow and other relevant details related to project delivery.
- 1.1.1.1.4 Garver will ingest data collected in the templates into the Owner's WISE database.

#### 1.1.1.2 Software Configuration and Administrator Training

- 1.1.1.2.1 Once data ingestion is completed, Garver will work with the Owner to configure the WISE software in accordance with the Owner's specifications.
- 1.1.1.2.2 Software configuration will take place over a series of three, 1-hour virtual meetings. Configuration meetings will focus on establishing project phase groups, project duration templates, cost curve templates, project dependencies, funding priorities, user roles and permissions, and system navigation.
- 1.1.1.2.3 Additionally, Garver will conduct two, 2-hour virtual Administrator Trainings for up to three (3) Owner representatives. Administrator Trainings will be structured in Train-the-Trainer style, and will focus on how to use, configure, and administer the WISE software.
- 1.1.1.2.4 During Administrator Training, Garver will provide the Owner representatives with a sandbox environment to begin testing and using the system.

#### 1.1.1.3 Software Finalization

- 1.1.1.3.1 Once materially functional, Garver will present the Owner with their WISE software. The presentation will include a description of the data workflow process as agreed to during the Data Discovery and Processing phase, as well as a demonstration of the configured WISE software. Within reason, Garver will incorporate any final edits from the Owner, that are possible within existing WISE functionality.

#### 1.1.1.4 Maintenance and Support

- 1.1.1.4.1 Garver will provide the Owner with detailed Software User-Guide and Administrator Guide documentation in PDF format.
- 1.1.1.4.2 Garver will provide technical support for Owner's staff utilizing the WISE Software. This support shall not exceed more than sixty (60) hours per year. Technical support hours needed over sixty (60) hours in one year can be provided at an hourly rate agreed upon by Owner and Garver.



1.1.1.4.3 The Owner could temporarily lose software access during schedule routine software maintenance and upgrades. Garver will provide Owner reasonable notice of any foreseen software downtime.

1.1.1.4.4 Software performance can vary due to factors beyond the provider's control, such as network congestion or system load. The provider is not liable for temporary performance fluctuations but commits to addressing any persistent performance issues promptly and in accordance with agreed services levels.

#### 1.1.1.5 Final Deliverables

1.1.1.5.1 WISE Software access to run unlimited project planning what-if scenarios around the project budget, sequencing, and funding of up to fifty (50) separate projects.

1.1.1.5.2 Owner will have limited license for access to the WISE Software portal for a period of thirty-six (36) months.

### 1.1.2 Portal and Reporting Development

#### 1.1.2.1 Project Kick-off and Data Discovery

1.1.2.1.1 Project Kick-Off Meeting: Upon receiving Notice to Proceed (NTP), Garver will schedule and complete a project kick-off meeting with key Owner staff. The focus of this meeting will be to introduce task leads, review the project schedule, scope, data needs, and next steps.

1.1.2.1.2 Data Discovery: During the discovery phase, Garver will conduct virtual meetings with Owner representatives to develop a comprehensive understanding of the Owner's current data systems, data architecture, processes, and protocols. Garver will schedule these meetings to discuss and document the existing project management systems, including project financials, schedules, and geospatial data. Additionally, Garver will record the Owner's project life cycle phases and any other significant systems or processes currently used for project management.

#### 1.1.3 Portal Creation and Configuration

1.1.3.1 Portal Creation: Garver will build a custom online data portal with unique URL and login access for the Owner.

1.1.3.2 Portal Configuration: Within reason, Garver will configure the colors and imagery of the Portal in accordance to the Owner's brand guidelines. Garver will also customize portals navigation that encompasses the scope of this contract.

#### 1.1.4 Report Development

1.1.4.1 Report Wireframe: Garver will work with Owner staff to formulate and agree upon report wireframes for a Project Status, Planned vs Actual, and Construction Daily reports.

1.1.4.1.1 Wireframes will be developed in conjunction with Owner representatives during two, 1-hour meetings.

1.1.4.1.2 Report wireframes will capture the requirements for each report, as well as key performance indicators and metrics.

1.1.4.1.3 Wireframes will serve as a go-by for Garver developers in subsequent phases of this contract.

1.1.4.2 Data Extraction and Transformation: The Owner will provide Garver with appropriate access to existing data sources as necessary to fulfill the requirements identified in the report wireframes. This includes data related to project financials, schedules, scope, locations, and construction daily reports. Garver will evaluate this information and develop extraction, transformation, and loading (ETL) pipelines to format the data into a structured architecture suitable for data modeling.





- 1.1.4.3 Data Modeling: Garver developers will utilize the dashboard wireframe and ETL pipelines to create a custom data model that fulfills the requirements identified during data discovery and report wireframing. This custom data model will establish data relationships between disparate data sources, enabling comprehensive reporting and analysis.
  - 1.1.4.4 Report Development: Garver will use the data model to develop the Project Status, Planned vs Actual, and Construction Daily reports. Reports will be hosted in the Owner's data portal and accessible using the portal URL and password.
  - 1.1.4.5 Report Refinements: Garver will schedule and facilitate up to two virtual meetings with key Owner staff, each lasting one hour, to demonstrate the report capabilities. During these meetings, Garver will gather feedback and make refinements to the reports accordingly.
  - 1.1.4.6 Training and Implementation: Garver will schedule and facilitate a virtual one-hour training and implementation session with key Owner staff. This session will focus on demonstrating the portal's functionality and training the primary users on how to navigate and utilize the portal effectively.
- 1.1.5 Maintenance and Support
- 1.1.5.1 Garver will provide technical support for Owner's staff during portal design and implementation. After portal implementation, technical support hours can be provided at an hourly rate agreed upon by Owner and Garver.
  - 1.1.5.2 The Owner could temporarily lose portal access during scheduled routine system maintenance and upgrades. Garver will provide Owner reasonable notice of any foreseeable system downtime.
- 1.1.6 Final Deliverables
- 1.1.6.1 Garver will provide the Owner with a data portal accessible via a single URL. Through this portal, the Owner will have access to Project Status, Planned vs. Actual, and Construction Daily Reports, as well as Construction documents and the WISE Planning Software.
- 1.1.7 Construction Document controls**
- 1.1.8 Electronic construction document control creation within the construction management software (OneDrive or similar) throughout the contract duration. Roles will consist of:
    - 1.1.8.1 Standard folder structure setup consisting of: concept documents, design documents including specifications and estimates, bid documents, contract terms and conditions, construction drawings as well as amendments, submittals & RFIs, general correspondence, environmental documentation, quality assurance and quality control, meeting minutes, project schedules, daily work reports, work directives, pay applications, change orders, operations and maintenance documentation, closeout documents, warranty information, and photos or others as determined by Garver and Owner.
    - 1.1.8.2 Creation of Owner's standard documents within the new folder structure:
      - 1.1.8.2.1 Inspector/Resident Project Representative (RPR) daily inspection report to be in Microsoft Excel format to be extractable for dashboard reporting.
      - 1.1.8.2.2 Standard meeting agendas for pre-construction & progress meetings
  - 1.1.9 Development of folder structure manual which will illustrate where to save common construction documents. This will include a standard naming convention which is necessary to link to the customized dashboards for reporting.



1.1.10 We will assist in migrating current active project documents into the new system. All new forms and reporting methods will initiate on an agreed upon date by both parties moving forward.

1.1.11 Exclusions:

1.1.11.1 Retroactively updating new standard forms on projects that are completed or in active construction.

1.2 In addition to those obligations set forth in the Agreement, Owner shall:

1.2.1 Furnish required information regarding projects that is reasonably requested by Garver as expeditiously as necessary for the orderly process of the software and/or reporting setup.

1.2.2 Garver shall be entitled to rely upon the accuracy and completeness of the information furnished by Owner.



**EXHIBIT B  
(COMPENSATION SCHEDULE)**

<b>WISE Implementation Fee based on 50 Projects:</b>	<b>\$15,000.00</b>
<b>WISE Annual Subscription Fee based on 50 Projects (Year 1):</b>	<b>\$30,000.00</b>
<b>WISE Annual Subscription Fee based on 50 Projects (Year 2):</b>	<b>\$30,000.00</b>
<b><u>WISE Annual Subscription Fee based on 50 Projects (Year 3):</u></b>	<b><u>\$30,000.00</u></b>
 <b>Total WISE Cost:</b>	 <b>\$105,000.00</b>

**Notes:**

- 1) Implementation fee will be a lump sum amount invoiced on the first invoice.
- 2) Subscription fee will be a lump sum amount invoiced at the beginning of each subscription year. The number of projects will be assessed each 6 months and adjusted accordingly. The subscription fee will be based on the following:
  - a. \$50/project/month for the first 50 projects.
  - b. \$25/project/month for the second 50 projects.
  - c. \$10/project/month for projects 101-200.
- 3) The subscription fee will not be changed without written approval from the Owner.

<b>Portal and Reporting Development:</b>	<b>\$75,000.00</b>
<b><u>Construction Document Controls:</u></b>	<b><u>\$15,000.00</u></b>
 <b>Total Portal, Reporting, Const. Document Control Cost:</b>	 <b>\$90,000.00</b>

**Notes:**

- 1) Portal, reporting development, and construction document control will be lump sum, billed pro rata on a monthly basis.
- 2) Cost for additional reports and maintenance will be charged hourly at a rate agreed upon by Owner and Garver.

Year 1 Cost = \$135,000.00  
Year 2 Cost = \$30,000.00  
Year 3 Cost = \$30,000.00



## EXHIBIT C

### Garver Owner Support Policy

#### Introduction

Excellence is a core value of Garver, and excellent support is critical to our customers' success. We offer tiered packages that are based on your needs and align with the complexity of your Garver deployment to give you the power of choice.

#### Contacting Owner Support

Access our [Knowledge Base](#)

- Email us at [supportservices@garverusa.com](mailto:supportservices@garverusa.com)

#### Garver Support Offerings

Garver offers the following support to our software and application:

##### Support Details:

Benefit	Details
Support Hours	<ul style="list-style-type: none"><li>• Access to Technical Support during business hours (excluding company holidays)<ul style="list-style-type: none"><li>• 8:00AM – 5:00PM Central time Monday to Friday</li></ul></li></ul>
Support Channels	<ul style="list-style-type: none"><li>• Easily submit cases by email at: <a href="mailto:supportservices@garverusa.com">supportservices@garverusa.com</a></li></ul>

#### General

##### *Reproducing Errors*

Garver must be able to reproduce errors in order to resolve them. Owner agrees to cooperate and work closely with Garver to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Reproducible errors that cannot promptly be resolved will be escalated to higher support tiers for further investigation and analysis.

##### *Access to Owner Data*

If required to address Owner's issue, Garver may access the data Owner stores in the Garver Services, as follows. Garver may ask Owner to send Garver screenshots, or share screens with Garver via videoconference/remote session, to help Garver understand and diagnose the issue. If the issue requires further escalation within Garver's support or engineering teams, specifically



authorized Garver personnel may access Owner's data through Garver's production system in accordance with Garver's security, privacy and confidentiality policies and procedures for the exclusive purposes of handling Owner's support case. For the avoidance of doubt, in all such cases, access to Owner's data would be for the sole purpose of addressing Owner's support issue and would be subject to Garver's security, privacy and confidentiality safeguards referenced in the Software Services Agreement between Garver and Owner.

*Excluded Items*

Owner Support does not include any of the following:

- Assistance in developing customizations;
- Assistance with non-Garver products, services or technologies;
- Assistance with installation or configuration of hardware, including computers, hard drives, networks or printers;
- Troubleshooting issues with in-house developed apps;
- Troubleshooting issues with integrations you've built for the Garver apps;
- Assistance with any code that is developed outside of or in addition to the core Garver products, for example, custom code developed by Owner or Garver's consulting team under a statement of work; and
- Training on the product, setup and configuration questions, or business process questions.

*Changes to Owner Support Plans*

Garver may change its Owner Support plans from time to time in its sole discretion.



**EXHIBIT D**  
**Security Controls**

**1. Introduction**

Garver was designed from the beginning with security in mind. The architecture implements a variety of security controls across multiple tiers to address multiple security risks. These security controls are subject to change; however, any changes will not materially decrease the overall security of the Software Services.

**2. Audits and Certifications**

- 2.1.** Garver utilizes global Amazon Web Services (AWS) and Microsoft Azure regions for its computing and storage needs. AWS and Azure are top-tier facilities with several accreditations, including SOC1 - SSAE-18, SOC2, SOC3, ISO 27001, and HIPAA.

**3. Web-Application Security Controls**

- 3.1.** Access to the Garver Application is only via HTTPS (TLS 1.2) establishing the encryption of the session between the end-user and the application and between Garver.
- 3.2.** A Garver account administrator can provision and de-provision additional Garver users and associated access as necessary.
- 3.3.** Role-based access control to manage multi-org permissions.
- 3.4.** Access to the Garver Application can be restricted by source IP address.
- 3.5.** Multi-factor authentication for accessing Garver application accounts utilizing time-based one-time passwords.
- 3.6.** Single sign-on support via SAML 2.0 identity providers.
- 3.7.** Customizable password policy helps customers align their Garver passwords to their corporate policies.

**4. Encryption**

- 4.1.** Garver uses AES 256-bit encryption for encryption at rest.
- 4.2.** Traffic between Garver and external APIs is over HTTPS utilizing TLS 1.2.

**5. Network**

- 5.1.** Garver utilizes Azure's network controls to restrict egress and ingress network access.
- 5.2.** Garver utilizes multi-tier architecture using Microsoft Azure Security Controls.

**6. Monitoring and Auditing**

- 6.1.** Garver's systems and network are monitored for security incidents, system health, network abnormalities, and availability.
- 6.2.** Garver collects application, network, user, and OS events to a centralized syslog server. These logs are automatically analyzed and reviewed for suspicious activity and threats. Any anomalies are escalated as necessary.
- 6.3.** Garver uses an intrusion detection system (IDS) to monitor network activity and alert of suspicious behavior.



- 6.4.** Garver's Incident Response team monitors Garver's application websites and works according to the company's Incident Response Plan (IRP) when necessary.
- 6.5.** Garver utilizes industry-leading security information and event management (SIEM) capabilities providing continuous security analysis of the system's security environment, network, user anomaly alerting, command and control (C&C) recognizance, automated threat detection, and reporting of Indicators of Compromise (IOC). All these capabilities are administered by Garver's security and operations staff and a third-party security operations center (SOC).
- 7. Disaster Recovery**
  - 7.1.** Garver uses Azure for storing encrypted customer data.
  - 7.2.** For customer Data stored on Azure, Garver utilizes Microsoft's standard backup and recovery controls.
  - 7.3.** Any necessary recovery of compute instances is achieved by rebuilding a new instance of the same type and configuration.
- 8. Vulnerability Management**
  - 8.1.** Garver performs periodic web application vulnerability assessments, static code analysis, and external dynamic assessments as part of its continuous monitoring program to ensure application security controls are properly applied and operating effectively.
  - 8.2.** Vulnerability assessment results are incorporated into the Garver software development lifecycle (SDLC) to remediate identified vulnerabilities. Specific vulnerabilities are entered into the Garver internal ticket system for tracking through resolution.
- 9. Incident Response**
  - 9.1.** In the event of a potential security breach, the Garver Incident Response Team will perform an assessment of the situation and develop appropriate mitigating strategies. If a potential breach is confirmed, Garver will immediately act to mitigate the breach and preserve forensic evidence, and will notify impacted customers' primary points of contact without undue delay to brief them on the situation and provide resolution status updates.
- 10. Privacy and Data Protection**
  - 10.1.** Garver provides native support for data subject access requests, such as the right to erasure (right to be forgotten) and anonymization, to support compliance with data privacy regulations.
- 11. Background Checks at Hiring**
  - 11.1.** Garver performs criminal background checks of its personnel who may have access to customers' data, based on the employee's jurisdictions of residence during the prior seven years, subject to applicable law.

# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on a Development Agreement between Wright Construction and Development, LLC and the City of Denison for abandoning a fifteen (15) foot alley and a thirty (30) foot wide strip of right-of-way (Contract Number 2024-0074).

## Staff Contact

Dianne York, Planner  
dyork@denisontx.gov  
903-465-2720

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## Summary

- A Petition for Right-of-Way Abandonment was received by Wright Construction and Development, LLC in February 2024.
- The Development Agreement will allow for the abandonment of a fifteen (15) foot alley and a thirty (30) foot wide strip of public right-of-way (ROW).

## Staff Recommendation

Staff recommends approval of the item.

## Recommended Motion

“I move to approve the Development Agreement between Wright Construction and Development LLC and the City of Denison for abandoning a fifteen (15) foot alley and a thirty (30) foot wide strip of right-of-way (Contract Number 2024-0074).

---

## Background Information and Analysis

Wright Construction and Development, LLC submitted a Petition for Right-of-Way Abandonment to Planning Staff in February 2024 to seek abandonment of a fifteen (15) foot alley and a thirty (30) foot wide strip of public right-of-way (ROW) for an undeveloped portion of Wilde Street. Along with the Petition, Wright Construction and Development, LLC submitted an appraisal determining the fair market value of the rights-of-way to be \$15,000.00. The City of Denison is in receipt of this payment. Upon review of the Petition, Staff felt it necessary to enter into a Development Agreement with the applicant. The proposed Agreement established time-oriented terms that must be met to complete the transaction of abandonment for the proposed rights-of-way. If said terms are not met, the proposed abandonment will be null and void and the City of Denison will retain said rights-of-way and refund the appraised value of \$15,000.00 to Wright Construction and Development, LLC.

## Financial Considerations

The appraised value of the proposed rights-of-way to be abandoned is \$15,000.00. This amount has been paid to the City of Denison. If the terms of the Development Agreement are not met, the City of Denison must refund these funds to Wright Construction and Development, LLC.

## Prior Board or Council Action

N/A



**Alternatives**

The City Council may table, deny or approve the item with conditions.

## **DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered into by and between Wright Construction and Development, LLC, (the "Owner") and the City of Denison (the "City"), to be effective on the date upon which the last of all of the Parties has approved and duly executed this Agreement ("Effective Date").

### **RECITALS**

**WHEREAS**, certain capitalized terms used herein are defined in Article I; and

**WHEREAS**, the City is a home-rule municipality of the State of Texas located within Grayson County; and

**WHEREAS**, the Owner and the City (which are sometimes individually referred to as a "Party" and collectively as the "Parties") desire to enter into this Agreement; and

**WHEREAS**, on the date the City Council voted to approve this Agreement, Owner owns Lots 1 through 16, Block 1, Fairmount Addition, Denison, Grayson County, Texas, which lies within the corporate limits of the City, and within Grayson County, Texas and is described and depicted in **Exhibit A** (the "Property"); and

**WHEREAS**, the Owner intends to replat the Property to realign the placement of lots and develop the Property as single-family residential in accordance with current City Regulations (as hereinafter defined) of the Property ("Project"); and

**WHEREAS**, a fifteen (15) foot alley ("ROW Area 1"), owned by the City, is located across the center of the Property; and

**WHEREAS**, a thirty (30) foot wide strip of right-of-way ("ROW Area 2") (together with ROW Area 1 hereinafter referred to as "ROW"), owned by the City, is located parallel to the Property on the southern lot line; and

**WHEREAS**, the Parties agree that in order for the Project to best proceed, the Owner shall submit a replat application that will include the abandonment of the ROW ("Replat") and pay all applicable right-of-way abandonment fees; and

**WHEREAS**, the Parties agree that upon meeting all requirements of the City's Subdivision Ordinance, state law, and the City's Regulations, the Replat shall be conditionally approved upon the condition that Owner submit a building permit application within 60 days of the conditional approval; and

**WHEREAS**, if a building permit application is not submitted within the 60 days of a conditional approval of the Replat, the Owner hereby agrees the Replat shall not be executed for filing, the Replat shall be withdrawn and this Agreement shall terminate; and

**WHEREAS**, if an approved building permit for the Project is not approved within 30 days after receipt of the building permit application, the Owner hereby agrees the Replat shall not be executed for filling, the Replat shall be withdrawn and this Agreement shall terminate; and

**WHEREAS**, the Parties intend for the Property to be developed in a manner consistent with state law the City's Regulations; and

**WHEREAS**, the City and the Owner agree that the Project can best proceed pursuant to an agreement such as this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants of the Parties set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

**ARTICLE I**  
**GENERAL TERMS AND DEFINITIONS**

1.1 **Definitions**. Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Agreement is defined in the introductory paragraph.

City is defined in the introductory paragraph.

City Assignee is defined in Section 6.2.

City Council means the city council of the City.

City Regulation(s) means any ordinance, rule, regulation, standard, policy, order, guideline, master plans, or other City-adopted or City-enforced requirement, as amended and adopted by the City for uniform application throughout the corporate limits, and as are applicable to the Project.

Claims is defined in Section 3.2(a).

Effective Date is the date in the introductory paragraph.

Project is defined in the Recitals.

Indemnified Party is defined in Section 3.2(a).

Owner is defined in the introductory paragraph.

Parties means the Owner and the City.

Party means the Owner or the City.

Property is defined in the Recitals.

Replat is defined in the Recitals.

Term shall have the meaning provided in Section 4.1.

## **ARTICLE II** **OBLIGATIONS**

2.1 Project. To meet the Owner's intent of developing the Property as single-family residential, the Replat shall be required to realign the placement of lots and shall include the abandonment of the ROW. The Parties agree that the Project can best be achieved by compliance with the terms and conditions as follows:

2.2 Owner's Obligations. The Owner agrees:

- (a) to submit the Replat meeting all requirements of the City's Subdivision Ordinance, state law, and the City's Regulations, including the payment of any fees associated with the abandonment of right-of-way as outlined in City Regulations; and
- (b) within 60 days of a conditional approval by the City of the Replat, Owner shall submit a building permit application for the Project for review by the City. If a building permit application is not submitted within the 60 days of a conditional approval of the Replat, the Replat shall not be executed for filing and Owner shall withdraw the Replat and this Agreement shall terminate; and
- (c) if the building permit application is not approved within 30 days after receipt, the Replat shall not be executed for filing and Owner shall withdraw the Replat and this Agreement shall terminate; and
- (d) to include in the notes on the Replat the deadline to obtain a building permit for the Replat to be approved.

2.3 City's Obligations. The City agrees:

- (a) to allow for the abandonment of the ROW in the Replat submitted by Owner provided the conditions outlined in section 2.2 are met; and
- (b) if conditions outlined in section 2.2 are not met, the amount paid by Owner to City as agreed upon by the Parties as the fair market value, based on the appraisal submitted by the Owner with the right-of-way abandonment application, will be reimbursed to the Owner.

## **ARTICLE III** **DEVELOPMENT PROCESS AND CHARGES**

3.1 Development Fees. Development of any portion of the Property shall be subject to payment to the City of the applicable fees according to the City Regulations, including without

limitation, impact fees, tap fees, technology fees, permit fees, development, inspection fees, and any other charges and fees not expressly exempted or altered by the terms of this Agreement.

**3.2 INDEMNIFICATION AND HOLD HARMLESS.**

**(a) THE OWNER AND ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER; (II) THE OWNER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE OWNER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS; (III) ANY CLAIMS OF PERSONS EMPLOYED BY THE OWNER OR ITS AGENTS TO CONSTRUCT THE PROJECT; OR (IV) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO OWNER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, AND/OR TRUSTEES, REGARDING OR RELATED TO CONSTRUCTING THE PROJECT OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PROJECT, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF ANY INDEMNIFIED PARTY. OWNER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST OWNER IN PROVIDING SUCH DEFENSE.**

**(b) IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF OWNER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF OWNER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES PURSUANT TO THIS AGREEMENT. OWNER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF OWNER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON THEIR OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES. THE CITY AGREES, UNLESS ADVISED BY DEFENSE COUNSEL TO THE CONTRARY, TO ASSERT ITS IMMUNITY FROM LIABILITY AND IMMUNITY FROM SUIT AND/OR OTHER AVAILABLE AFFIRMATIVE DEFENSES**

**(c) THIS SECTION 3.2 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

(d) THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION AND THE EXPRESS NEGLIGENCE TEXT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT, AND IS VALID AND ENFORCEABLE AGAINST THE OWNER.

**3.3 THE OWNER'S ACKNOWLEDGEMENT OF THE CITY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNERS' WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT.**

(a) THE OWNER ACKNOWLEDGES AND AGREES THAT, PROVIDED THERE ARE NO CITY DEFAULTS UNDER THIS AGREEMENT:

(i) THE REQUIREMENTS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THE FEES TO BE IMPOSED BY THE CITY PURSUANT TO THIS AGREEMENT, REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:

(A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;

(B) VIOLATION OF THE TEXAS LOCAL GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED;

(C) VIOLATION OF ANY APPLICABLE ROUGH PROPORTIONALITY REQUIREMENTS; AND/OR

(D) NUISANCE.

(b) THIS SECTION 3.3 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**ARTICLE IV**  
**TERM**

4.1 Term. The term of this Agreement shall begin on the Effective Date and end one (1) year from the conditional approval of the Replat (the "Term"), unless terminated sooner as provided herein.

**ARTICLE V**  
**EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. Except for the deadline to obtain a building permit, no Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than thirty (30) days after written notice of the alleged failure has been given). Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured and within such 30-day

period gives written notice to the non-defaulting Party of the details of why the cure will take longer than 30 days with a statement of how many days are needed to cure.

5.2 Remedies.

(a) If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, or actions for specific performance, mandamus, or injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL ENTITLE THE AGGRIEVED PARTY TO TERMINATE THIS AGREEMENT OR LIMIT THE TERM OF THIS AGREEMENT.

**ARTICLE VI**  
**RECORDATION**

This Agreement and all amendments hereto shall be recorded in the deed records of each county within which the Property is located. This Agreement binds and constitutes a covenant running with the Property. Upon the Effective Date, this Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and forms a part of any other requirements for development within the Property.

**ARTICLE VII**  
**ADDITIONAL PROVISIONS**

7.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council of the City; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, 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 Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City:	Attn: City Manager City of Denison 300 W. Main Street Denison, TX 75020 TEL: (903) 464-4452
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With a copy to:	Attn: Julie Fort
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Messer & Fort, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034  
TEL: (972) 668-6400

To the Owner:

Braeden Wright  
Wright Construction and Development LLC  
120 S. Austin Avenue  
Denison, Texas 75020  
TEL: (903) 271-9389

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

7.3 Interpretation. The Parties acknowledge that each has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

7.4 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

7.5 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Owner represents and warrants that this Agreement has been approved by appropriate action of the Owner, and that the individual executing this Agreement on behalf of the Owner has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

7.6 Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

7.7 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

7.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties.



7.7 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

7.8 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in each county in which the Property is located. Exclusive venue for any action to enforce or construe this Agreement shall be in the County District Court in which any of the Property is located.

7.9 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

7.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.11 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement. This provision shall not be construed as limiting or otherwise hindering the legislative discretion of the City Council seated at the time that this Agreement is executed or any future City Council.

7.12 Exhibits. The following exhibit is attached to this Agreement and are incorporated herein for all purposes:

Exhibit A      Legal Description and Depiction of the Property

7.13 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement.

7.14 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force

majeure event, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. A Party that fails to provide timely notice of an event of force majeure will be deemed to be able to resume full performance within thirty (30) days of such event. The term "force majeure" shall include events or circumstances that are not within the reasonable control of Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

7.15 Amendments. This Agreement cannot be modified, amended, or otherwise varied, except in writing signed by the City and the Owner expressly amending the terms of this Agreement.

7.16 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

EXECUTED by the City and the Owner on the respective dates stated below after approval of the City Council of the City on \_\_\_\_\_, 2024.

**CITY OF DENISON**

By: \_\_\_\_\_  
Robert Crawley, Mayor

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

ATTEST:

\_\_\_\_\_  
Christine Wallentine, City Clerk

STATE OF TEXAS                    §  
   §  
COUNTY OF GRAYSON           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024, by Robert Crawley, the Mayor of the City of Denison, Texas, on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Name printed or typed

Commission Expires: \_\_\_\_\_

**OWNER:**

**WRIGHT CONSTRUCTION AND DEVELOPMENT LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**STATE OF TEXAS                    §**  
   §  
**COUNTY OF \_\_\_\_                   §**

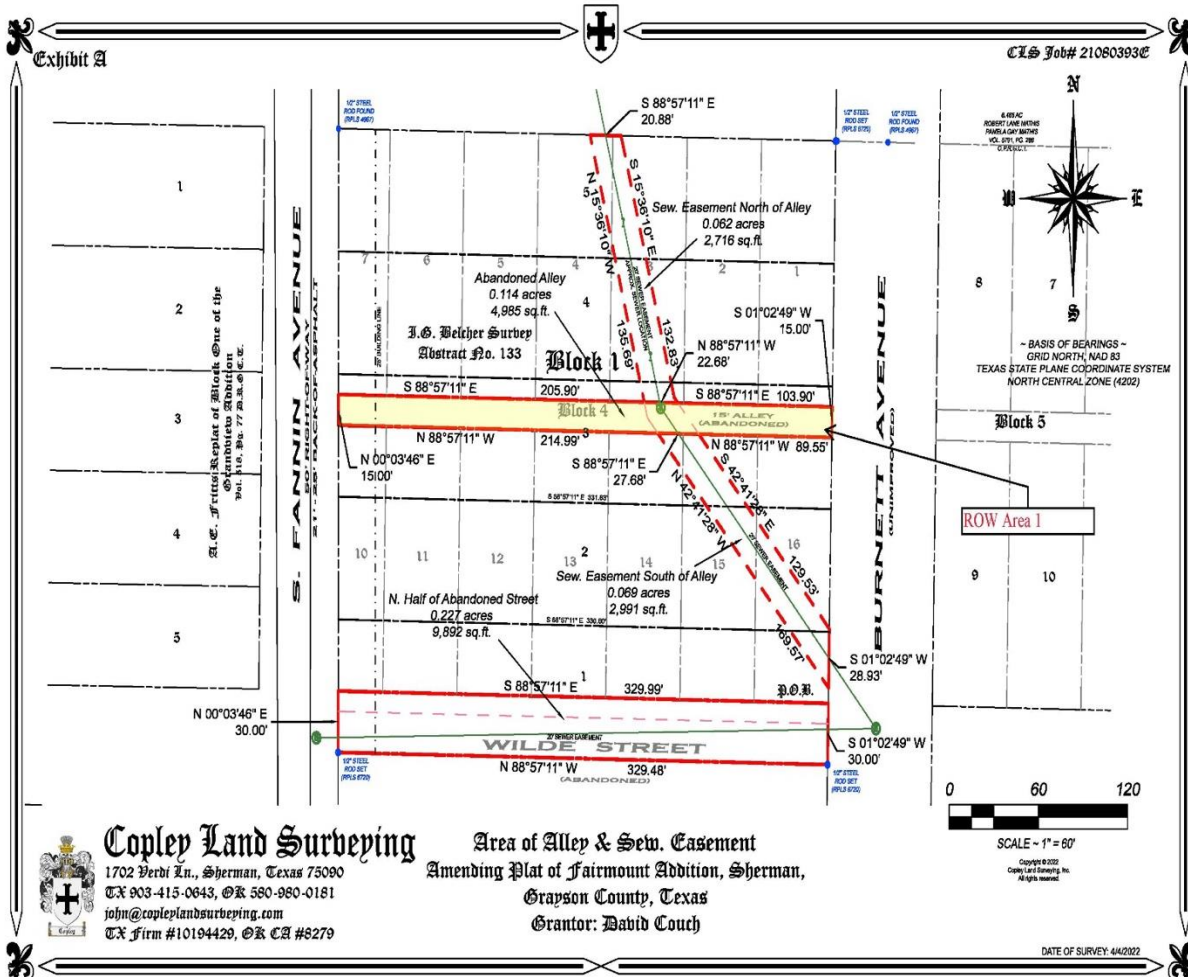
BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgments, on \_\_\_\_\_, 2024, personally appeared \_\_\_\_\_, Owner of the Property, and acknowledged that he executed the foregoing document on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

# EXHIBIT A

## LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

Lots 1 through 16, Block 1, Fairmount Addition, Denison, Grayson County, Texas including a fifteen (15) foot alley located across the center of the Property and a thirty (30) foot wide strip of right-of-way located parallel to the Property on the southern lot line.



# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on entering into an agreement with Denison Youth Sports for the 2024 fall and 2025 spring youth recreational baseball league provider at Texoma Health Foundation Park and Waterloo Baseball Fields (Contract Numbers 2024-0070 and 2024-0071) and authorize the Interim City Manager to execute the same.

## Staff Contact

Andrew Means, Recreation Manager  
ameans@denisontx.gov  
903-465-2720 Ext. 2034

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## Summary

- Staff initiated a request for proposals and invited proposals for the 2024 fall and 2025 spring youth recreational baseball league provider at Texoma Health Foundation Park and Waterloo Baseball Fields on April 1, 2024.
- The program scope of work covers organizational structure, experience, league overview, program fees, and the ability to communicate effectively.
- The City received proposals from four organizations, 306 Elite Performance, Boys and Girls Club of Denison, Denison Youth Sports, and Texoma Tournaments and Recreation.
- Staff assessed and awarded Denison Youth Sports a higher overall score.

## Staff Recommendation

Staff recommends entering into an agreement with Denison Youth Sports.

## Recommended Motion

“I move to approve entering into an agreement with Denison Youth Sports for the 2024 fall and 2025 spring youth recreational baseball league provider at Texoma Health Foundation Park and Waterloo Baseball Fields and authorize the Interim City Manager to execute the same.”

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## Background Information and Analysis

Historically, the Parks and Recreation Department has partnered with Denison Little League Baseball to provide a youth recreational baseball league at various city owned facilities. In 2023, Denison Little League Baseball transitioned into what is now Denison Youth Sports. As of recent, multiple organizations have inquired about providing the same service at the parks. Due to the number of requests, a RFP was created to solicit providers. Denison Youth Sports was one of four organizations to submit a proposal. The City of Denison scored each organization, with Denison Youth Sports grading the highest, and is recommending moving forward with their services at THF Park and Waterloo Baseball Fields.

## Financial Considerations

Denison Youth Sports will pay a \$5 per player fee for Denison residents and \$8 per player fee for non-residents each season to the City of Denison.

**Prior Board or Council Action**

None.

**Alternatives**

Council can reject the proposal from Denison Youth Sports and re-advise staff to either choosing an alternate proposer or have staff create an alternative program and go back out for RFP.

**LICENSE AGREEMENT WITH DENISON YOUTH SPORTS FOR  
USE OF TEXOMA HEALTH FOUNDATION PARK  
BASEBALL/SOFTBALL COMPLEX**

This LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF DENISON, TEXAS** ("City"), a home-rule municipal corporation of the State of Texas, and **DENISON YOUTH SPORTS** ("Licensee"), a Texas nonprofit corporation. City and Licensee shall be collectively referred to herein as the "Parties".

**WHEREAS**, the City owns **TEXOMA HEALTH FOUNDATION PARK** located at 3801 US Highway 75 in Denison, Texas 75020, which consists of five (5) baseball/softball fields for use as a recreational area, including public restrooms, batting cages, umpire room, common areas and parking lot (the "Complex"), as depicted on **Exhibit "A"** attached hereto and incorporated herein for all purposes; and

**WHEREAS**, Licensee is a nonprofit tax-exempt organization established to promote and develop the game of baseball for the youth of the Texoma area, including the City; and

**WHEREAS**, to serve its mission, the Licensee sponsors a recreational baseball program designed to provide healthy activity, emphasizing enjoyment and development over competition for youth baseball players and offers a competitive baseball program that allows players the opportunity to advance their skills through higher competition (hereinafter "Events"); and

**WHEREAS**, Licensee wishes to utilize the Complex for the Events from August 1, 2024, through July 31, 2025, as further set forth below; and

**WHEREAS**, the City desires to foster an environment for the combination of talents and resources offered by Licensee; and

**WHEREAS**, due to the limited number of personnel and limited funding within the Parks and Recreation Department, partnering with agencies such as Licensee allows the City to greatly increase athletic sports opportunities for the City's residents; and

**WHEREAS**, City desires to recognize partnering agencies within the community that will be given priority use of the parks and recreation facilities to ensure that varied sporting programs may be offered by the City over and above those directly implemented by City staff; and

**WHEREAS**, both Parties desire to foster sportsmanship, skills, teamwork and a sense of community while providing opportunities for young athletes to participate within any sport regardless of his or her physical talents or abilities; and

**WHEREAS**, Events that Licensee will host promote the recreational advantages of the sport of baseball and the Complex; therefore, the use of the Complex for Events serves the overall recreational purpose of the Complex; and

**WHEREAS**, the Events will be open and free to public spectators; and

**WHEREAS**, the Parties desire to enter into this Agreement to establish the roles and obligations of each Party; and

**WHEREAS**, the City desires to provide Licensee with use of the Complex for the purposes stated herein and in accordance with the terms of this Agreement.

**WHEREAS**, in consideration of the mutual promises and covenants herein and the payment to be made from City to Licensee, Licensee agrees to perform all services as set forth in the City's Request for Proposals for 2024 Fall and 2025 Spring Youth Recreational Baseball League Provider, in accordance with the Contract Documents listed below, but generally described as providing a youth baseball league (the "Services").

The "Contract Documents" consist of the following items, which items, Licensee acknowledges have previously been provided to or created by Licensee and which items are incorporated into this Agreement by reference as though fully set out in this Agreement:

- A. This Agreement.
- B. City's Request for Proposals including all attachments, specifications, and all addenda issued prior to execution of this Agreement.
- C. Licensee's Executed Proposal in response to City's Request for Proposals.
- D. Proposer's Affidavit of Non-Collusion.
- E. Conflict of Interest Questionnaire Coversheet.
- F. Conflict of Interest Questionnaire.
- G. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- H. All required Insurance Certificates, and affidavits.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

## **ARTICLE 1. COMPLEX**

- 1.01. For and in consideration of the "License Fee" (as hereinafter defined) to be paid hereunder and other valuable promises, covenants, and agreements, the City hereby grants to Licensee a nonexclusive right to use the Complex. Licensee shall use the Complex solely for the purposes of setting up, conducting, and taking down the Events in accordance with the terms of this Agreement.
- 1.02. Notwithstanding anything to the contrary, in the event that inclement weather causes an unsafe playing condition on any of the fields at the Complex, the City will consult with the Licensee concerning the safety of such play and, if deemed necessary by the City in its sole and absolute discretion, the City may cancel or delay Events on any one or all of fields and/or the Complex.
- 1.03. This Agreement does not constitute a sale, lease, assignment or disposal of the Complex in any means whatsoever but is merely intended to grant the Licensee the right to use the Complex in accordance with the terms stated herein.



**ARTICLE 2.**  
**TERM AND TERMINATION**

- 2.01. Subject to earlier termination as hereinafter set forth, this Agreement shall commence on August 1, 2024, and expire on July 31, 2025, ("Initial Term"). Licensee's use of the Complex shall not be continuous through the Initial Term, but shall be restricted to Events scheduled on Mondays, Tuesdays, Wednesdays, and Thursdays from 6:00 p.m. until 10:00 p.m. at the Complex, subject to availability of the Complex, as determined by the Director of the City's Parks and Recreation Department or that person's designee ("Director"). Makeup games shall be determined on an as needed basis and if available, with five (5) days advance written notice to the Director.
- 2.02. In the event that Licensee fails to comply with any of the terms and conditions of this Agreement, City shall have the right, without notice, to declare the Agreement immediately terminated. In the event of such termination, all rights and privileges of the Licensee shall cease and terminate, and Licensee shall immediately cease use of the Complex. All funds owed to the City shall be due and payable by Licensee no later than the tenth (10th) calendar day after the date of termination.
- 2.03. Either party may terminate this Agreement, with or without cause, with thirty (30) days' written notice to the other party.
- 2.04. At the end of the Initial Term, the City shall have the sole right and option to renew for four (4) one (1) year terms (each a "Renewal Term" and collectively, the "Term") upon thirty (30) days' written notice to the Licensee prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be.

**ARTICLE 3.**  
**PERMITTED USES**

- 3.01. The Licensee shall have full use of the Complex during the Term to set up, prepare, and conduct the Events, which may include, but not be limited to, the placement of signs and banners; erection of tents for Event officials, volunteers, and refreshments; and other activities that will benefit the conduct of the Events.
- 3.02. Any and all activities and uses hereunder are subject to all applicable laws, rules and regulations, and approval by the Director.
- 3.03. The Licensee shall have shared use of all parking spaces available at the Complex, as detailed on **Exhibit "A"**, to provide for Licensee, Licensee's Event personnel, and patron parking for the Events. All such parking shall be nonexclusive, open to the general public, and on a first come, first served basis. Licensee acknowledges and agrees that the City does not guarantee parking for the Events.

**ARTICLE 4.**  
**RESPONSIBILITIES OF THE PARTIES**

- 4.01. City's Duties.
- a. City staff will:

- i. Ensure all-natural and artificial turf fields located at the Complex are properly maintained as the City's budget allows.
- ii. Prepare the Complex for Events by mowing, painting foul lines, and setting bases and pitching mounds at specified distances.
- iii. Coordinate light schedules as needed.
- iv. Provide and pay for any utility connections or usage of the Licensee associated with this Agreement.

#### 4.02. Licensee's Duties.

##### a. Licensee's staff and its subcontractors shall, at its sole cost and expense:

- i. At the start of the Term, attend a scheduling meeting and provide within fourteen (14) days to the Director with estimated team rosters, practice field and leagues schedules. Makeup games rescheduled due to inclement weather cancellations must be approved by the Director five (5) days prior.
- ii. Licensee shall place a premium on the ethics of its league and ensure that the coaches, participants, and parents demonstrate appropriate behaviors at all times.
- iii. Have on file within twenty (20) days of the start of the Term, signed copies of sports ethics contracts for coaches and participants. Licensee shall also have on file signed waiver and release forms releasing the City and Licensee for any injuries (including death) or property damage resulting from participation in the Events.
- iv. Provide copies to its coaches of a set of sports rules by the accredited league organization that represents their sport. A copy will also be provided to the City.
- v. Provide the City with a copy of the rules of conduct, and disciplinary policy/procedures that will be adopted for the season and be placed on a league's webpage.
- vi. Ensure coaches have access to a first aid kit near any game field of play and have a cell phone available at all times when coaching. First aid kit must include insta-cold compress, band-aids, tweezers, and wrap. Licensee shall ensure within ten (10) days of the start of the Term that any person who has direct contact with children has cleared a mandatory background check with supporting documentation on file.
- vii. Offer skills training to league coaches on a yearly basis. Coaches shall be trained in age-appropriate sports skills, coaching techniques, and physical conditioning for their sport.
- viii. Comply with and cause the Complex to comply with during the Term: (i) all valid federal, state, local and other governmental laws, ordinances, rules, orders and regulations generally affecting the Complex, including all rules, regulations, and requirements of the City and its Police, Fire, Code Compliance, and Parks and Recreation Departments, (ii) any and all requirements specifically made by the City's Fire Marshal in connection with this

Agreement, or a part thereof or the use thereof, and (iii) all rules, orders, and regulations of the National Board of Underwriters or other body exercising similar functions in connection with the prevention of fire or the connection of hazardous conditions that apply to the Complex. If applicable, Licensee shall comply with the requirements of all policies of insurance which, at any time, may be in force with respect to the Complex (other than any policies obtained by City and not approved in writing by Licensee) and, to the extent that Licensee has written notice thereof, with the provisions of any contracts, agreements, and restrictions affecting the Complex or a part thereof or the ownership, occupancy, or use thereof that exist as of the date this Agreement is executed.

- ix. Provide for the delivery, setup, and removal of all signs and banners, tents, tables, chairs, and the like with the times for setup and removal being approved in advance by the Director.
- x. Ensure that no Licensee-associated vehicles (including, but not limited to, vehicles being used by vendors, sponsors, subcontractors, crewmembers, or patrons) drive or park off designated roadways and on to turf areas unless expressly approved in advance by the Director.
- xi. Provide for the removal of all structures, including, but not limited to, tents, of any kind placed on or at the Complex by the Licensee in connection with the Events prior to the expiration of this Agreement.

## **ARTICLE 5. CONSIDERATION**

- 5.01. In consideration for Licensee's right to use the Complex for the purposes stated herein for the Term, the Licensee agrees to pay the City a License Fee of five Dollars (\$5.00) per resident player and eight dollars (\$8.00) per nonresident player for the Term, regardless of the number of games or practices they utilize at the Complex. Fixed fees are based on one (1) Term and will not increase during the Term of this Agreement. Payment is due to the City not later than fourteen (14) days after the first scheduled game of the Term, otherwise Licensee will forfeit use of the Complex. Payment shall be made by check or credit card, with checks being made payable to the "City of Denison."
- 5.02. Any non-league tournaments or games will be the responsibility of Licensee for paying all costs of the tournament as indicated on the Comprehensive Fee Schedule for tournament rentals. (See Director for Policy & Procedures - Fees). The consideration for an additional term beyond the Initial Term may vary; therefore, any consideration to be paid by the Licensee to the City for the right to use the Complex for any Renewal Term shall be set forth in a written amendment to this Agreement. If the Parties cannot come to a mutual agreement of the consideration to be paid to the City for the Licensee's right to use the Complex thirty (30) days before the start of a Renewal Term, then this Agreement shall automatically terminate.

## **ARTICLE 6. ACCEPTANCE AND PROTECTION OF COMPLEX**

- 6.01 Licensee covenants and agrees that it shall take the Complex as it finds them and that it will leave the Complex in as good or better condition than that which exists prior to Licensee's use of the

Complex, normal wear and tear from usage excepted. Licensee further covenants and agrees that it will not do or permit to be done any injury or damage to any of said Complex or suffer any waste to the Complex, normal wear and tear from usage excepted, but in the event any damage is done, Licensee hereby covenants and agrees to reimburse City therefore promptly. Licensee shall keep and maintain the Complex in a good, clean, and sanitary condition at all times. Licensee shall be responsible for all damages caused by Licensee, its agents, servants, employees, contractors, subcontractors, licensees, or invitees, normal wear and tear from usage excepted; Licensee agrees to fully repair or otherwise cure all such damages at Licensee's sole cost and expense. The City shall determine whether any damage has been done, the amount of the damage, and the reasonable costs of repairing the damage. Any damage for which Licensee is responsible hereunder shall be repaired or replaced by the Licensee within thirty (30) days of receipt of written notification from the City; all such repairs or replacements must be made to the reasonable satisfaction of the City.

## **ARTICLE 7. ADVERTISING**

- 7.01. No banners, advertisements, or signs may be hung from trees, fences, or buildings or be displayed on the Complex without the express permission of the Director. In addition, Licensee covenants and agrees that no decorative or other material shall be nailed, tacked, screwed, or otherwise physically attached to any part of the City's property without the consent of the Director. The location and content of such advertisements and announcements are subject to the approval of the Director.

## **ARTICLE 8. COPYRIGHT COMPLIANCE**

- 8.01. Licensee agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations issued hereunder including, but not limited to, the assumption of any and all responsibilities for paying royalties which are due for the use of copyrighted works in Licensee's performances or exhibitions to the copyright owner, or representative or said copyright owner. City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. City specifically does not authorize, permit, or condone the performance, reproduction, or other use of copyrighted materials by Licensee or its agents or licensees without the appropriate licenses or permission being secured by Licensee in advance. It is further agreed that LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD CITY HARMLESS FOR ANY CLAIMS ARISING FROM NONPAYMENT TO LICENSING AGENCIES, INCLUDING, BUT NOT LIMITED TO, ASCAP, BMI, AND SESAC OR DAMAGES ARISING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS. City expressly assumes no obligation to review or obtain appropriate licensing, and all such licensing shall be the exclusive obligation of the Licensee.

Licensee understands that they are responsible for securing any and all licenses by all artists/performers giving permission for the recordings. Licensee is responsible for both reporting and payment of any music or other licensing fees that may be required by law.

- 8.02. Licensee understands and agrees that without the proper license obtained by Licensee, there is a risk of an injunction or money damages arising from a copyright lawsuit brought by ASCAP, BMI, SESAC or any other licensing agency or copyright holder.

**ARTICLE 9.  
NON-DISCRIMINATION**

- 9.01. Licensee agrees that during use of the Complex, Licensee will not subject anyone to discrimination in any way because of the person's financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status. No one can be excluded from the Events or denied the benefits of the Events because of financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status.

**ARTICLE 10.  
LIABILITY AND INDEMNIFICATION**

- 10.01. City and Licensee mutually covenant and agree that City shall not be liable or responsible for any property placed on the Complex.
- 10.02. LICENSEE SHALL AND DOES AGREE TO RELEASE, INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS CITY AND CITY'S EMPLOYEES, REPRESENTATIVES, OFFICERS, AGENTS, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY (1) RELATING TO THE USE OR OCCUPANCY OF THE COMPLEX BY LICENSEE, ITS EMPLOYEES, PATRONS, AGENTS, INVITEE, LICENSEES, VOLUNTEERS, SUBCONTRACTORS, AND ANY PARTY USING THE COMPLEX OR (2) BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION ON THE PART OF LICENSEE OR ANY INVITEE, LICENSEE, EMPLOYEE, DIRECTOR, OFFICER, SERVANT, VOLUNTEER, OR CONTRACTOR OF LICENSEE, OR ANYONE LICENSEE CONTROLS OR EXERCISES CONTROL OVER OR (3) BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LICENSEE UNDER THIS AGREEMENT.
- 10.03. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO LICENSEE'S OBLIGATIONS UNDER THIS SECTION 10, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY EXEMPLARY OR PUNITIVE DAMAGES FOR BREACH OF CONTRACT.

## **ARTICLE 11. INSURANCE**

1 1.01. Licensee covenants and agrees to obtain and keep in force and to ensure its contractors, as applicable, keep in force during the term of this Agreement one or more policies of insurance as follows:

- a) Commercial General Liability
  - i. \$1,000,000 each occurrence
  - ii. \$2,000,000 aggregate
  
- b) Automobile Liability
  - i. \$1,000,000 each accident on a combined single limit, or
  - ii. \$250,000
  - iii. \$500,000
  - iv. Property Damage
  - v. Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto," defined as autos owned, hired and non-owned, when said vehicle is used in the course of the Events licensed herein.

1 1.02. Terms and Conditions Applicable to All Insurance

- a) Certificates of insurance evidencing all required insurance shall be delivered to the City at least two (2) weeks prior to the Term.
  
- b) Applicable policies shall be endorsed to name the City and the Licensee as Additional Insureds thereon, as its interests may appear. The term "City" shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
  
- c) Applicable policies shall be endorsed to name the City an Additional Insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents and volunteers as respects the contracted services.
  
- d) Certificate(s) of insurance shall document that insurance coverage specified in this Agreement are provided under applicable policies documented thereon.
  
- e) Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements.
  
- f) A minimum of thirty (30) days' notice of cancellation or material change in coverage affecting the required lines and limits of insurance shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of nonpayment of premium. Notice shall be sent to the City Manager at the address in Section 15.05.
  
- g) Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A: VII in the current A.M. Best Key Rating Guide or have reasonably

equivalent financial strength and solvency to the satisfaction of the City's Risk Management Division.

- h) Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the City in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups must also be approved. Dedicated financial resources or letters of credit may also be acceptable to the City.
- i) Applicable policies shall each be endorsed with a waiver of subrogation in favor of the City.
- j) The City shall be entitled, upon its request and without incurring expense, to review the Licensee's insurance policies including endorsements thereto and, at the City's discretion, the Licensee may be required to provide proof of insurance premium payments.
- k) The Commercial General Liability insurance policy shall have no exclusions by endorsements that have effect on the lines and limits of insurance required in this Agreement, unless the City approves such exclusions.

## **ARTICLE 12. COMPLIANCE WITH LAW AND POLICIES**

- 12.01. Licensee covenants and agrees that it shall not engage in any unlawful use of the Complex. Licensee further agrees that it shall not permit its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees or invitees to engage in any unlawful use of the Complex and Licensee shall immediately remove from the Complex any person engaging in such unlawful activities. Unlawful use of the Complex by Licensee itself shall constitute an immediate breach of this Agreement.
- 12.02. Licensee shall comply with all City regulations, policies, and specific requirements for the Events and shall coordinate with City staff with regard to arrangements for site use. Licensee covenants and agrees that during the Term of this Agreement that if the City calls to the attention of Licensee any such violation on the part of Licensee or any person employed by or admitted to said Complex by said Licensee, then Licensee shall immediately desist from and correct such violation or vacate the Complex.
- 12.03. Each party shall be responsible for obtaining and maintaining any and all applicable permits, licenses, or approvals necessary to fulfill its own individual obligations under this Agreement in accordance with any local, state, or federal statutes, rules, or regulations.

## **ARTICLE 13. RIGHT OF ENTRY**

- 13.01. At all times during the Term of this Agreement, City shall have the right, through its agents and representatives, to enter into and upon the Complex at any time to fulfill its obligations herein and during reasonable business hours for the purpose of examining and inspecting the same for the purpose of determining whether Licensee shall have complied with all of its obligations hereunder in respect to the use of the Complex.

- 13.02. During any inspection, City may perform any obligations that City is authorized or required to perform under the terms of this Agreement or pursuant to its governmental duties under federal state or local laws, rules, or regulations.

#### **ARTICLE 14.**

#### **CHARITABLE IMMUNITY/ LIMITATION OF LANDOWNERS' LIABILITY**

- 14.01. Licensee agrees that if it is a charitable organization, corporation, entity or individual enterprise having, claiming or entitled to any immunity, exemption (statutory or otherwise) or limitation from and against liability for damage or injury to property or persons under the provisions of the Charitable Immunity and Liability Act of 1987, C.P. R.C., 84.001 et seq., or other applicable law, that Licensee hereby expressly waives its right to assert or plead defensively any such immunity or limitation of liability as against City.
- 14.02. Licensee agrees, consents and acknowledges that City is a Landowner under the Recreational Use Statute, C.P. R.C., 75.001 et seq., or other applicable law, and does not waive any immunity or limitation for liability by entering into this Agreement nor would have entered into this Agreement if this provision was not applicable or enforceable.

#### **ARTICLE 15.**

#### **MISCELLANEOUS PROVISIONS**

- 15.01. Immunity. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15.02. Assignment/Non-Transferable. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City.
- 15.03. Successors and Assigns. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 15.04. Execution and Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 15.05. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand—delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:



To the City of Denison:

City of Denison  
Attn: City Manager  
300 West Main St.  
Denison, Texas, 75020

With Copy to:

Messer Fort, PLLC  
Attn: Julie Fort  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

To Licensee:

Denison Youth Sports  
Attn: Bianca Crouse  
69 Crimson Ln  
Calera, OK 74730

- 15.06. Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 15.07. Fiscal Funding Out. If, for any reason, at any time during any term of this Agreement, the City Council fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement, the City may terminate this Agreement pursuant to this section following (i) delivery by the City of written notice of the City's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.
- 15.08. Independent Contractor. Licensee shall operate hereunder as an independent contractor as to all rights and privileges herein contained and nothing herein shall be construed as creating a partnership or joint enterprise between Licensee and City.
- 15.09. Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 15.10. Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- 15.11. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

- 15.12. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.
- 15.13. Entire Agreement. This Agreement (including all attachments, schedules, and exhibits attached hereto) contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for the use of the Complex only and not any other matters that may exist between the Parties past, present or future.
- 15.14. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.
- 15.15. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 15.16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 15.17. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 15.18. Force Majeure. Neither Licensee nor the City of Denison shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.
- 15.19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- 15.20. Savings/Severability. 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 hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.21. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiples, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

DENISON YOUTH SPORTS

CITY OF DENISON, TEXAS

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Bobby Atteberry, Interim City Manager

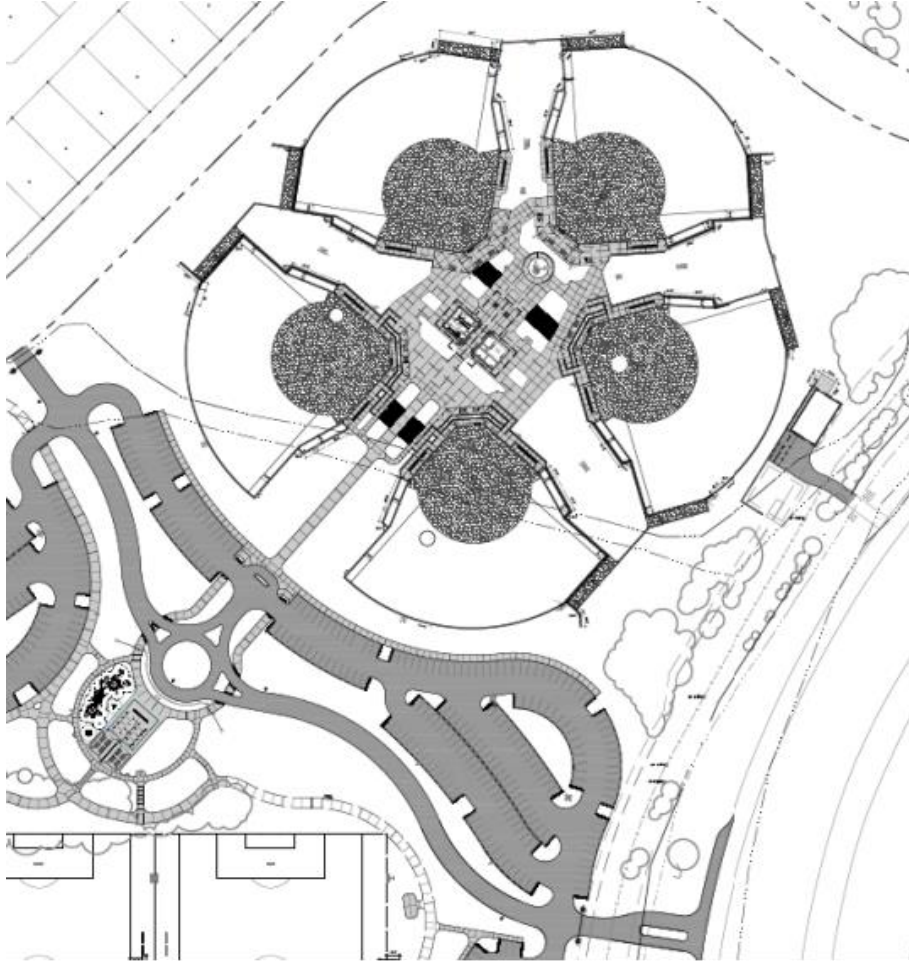
ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Christine Wallentine, City Clerk

**EXHIBIT "A"**  
**Texoma Health Foundation Park Baseball/Softball Fields**



**LICENSE AGREEMENT WITH DENISON YOUTH SPORTS FOR  
USE OF WATERLOO BASEBALL COMPLEX**

This LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF DENISON, TEXAS** ("City"), a home-rule municipal corporation of the State of Texas, and **DENISON YOUTH SPORTS** ("Licensee"), a Texas nonprofit corporation. City and Licensee shall be collectively referred to herein as the "Parties".

**WHEREAS**, the City owns Waterloo Baseball Complex located at 1500 W. Brock St. in Denison, Texas 75020, which consists of two (2) baseball fields for use as a recreational area, including public restrooms, batting cages, press box, concession building, storage building, common areas and parking lot (the "Complex"), as depicted on **Exhibit "A"** attached hereto and incorporated herein for all purposes; and

**WHEREAS**, Licensee is a nonprofit tax-exempt organization established to promote and develop the game of baseball for the youth of the Texoma area, including the City; and

**WHEREAS**, to serve its mission, the Licensee sponsors a recreational baseball program designed to provide healthy activity, emphasizing enjoyment and development over competition for youth baseball players and offers a competitive baseball program that allows players the opportunity to advance their skills through higher competition (hereinafter "Events"); and

**WHEREAS**, Licensee wishes to utilize the Complex for the Events from August 1, 2024, through July 31, 2025, as further set forth below; and

**WHEREAS**, the City desires to foster an environment for the combination of talents and resources offered by Licensee; and

**WHEREAS**, due to the limited number of personnel and limited funding within the Parks and Recreation Department, partnering with agencies such as Licensee allows the City to greatly increase athletic sports opportunities for the City's residents; and

**WHEREAS**, City desires to recognize partnering agencies within the community that will be given priority use of the parks and recreation facilities to ensure that varied sporting programs may be offered by the City over and above those directly implemented by City staff; and

**WHEREAS**, both Parties desire to foster sportsmanship, skills, teamwork and a sense of community while providing opportunities for young athletes to participate within any sport regardless of his or her physical talents or abilities; and

**WHEREAS**, Events that Licensee will host promote the recreational advantages of the sport of baseball and the Complex; therefore, the use of the Complex for Events serves the overall recreational purpose of the Complex; and

**WHEREAS**, the Events will be open and free to public spectators; and

**WHEREAS**, the Parties desire to enter into this Agreement to establish the roles and obligations of each Party; and

**WHEREAS**, the City desires to provide Licensee with use of the Complex for the purposes stated herein and in accordance with the terms of this Agreement.

**WHEREAS**, in consideration of the mutual promises and covenants herein and the payment to be made from City to Licensee, Licensee agrees to perform all services as set forth in the City's Request for Proposals for 2024 Fall and 2025 Spring Youth Recreational Baseball League Provider, in accordance with the Contract Documents listed below, but generally described as providing a youth baseball league (the "Services").

The "Contract Documents" consist of the following items, which items, Licensee acknowledges have previously been provided to or created by Licensee and which items are incorporated into this Agreement by reference as though fully set out in this Agreement:

- A. This Agreement.
- B. City's Request for Proposals including all attachments, specifications, and all addenda issued prior to execution of this Agreement.
- C. Licensee's Executed Proposal in response to City's Request for Proposals.
- D. Proposer's Affidavit of Non-Collusion.
- E. Conflict of Interest Questionnaire Coversheet.
- F. Conflict of Interest Questionnaire.
- G. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- H. All required Insurance Certificates, and affidavits.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

## **ARTICLE 1. COMPLEX**

- 1.01. For and in consideration of the "License Fee" (as hereinafter defined) to be paid hereunder and other valuable promises, covenants, and agreements, the City hereby grants to Licensee a nonexclusive right to use the Complex. Licensee shall use the Complex solely for the purposes of setting up, conducting, and taking down the Events in accordance with the terms of this Agreement.
- 1.02. Notwithstanding anything to the contrary, in the event that inclement weather causes an unsafe playing condition on any of the fields at the Complex, the City will consult with the Licensee concerning the safety of such play and, if deemed necessary by the City in its sole and absolute discretion, the City may cancel or delay Events on any one or all of fields and/or the Complex.
- 1.03. This Agreement does not constitute a sale, lease, assignment or disposal of the Complex in any means whatsoever but is merely intended to grant the Licensee the right to use the Complex in accordance with the terms stated herein.

**ARTICLE 2.**  
**TERM AND TERMINATION**

- 2.01. Subject to earlier termination as hereinafter set forth, this Agreement shall commence on August 1, 2024, and expire on July 31, 2025, ("Initial Term"). Licensee's use of the Complex shall not be continuous through the Initial Term, but shall be restricted to Events scheduled Monday through Friday from 5:00 p.m. until 10:00 p.m. during the Fall and Spring Seasons, and Saturday and Sunday from 8:00 a.m. until 10:00 p.m. during the Spring Season at the Complex, subject to availability of the Complex, as determined by the Director of the City's Parks and Recreation Department or that person's designee ("Director"). Makeup games shall be determined on an as needed basis and if available, with five (5) days advance written notice to the Director.
- 2.02. In the event that Licensee fails to comply with any of the terms and conditions of this Agreement, City shall have the right, without notice, to declare the Agreement immediately terminated. In the event of such termination, all rights and privileges of the Licensee shall cease and terminate, and Licensee shall immediately cease use of the Complex. All funds owed to the City shall be due and payable by Licensee no later than the tenth (10th) calendar day after the date of termination.
- 2.03. Either party may terminate this Agreement, with or without cause, with thirty (30) days' written notice to the other party.
- 2.04. At the end of the Initial Term, the City shall have the sole right and option to renew for four (4) one (1) year terms (each a "Renewal Term" and collectively, the "Term") upon thirty (30) days' written notice to the Licensee prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be.

**ARTICLE 3.**  
**PERMITTED USES**

- 3.01. The Licensee shall have full use of the Complex during the Term to set up, prepare, and conduct the Events, which may include, but not be limited to, the placement of signs and banners; erection of tents for Event officials, volunteers, and refreshments; and other activities that will benefit the conduct of the Events.
- 3.02. Any and all activities and uses hereunder are subject to all applicable laws, rules and regulations, and approval by the Director.
- 3.03. The Licensee shall have shared use of all parking spaces available at the Complex, as detailed on **Exhibit "A"**, to provide for Licensee, Licensee's Event personnel, and patron parking for the Events. All such parking shall be nonexclusive, open to the general public, and on a first come, first served basis. Licensee acknowledges and agrees that the City does not guarantee parking for the Events.

**ARTICLE 4.**  
**RESPONSIBILITIES OF THE PARTIES**

- 4.01. City's Duties.

- a. City staff will:
  - i. Ensure all-natural turf fields located at the Complex are properly maintained as the City's budget allows.
  - ii. Prepare the Complex for Events by dragging infields twice per week, mowing as needed, and chalking and painting of the baseball fields one (1) time per week. All field preparations will be conducted Monday through Friday between 6:30 a.m. and 3:00 p.m.
  - iii. Provide and pay for any utility connections or usage of the Licensee associated with this Agreement.
  - iv. Coordinate all the practice scheduling at the Complex during the Term of this Agreement.

#### 4.02. Licensee's Duties.

- a. Licensee's staff and its subcontractors shall, at its sole cost and expense:
  - i. At the start of the Term, attend a scheduling meeting and provide within fourteen (14) days to the Director with estimated team rosters, practice field and leagues schedules. Makeup games rescheduled due to inclement weather cancellations must be approved by the Director five (5) days prior.
  - ii. Licensee shall place a premium on the ethics of its league and ensure that the coaches, participants, and parents demonstrate appropriate behaviors at all times.
  - iii. Have on file within twenty (20) days of the start of the Term, signed copies of sports ethics contracts for coaches and participants. Licensee shall also have on file signed waiver and release forms releasing the City and Licensee for any injuries (including death) or property damage resulting from participation in the Events.
  - iv. Provide copies to its coaches of a set of sports rules by the accredited league organization that represents their sport. A copy will also be provided to the City.
  - v. Provide the City with a copy of the rules of conduct, and disciplinary policy/procedures that will be adopted for the season and be placed on a league's webpage.
  - vi. Ensure coaches have access to a first aid kit near any game field of play and have a cell phone available at all times when coaching. First aid kit must include insta-cold compress, band-aids, tweezers, and wrap. Licensee shall ensure within ten (10) days of the start of the Term that any person who has direct contact with children has cleared a mandatory background check with supporting documentation on file.
  - vii. Offer skills training to league coaches on a yearly basis. Coaches shall be trained in age-appropriate sports skills, coaching techniques, and physical conditioning for their sport.
  - viii. Comply with and cause the Complex to comply with during the Term: (i) all valid federal, state, local and other governmental laws, ordinances, rules, orders and regulations generally affecting the Complex, including all rules, regulations, and requirements of the City and its



Police, Fire, Code Compliance, and Parks and Recreation Departments, (ii) any and all requirements specifically made by the City's Fire Marshal in connection with this Agreement, or a part thereof or the use thereof, and (iii) all rules, orders, and regulations of the National Board of Underwriters or other body exercising similar functions in connection with the prevention of fire or the connection of hazardous conditions that apply to the Complex. If applicable, Licensee shall comply with the requirements of all policies of insurance which, at any time, may be in force with respect to the Complex (other than any policies obtained by City and not approved in writing by Licensee) and, to the extent that Licensee has written notice thereof, with the provisions of any contracts, agreements, and restrictions affecting the Complex or a part thereof or the ownership, occupancy, or use thereof that exist as of the date this Agreement is executed.

- ix. Provide for the delivery, setup, and removal of all signs and banners, tents, tables, chairs, and the like with the times for setup and removal being approved in advance by the Director.
- x. Ensure that no Licensee-associated vehicles (including, but not limited to, vehicles being used by vendors, sponsors, subcontractors, crewmembers, or patrons) drive or park off designated roadways and on to turf areas unless expressly approved in advance by the Director.
- xi. Provide for the removal of all structures, including, but not limited to, tents, of any kind placed on or at the Complex by the Licensee in connection with the Events prior to the expiration of this Agreement.
- xii. Ensure the Complex is secured when not in use and provide the City with a key or code to access the Complex during the License Term.

## **ARTICLE 5. CONSIDERATION**

- 5.01. In consideration for Licensee's right to use the Complex for the purposes stated herein for the Term, the Licensee agrees to pay the City a License Fee of five dollars (\$5.00) per resident player and eight dollars (\$8.00) per nonresident player for the Term, regardless of the number of games or practices they utilize at the Complex. The player fee will be waived if participant has already paid toward the THF Park license fee for the License Term. Fixed fees are based on one (1) Term and will not increase during the Term of this Agreement. Payment is due to the City not later than fourteen (14) days after the first scheduled game of the Term, otherwise Licensee will forfeit use of the Complex. Payment shall be made by check or credit card, with checks being made payable to the "City of Denison."
- 5.02. Any non-league tournaments or games will be the responsibility of Licensee for paying all costs of the tournament as indicated on the Comprehensive Fee Schedule for tournament rentals. (See Director for Policy & Procedures - Fees). The consideration for an additional term beyond the Initial Term may vary; therefore, any consideration to be paid by the Licensee to the City for the right to use the Complex for any Renewal Term shall be set forth in a written amendment to this Agreement. If the Parties cannot come to a mutual agreement of the consideration to be paid to the City for the Licensee's right to use the Complex thirty (30) days before the start of a Renewal Term, then this Agreement shall automatically terminate.

**ARTICLE 6.**  
**ACCEPTANCE AND PROTECTION OF COMPLEX**

- 6.01 Licensee covenants and agrees that it shall take the Complex as it finds them and that it will leave the Complex in as good or better condition than that which exists prior to Licensee's use of the Complex, normal wear and tear from usage excepted. Licensee further covenants and agrees that it will not do or permit to be done any injury or damage to any of said Complex or suffer any waste to the Complex, normal wear and tear from usage excepted, but in the event any damage is done, Licensee hereby covenants and agrees to reimburse City therefore promptly. Licensee shall keep and maintain the Complex in a good, clean, and sanitary condition at all times. Licensee shall be responsible for all damages caused by Licensee, its agents, servants, employees, contractors, subcontractors, licensees, or invitees, normal wear and tear from usage excepted; Licensee agrees to fully repair or otherwise cure all such damages at Licensee's sole cost and expense. The City shall determine whether any damage has been done, the amount of the damage, and the reasonable costs of repairing the damage. Any damage for which Licensee is responsible hereunder shall be repaired or replaced by the Licensee within thirty (30) days of receipt of written notification from the City; all such repairs or replacements must be made to the reasonable satisfaction of the City.

**ARTICLE 7.**  
**ADVERTISING**

- 7.01. No banners, advertisements, or signs may be hung from trees, fences, or buildings or be displayed on the Complex without the express permission of the Director. In addition, Licensee covenants and agrees that no decorative or other material shall be nailed, tacked, screwed, or otherwise physically attached to any part of the City's property without the consent of the Director. The location and content of such advertisements and announcements are subject to the approval of the Director.

**ARTICLE 8.**  
**COPYRIGHT COMPLIANCE**

- 8.01. Licensee agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations issued hereunder including, but not limited to, the assumption of any and all responsibilities for paying royalties which are due for the use of copyrighted works in Licensee's performances or exhibitions to the copyright owner, or representative or said copyright owner. City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. City specifically does not authorize, permit, or condone the performance, reproduction, or other use of copyrighted materials by Licensee or its agents or licensees without the appropriate licenses or permission being secured by Licensee in advance. It is further agreed that LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD CITY HARMLESS FOR ANY CLAIMS ARISING FROM NONPAYMENT TO LICENSING AGENCIES, INCLUDING, BUT NOT LIMITED TO, ASCAP, BMI, AND SESAC OR DAMAGES ARISING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS. City expressly assumes no obligation to review or obtain appropriate licensing, and all such licensing shall be the exclusive obligation of the Licensee.

Licensee understands that they are responsible for securing any and all licenses by all artists/performers giving permission for the recordings. Licensee is responsible for both reporting and payment of any music or other licensing fees that may be required by law.

- 8.02. Licensee understands and agrees that without the proper license obtained by Licensee, there is a risk of an injunction or money damages arising from a copyright lawsuit brought by ASCAP, BMI, SESAC or any other licensing agency or copyright holder.

### **ARTICLE 9. NON-DISCRIMINATION**

- 9.01. Licensee agrees that during use of the Complex, Licensee will not subject anyone to discrimination in any way because of the person's financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status. No one can be excluded from the Events or denied the benefits of the Events because of financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status.

### **ARTICLE 10. LIABILITY AND INDEMNIFICATION**

- 10.01. City and Licensee mutually covenant and agree that City shall not be liable or responsible for any property placed on the Complex.
- 10.02. LICENSEE SHALL AND DOES AGREE TO RELEASE, INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS CITY AND CITY'S EMPLOYEES, REPRESENTATIVES, OFFICERS, AGENTS, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY (1) RELATING TO THE USE OR OCCUPANCY OF THE COMPLEX BY LICENSEE, ITS EMPLOYEES, PATRONS, AGENTS, INVITEE, LICENSEES, VOLUNTEERS, SUBCONTRACTORS, AND ANY PARTY USING THE COMPLEX OR (2) BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION ON THE PART OF LICENSEE OR ANY INVITEE, LICENSEE, EMPLOYEE, DIRECTOR, OFFICER, SERVANT, VOLUNTEER, OR CONTRACTOR OF LICENSEE, OR ANYONE LICENSEE CONTROLS OR EXERCISES CONTROL OVER OR (3) BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LICENSEE UNDER THIS AGREEMENT.
- 10.03. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO LICENSEE'S OBLIGATIONS UNDER THIS SECTION 10, NEITHER PARTY WILL BE LIABLE

TO THE OTHER FOR ANY EXEMPLARY OR PUNITIVE DAMAGES FOR BREACH OF CONTRACT.

## **ARTICLE 11. INSURANCE**

1 1.01. Licensee covenants and agrees to obtain and keep in force and to ensure its contractors, as applicable, keep in force during the term of this Agreement one or more policies of insurance as follows:

- a) Commercial General Liability
  - i. \$1,000,000 each occurrence
  - ii. \$2,000,000 aggregate
  
- b) Automobile Liability
  - i. \$1,000,000 each accident on a combined single limit, or
  - ii. \$250,000
  - iii. \$500,000
  - iv. Property Damage
  - v. Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto," defined as autos owned, hired and non-owned, when said vehicle is used in the course of the Events licensed herein.

1 1.02. Terms and Conditions Applicable to All Insurance

- a) Certificates of insurance evidencing all required insurance shall be delivered to the City at least two (2) weeks prior to the Term.
  
- b) Applicable policies shall be endorsed to name the City and the Licensee as Additional Insureds thereon, as its interests may appear. The term "City" shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
  
- c) Applicable policies shall be endorsed to name the City an Additional Insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents and volunteers as respects the contracted services.
  
- d) Certificate(s) of insurance shall document that insurance coverage specified in this Agreement are provided under applicable policies documented thereon.
  
- e) Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements.
  
- f) A minimum of thirty (30) days' notice of cancellation or material change in coverage affecting the required lines and limits of insurance shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of nonpayment of premium. Notice shall be sent to the City Manager at the address in Section 15.05.

- g) Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A: VII in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of the City's Risk Management Division.
- h) Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the City in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups must also be approved. Dedicated financial resources or letters of credit may also be acceptable to the City.
- i) Applicable policies shall each be endorsed with a waiver of subrogation in favor of the City.
- j) The City shall be entitled, upon its request and without incurring expense, to review the Licensee's insurance policies including endorsements thereto and, at the City's discretion, the Licensee may be required to provide proof of insurance premium payments.
- k) The Commercial General Liability insurance policy shall have no exclusions by endorsements that have effect on the lines and limits of insurance required in this Agreement, unless the City approves such exclusions.

**ARTICLE 12.**  
**COMPLIANCE WITH LAW AND POLICIES**

- 12.01. Licensee covenants and agrees that it shall not engage in any unlawful use of the Complex. Licensee further agrees that it shall not permit its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees or invitees to engage in any unlawful use of the Complex and Licensee shall immediately remove from the Complex any person engaging in such unlawful activities. Unlawful use of the Complex by Licensee itself shall constitute an immediate breach of this Agreement.
- 12.02. Licensee shall comply with all City regulations, policies, and specific requirements for the Events and shall coordinate with City staff with regard to arrangements for site use. Licensee covenants and agrees that during the Term of this Agreement that if the City calls to the attention of Licensee any such violation on the part of Licensee or any person employed by or admitted to said Complex by said Licensee, then Licensee shall immediately desist from and correct such violation or vacate the Complex.
- 12.03. Each party shall be responsible for obtaining and maintaining any and all applicable permits, licenses, or approvals necessary to fulfill its own individual obligations under this Agreement in accordance with any local, state, or federal statutes, rules, or regulations.

**ARTICLE 13.**  
**RIGHT OF ENTRY**

- 13.01. At all times during the Term of this Agreement, City shall have the right, through its agents and representatives, to enter into and upon the Complex at any time to fulfill its obligations herein and during reasonable business hours for the purpose of examining and inspecting the same for the

purpose of determining whether Licensee shall have complied with all of its obligations hereunder in respect to the use of the Complex.

- 13.02. During any inspection, City may perform any obligations that City is authorized or required to perform under the terms of this Agreement or pursuant to its governmental duties under federal state or local laws, rules, or regulations.

#### **ARTICLE 14.**

#### **CHARITABLE IMMUNITY/ LIMITATION OF LANDOWNERS' LIABILITY**

- 14.01. Licensee agrees that if it is a charitable organization, corporation, entity or individual enterprise having, claiming or entitled to any immunity, exemption (statutory or otherwise) or limitation from and against liability for damage or injury to property or persons under the provisions of the Charitable Immunity and Liability Act of 1987, C.P. R.C., 84.001 et seq., or other applicable law, that Licensee hereby expressly waives its right to assert or plead defensively any such immunity or limitation of liability as against City.
- 14.02. Licensee agrees, consents and acknowledges that City is a Landowner under the Recreational Use Statute, C.P. R.C., 75.001 et seq., or other applicable law, and does not waive any immunity or limitation for liability by entering into this Agreement nor would have entered into this Agreement if this provision was not applicable or enforceable.

#### **ARTICLE 15.**

#### **MISCELLANEOUS PROVISIONS**

- 15.01. Immunity. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15.02. Assignment/Non-Transferable. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City.
- 15.03. Successors and Assigns. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 15.04. Execution and Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 15.05. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand—delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To the City of Denison:

City of Denison  
Attn: City Manager  
300 West Main St.  
Denison, Texas, 75020

With Copy to:

Messer Fort, PLLC  
Attn: Julie Fort  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

To Licensee:

Denison Youth Sports  
Attn: Bianca Crouse  
69 Crimson Ln  
Calera, OK 74730

- 15.06. Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 15.07. Fiscal Funding Out. If, for any reason, at any time during any term of this Agreement, the City Council fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement, the City may terminate this Agreement pursuant to this section following (i) delivery by the City of written notice of the City's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.
- 15.08. Independent Contractor. Licensee shall operate hereunder as an independent contractor as to all rights and privileges herein contained and nothing herein shall be construed as creating a partnership or joint enterprise between Licensee and City.
- 15.09. Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 15.10. Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

- 15.11. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- 15.12. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.
- 15.13. Entire Agreement. This Agreement (including all attachments, schedules, and exhibits attached hereto) contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for the use of the Complex only and not any other matters that may exist between the Parties past, present or future.
- 15.14. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.
- 15.15. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 15.16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 15.17. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 15.18. Force Majeure. Neither Licensee nor the City of Denison shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.
- 15.19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.



15.20. Savings/Severability. 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 hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.21. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiples, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

DENISON YOUTH SPORTS

CITY OF DENISON, TEXAS

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Bobby Atteberry, Interim City Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Christine Wallentine, City Clerk

**EXHIBIT "A"**  
**Waterloo Baseball Complex**



# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on entering into an agreement with Boys and Girls Club of Denison for the 2024 fall and 2025 spring youth recreational softball league provider at Texoma Health Foundation Park and Culpepper Softball Fields (Contract Numbers 2024-0068 and 2024-0069) and authorize the Interim City Manager to execute the same.

## Staff Contact

Andrew Means, Recreation Manager  
ameans@denisontx.gov  
903-465-2720 Ext. 2034

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## Summary

- Staff initiated a request for proposals and invited proposals for the 2024 fall and 2025 spring youth recreational softball league provider at Texoma Health Foundation Park and Culpepper Softball Fields on April 1, 2024.
- The program scope of work covers organizational structure, experience, league overview, program fees, and communication effectiveness and methods.
- The City received proposals from two organizations, Boys and Girls Club of Denison and Texoma Tournaments and Recreation.
- Staff assessed and awarded Boys and Girls Club of Denison a higher overall score.

## Staff Recommendation

Staff recommends entering into an agreement with Boys and Girls Club of Denison.

## Recommended Motion

“I move to approve entering into an agreement with Boys and Girls Club of Denison for the 2024 fall and 2025 spring youth recreational baseball league provider at Texoma Health Foundation Park and Culpepper Softball Fields and authorize the Interim City Manager to execute the same.”

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## Background Information and Analysis

Historically, the Denison Parks and Recreation Department coordinated the recreational softball leagues in Denison until the year 2021. To maximize City resources and optimize staff operations, the City decided to partner with the Boys and Girls Club of Denison. This is an industry standard for city entities to work with local youth organizations to facilitate recreational sports. Boys and Girls Club of Denison is currently in its 4<sup>th</sup> year of coordinating the softball program. As of recent, multiple organizations have inquired about providing the same service at the parks. Due to the number of requests, a RFP was created to solicit providers. Boys and Girls Club of Denison was one of two organizations to submit a proposal. The City of Denison scored each organization, with Boys and Girls Club of Denison grading the highest, and is recommending moving forward with their services at THF Park and Culpepper Softball Fields.

## Financial Considerations

Boys and Girls Club of Denison will pay a \$5 per player fee for Denison residents and \$8 per player fee for non-residents each season to the City of Denison.

**Prior Board or Council Action**

None.

**Alternatives**

Council can reject the proposal from Boys and Girls Club of Denison and re-advise staff to either choosing an alternate proposer or have staff create an alternative program and go back out for RFP.

**LICENSE AGREEMENT WITH BOYS AND GIRLS CLUB OF  
DENISON FOR USE OF TEXOMA HEALTH FOUNDATION  
PARK BASEBALL/SOFTBALL COMPLEX**

This LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF DENISON, TEXAS** ("City"), a home-rule municipal corporation of the State of Texas, and **BOYS AND GIRLS CLUB OF DENISON** ("Licensee"), a Texas nonprofit corporation. City and Licensee shall be collectively referred to herein as the "Parties".

**WHEREAS**, the City owns TEXOMA HEALTH FOUNDATION PARK located at 3801 US Highway 75 in Denison, Texas 75020, which consists of five (5) baseball/softball fields for use as a recreational area, including public restrooms, batting cages, umpire room, common areas and parking lot (the "Complex"), as depicted on Exhibit "A" attached hereto and incorporated herein for all purposes; and

**WHEREAS**, Licensee is a nonprofit tax-exempt organization established to promote and develop the game of softball for the youth of the Texoma area, including the City; and

**WHEREAS**, to serve its mission, the Licensee sponsors a recreational softball program designed to provide healthy activity, emphasizing enjoyment and development over competition for youth softball players and offers a competitive softball program that allows players the opportunity to advance their skills through higher competition (hereinafter "Events"); and

**WHEREAS**, Licensee wishes to utilize the Complex for the Events from August 1, 2024, through July 31, 2025, as further set forth below; and

**WHEREAS**, the City desires to foster an environment for the combination of talents and resources offered by Licensee; and

**WHEREAS**, due to the limited number of personnel and limited funding within the Parks and Recreation Department, partnering with agencies such as Licensee allows the City to greatly increase athletic sports opportunities for the City's residents; and

**WHEREAS**, City desires to recognize partnering agencies within the community that will be given priority use of the parks and recreation facilities to ensure that varied sporting programs may be offered by the City over and above those directly implemented by City staff; and

**WHEREAS**, both Parties desire to foster sportsmanship, skills, teamwork and a sense of community while providing opportunities for young athletes to participate within any sport regardless of his or her physical talents or abilities; and

**WHEREAS**, Events that Licensee will host promote the recreational advantages of the sport of softball and the Complex; therefore, the use of the Complex for Events serves the overall recreational purpose of the Complex; and

**WHEREAS**, the Events will be open and free to public spectators; and

**WHEREAS**, the Parties desire to enter into this Agreement to establish the roles and obligations of each Party; and

**WHEREAS**, the City desires to provide Licensee with use of the Complex for the purposes stated herein and in accordance with the terms of this Agreement.

**WHEREAS**, in consideration of the mutual promises and covenants herein and the payment to be made from City to Licensee, Licensee agrees to perform all services as set forth in the City's Request for Proposals for 2024 Fall and 2025 Spring Youth Recreational Softball League Provider, in accordance with the Contract Documents listed below, but generally described as providing a youth softball league (the "Services").

The "Contract Documents" consist of the following items, which items, Licensee acknowledges have previously been provided to or created by Licensee and which items are incorporated into this Agreement by reference as though fully set out in this Agreement:

- A. This Agreement.
- B. City's Request for Proposals including all attachments, specifications, and all addenda issued prior to execution of this Agreement.
- C. Licensee's Executed Proposal in response to City's Request for Proposals.
- D. Proposer's Affidavit of Non-Collusion.
- E. Conflict of Interest Questionnaire Coversheet.
- F. Conflict of Interest Questionnaire.
- G. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- H. All required Insurance Certificates, and affidavits.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

## **ARTICLE 1. COMPLEX**

- 1.01. For and in consideration of the "License Fee" (as hereinafter defined) to be paid hereunder and other valuable promises, covenants, and agreements, the City hereby grants to Licensee a nonexclusive right to use the Complex. Licensee shall use the Complex solely for the purposes of setting up, conducting, and taking down the Events in accordance with the terms of this Agreement.
- 1.02. Notwithstanding anything to the contrary, in the event that inclement weather causes an unsafe playing condition on any of the fields at the Complex, the City will consult with the Licensee concerning the safety of such play and, if deemed necessary by the City in its sole and absolute discretion, the City may cancel or delay Events on any one or all of fields and/or the Complex.
- 1.03. This Agreement does not constitute a sale, lease, assignment or disposal of the Complex in any means whatsoever but is merely intended to grant the Licensee the right to use the Complex in accordance with the terms stated herein.

**ARTICLE 2.**  
**TERM AND TERMINATION**

- 2.01. Subject to earlier termination as hereinafter set forth, this Agreement shall commence on August 1, 2024, and expire on July 31, 2025, ("Initial Term"). Licensee's use of the Complex shall not be continuous through the Initial Term, but shall be restricted to Events scheduled on Mondays, Tuesdays, Wednesdays, and Thursdays from 6:00 p.m. until 10:00 p.m. at the Complex, subject to availability of the Complex, as determined by the Director of the City's Parks and Recreation Department or that person's designee ("Director"). Makeup games shall be determined on an as needed basis and if available, with five (5) days advance written notice to the Director.
- 2.02. In the event that Licensee fails to comply with any of the terms and conditions of this Agreement, City shall have the right, without notice, to declare the Agreement immediately terminated. In the event of such termination, all rights and privileges of the Licensee shall cease and terminate, and Licensee shall immediately cease use of the Complex. All funds owed to the City shall be due and payable by Licensee no later than the tenth (10th) calendar day after the date of termination.
- 2.03. Either party may terminate this Agreement, with or without cause, with thirty (30) days' written notice to the other party.
- 2.04. At the end of the Initial Term, the City shall have the sole right and option to renew for four (4) one (1) year terms (each a "Renewal Term" and collectively, the "Term") upon thirty (30) days' written notice to the Licensee prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be.

**ARTICLE 3.**  
**PERMITTED USES**

- 3.01. The Licensee shall have full use of the Complex during the Term to set up, prepare, and conduct the Events, which may include, but not be limited to, the placement of signs and banners; erection of tents for Event officials, volunteers, and refreshments; and other activities that will benefit the conduct of the Events.
- 3.02. Any and all activities and uses hereunder are subject to all applicable laws, rules and regulations, and approval by the Director.
- 3.03. The Licensee shall have shared use of all parking spaces available at the Complex, as detailed on **Exhibit "A"**, to provide for Licensee, Licensee's Event personnel, and patron parking for the Events. All such parking shall be nonexclusive, open to the general public, and on a first come, first served basis. Licensee acknowledges and agrees that the City does not guarantee parking for the Events.

**ARTICLE 4.**  
**RESPONSIBILITIES OF THE PARTIES**

- 4.01. City's Duties.
- a. City staff will:



- i. Ensure all-natural and artificial turf fields located at the Complex are properly maintained as the City's budget allows.
- ii. Prepare the Complex for Events by mowing, painting foul lines, and setting bases and pitching mounds at specified distances.
- iii. Coordinate light schedules as needed.
- iv. Provide and pay for any utility connections or usage of the Licensee associated with this Agreement.

#### 4.02. Licensee's Duties.

##### a. Licensee's staff and its subcontractors shall, at its sole cost and expense:

- i. At the start of the Term, attend a scheduling meeting and provide within fourteen (14) days to the Director with estimated team rosters, practice field and leagues schedules. Makeup games rescheduled due to inclement weather cancellations must be approved by the Director five (5) days prior.
- ii. Licensee shall place a premium on the ethics of its league and ensure that the coaches, participants, and parents demonstrate appropriate behaviors at all times.
- iii. Have on file within twenty (20) days of the start of the Term, signed copies of sports ethics contracts for coaches and participants. Licensee shall also have on file signed waiver and release forms releasing the City and Licensee for any injuries (including death) or property damage resulting from participation in the Events.
- iv. Provide copies to its coaches of a set of sports rules by the accredited league organization that represents their sport. A copy will also be provided to the City.
- v. Provide the City with a copy of the rules of conduct, and disciplinary policy/procedures that will be adopted for the season and be placed on a league's webpage.
- vi. Ensure coaches have access to a first aid kit near any game field of play and have a cell phone available at all times when coaching. First aid kit must include insta-cold compress, band-aids, tweezers, and wrap. Licensee shall ensure within ten (10) days of the start of the Term that any person who has direct contact with children has cleared a mandatory background check with supporting documentation on file.
- vii. Offer skills training to league coaches on a yearly basis. Coaches shall be trained in age-appropriate sports skills, coaching techniques, and physical conditioning for their sport.
- viii. Comply with and cause the Complex to comply with during the Term: (i) all valid federal, state, local and other governmental laws, ordinances, rules, orders and regulations generally affecting the Complex, including all rules, regulations, and requirements of the City and its Police, Fire, Code Compliance, and Parks and Recreation Departments, (ii) any and all requirements specifically made by the City's Fire Marshal in connection with this



Agreement, or a part thereof or the use thereof, and (iii) all rules, orders, and regulations of the National Board of Underwriters or other body exercising similar functions in connection with the prevention of fire or the connection of hazardous conditions that apply to the Complex. If applicable, Licensee shall comply with the requirements of all policies of insurance which, at any time, may be in force with respect to the Complex (other than any policies obtained by City and not approved in writing by Licensee) and, to the extent that Licensee has written notice thereof, with the provisions of any contracts, agreements, and restrictions affecting the Complex or a part thereof or the ownership, occupancy, or use thereof that exist as of the date this Agreement is executed.

- ix. Provide for the delivery, setup, and removal of all signs and banners, tents, tables, chairs, and the like with the times for setup and removal being approved in advance by the Director.
- x. Ensure that no Licensee-associated vehicles (including, but not limited to, vehicles being used by vendors, sponsors, subcontractors, crewmembers, or patrons) drive or park off designated roadways and on to turf areas unless expressly approved in advance by the Director.
- xi. Provide for the removal of all structures, including, but not limited to, tents, of any kind placed on or at the Complex by the Licensee in connection with the Events prior to the expiration of this Agreement.

## **ARTICLE 5. CONSIDERATION**

- 5.01. In consideration for Licensee's right to use the Complex for the purposes stated herein for the Term, the Licensee agrees to pay the City a License Fee of five dollars (\$5.00) per resident player and eight dollars (\$8.00) per nonresident player for the Term, regardless of the number of games or practices they utilize at the Complex. Fixed fees are based on one (1) Term and will not increase during the Term of this Agreement. Payment is due to the City not later than fourteen (14) days after the first scheduled game of the Term, otherwise Licensee will forfeit use of the Complex. Payment shall be made by check or credit card, with checks being made payable to the "City of Denison."
- 5.02. Any non-league tournaments or games will be the responsibility of Licensee for paying all costs of the tournament as indicated on the Comprehensive Fee Schedule for tournament rentals. (See Director for Policy & Procedures - Fees). The consideration for an additional term beyond the Initial Term may vary; therefore, any consideration to be paid by the Licensee to the City for the right to use the Complex for any Renewal Term shall be set forth in a written amendment to this Agreement. If the Parties cannot come to a mutual agreement of the consideration to be paid to the City for the Licensee's right to use the Complex thirty (30) days before the start of a Renewal Term, then this Agreement shall automatically terminate.

## **ARTICLE 6. ACCEPTANCE AND PROTECTION OF COMPLEX**

- 6.01 Licensee covenants and agrees that it shall take the Complex as it finds them and that it will leave the Complex in as good or better condition than that which exists prior to Licensee's use of the

Complex, normal wear and tear from usage excepted. Licensee further covenants and agrees that it will not do or permit to be done any injury or damage to any of said Complex or suffer any waste to the Complex, normal wear and tear from usage excepted, but in the event any damage is done, Licensee hereby covenants and agrees to reimburse City therefore promptly. Licensee shall keep and maintain the Complex in a good, clean, and sanitary condition at all times. Licensee shall be responsible for all damages caused by Licensee, its agents, servants, employees, contractors, subcontractors, licensees, or invitees, normal wear and tear from usage excepted; Licensee agrees to fully repair or otherwise cure all such damages at Licensee's sole cost and expense. The City shall determine whether any damage has been done, the amount of the damage, and the reasonable costs of repairing the damage. Any damage for which Licensee is responsible hereunder shall be repaired or replaced by the Licensee within thirty (30) days of receipt of written notification from the City; all such repairs or replacements must be made to the reasonable satisfaction of the City.

## **ARTICLE 7. ADVERTISING**

- 7.01. No banners, advertisements, or signs may be hung from trees, fences, or buildings or be displayed on the Complex without the express permission of the Director. In addition, Licensee covenants and agrees that no decorative or other material shall be nailed, tacked, screwed, or otherwise physically attached to any part of the City's property without the consent of the Director. The location and content of such advertisements and announcements are subject to the approval of the Director.

## **ARTICLE 8. COPYRIGHT COMPLIANCE**

- 8.01. Licensee agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations issued hereunder including, but not limited to, the assumption of any and all responsibilities for paying royalties which are due for the use of copyrighted works in Licensee's performances or exhibitions to the copyright owner, or representative or said copyright owner. City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. City specifically does not authorize, permit, or condone the performance, reproduction, or other use of copyrighted materials by Licensee or its agents or licensees without the appropriate licenses or permission being secured by Licensee in advance. It is further agreed that LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD CITY HARMLESS FOR ANY CLAIMS ARISING FROM NONPAYMENT TO LICENSING AGENCIES, INCLUDING, BUT NOT LIMITED TO, ASCAP, BMI, AND SESAC OR DAMAGES ARISING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS. City expressly assumes no obligation to review or obtain appropriate licensing, and all such licensing shall be the exclusive obligation of the Licensee.

Licensee understands that they are responsible for securing any and all licenses by all artists/performers giving permission for the recordings. Licensee is responsible for both reporting and payment of any music or other licensing fees that may be required by law.

- 8.02. Licensee understands and agrees that without the proper license obtained by Licensee, there is a risk of an injunction or money damages arising from a copyright lawsuit brought by ASCAP, BMI, SESAC or any other licensing agency or copyright holder.

**ARTICLE 9.  
NON-DISCRIMINATION**

- 9.01. Licensee agrees that during use of the Complex, Licensee will not subject anyone to discrimination in any way because of the person's financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status. No one can be excluded from the Events or denied the benefits of the Events because of financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status.

**ARTICLE 10.  
LIABILITY AND INDEMNIFICATION**

- 10.01. City and Licensee mutually covenant and agree that City shall not be liable or responsible for any property placed on the Complex.
- 10.02. LICENSEE SHALL AND DOES AGREE TO RELEASE, INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS CITY AND CITY'S EMPLOYEES, REPRESENTATIVES, OFFICERS, AGENTS, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY (1) RELATING TO THE USE OR OCCUPANCY OF THE COMPLEX BY LICENSEE, ITS EMPLOYEES, PATRONS, AGENTS, INVITEE, LICENSEES, VOLUNTEERS, SUBCONTRACTORS, AND ANY PARTY USING THE COMPLEX OR (2) BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION ON THE PART OF LICENSEE OR ANY INVITEE, LICENSEE, EMPLOYEE, DIRECTOR, OFFICER, SERVANT, VOLUNTEER, OR CONTRACTOR OF LICENSEE, OR ANYONE LICENSEE CONTROLS OR EXERCISES CONTROL OVER OR (3) BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LICENSEE UNDER THIS AGREEMENT.
- 10.03. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO LICENSEE'S OBLIGATIONS UNDER THIS SECTION 10, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY EXEMPLARY OR PUNITIVE DAMAGES FOR BREACH OF CONTRACT.

## **ARTICLE 11. INSURANCE**

1 1.01. Licensee covenants and agrees to obtain and keep in force and to ensure its contractors, as applicable, keep in force during the term of this Agreement one or more policies of insurance as follows:

- a) Commercial General Liability
  - i. \$1,000,000 each occurrence
  - ii. \$2,000,000 aggregate
  
- b) Automobile Liability
  - i. \$1,000,000 each accident on a combined single limit, or
  - ii. \$250,000
  - iii. \$500,000
  - iv. Property Damage
  - v. Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto," defined as autos owned, hired and non-owned, when said vehicle is used in the course of the Events licensed herein.

1 1.02. Terms and Conditions Applicable to All Insurance

- a) Certificates of insurance evidencing all required insurance shall be delivered to the City at least two (2) weeks prior to the Term.
  
- b) Applicable policies shall be endorsed to name the City and the Licensee as Additional Insureds thereon, as its interests may appear. The term "City" shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
  
- c) Applicable policies shall be endorsed to name the City an Additional Insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents and volunteers as respects the contracted services.
  
- d) Certificate(s) of insurance shall document that insurance coverage specified in this Agreement are provided under applicable policies documented thereon.
  
- e) Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements.
  
- f) A minimum of thirty (30) days' notice of cancellation or material change in coverage affecting the required lines and limits of insurance shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of nonpayment of premium. Notice shall be sent to the City Manager at the address in Section 15.05.
  
- g) Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A: VII in the current A.M. Best Key Rating Guide or have reasonably

equivalent financial strength and solvency to the satisfaction of the City's Risk Management Division.

- h) Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the City in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups must also be approved. Dedicated financial resources or letters of credit may also be acceptable to the City.
- i) Applicable policies shall each be endorsed with a waiver of subrogation in favor of the City.
- j) The City shall be entitled, upon its request and without incurring expense, to review the Licensee's insurance policies including endorsements thereto and, at the City's discretion, the Licensee may be required to provide proof of insurance premium payments.
- k) The Commercial General Liability insurance policy shall have no exclusions by endorsements that have effect on the lines and limits of insurance required in this Agreement, unless the City approves such exclusions.

**ARTICLE 12.  
COMPLIANCE WITH LAW AND POLICIES**

- 12.01. Licensee covenants and agrees that it shall not engage in any unlawful use of the Complex. Licensee further agrees that it shall not permit its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees or invitees to engage in any unlawful use of the Complex and Licensee shall immediately remove from the Complex any person engaging in such unlawful activities. Unlawful use of the Complex by Licensee itself shall constitute an immediate breach of this Agreement.
- 12.02. Licensee shall comply with all City regulations, policies, and specific requirements for the Events and shall coordinate with City staff with regard to arrangements for site use. Licensee covenants and agrees that during the Term of this Agreement that if the City calls to the attention of Licensee any such violation on the part of Licensee or any person employed by or admitted to said Complex by said Licensee, then Licensee shall immediately desist from and correct such violation or vacate the Complex.
- 12.03. Each party shall be responsible for obtaining and maintaining any and all applicable permits, licenses, or approvals necessary to fulfill its own individual obligations under this Agreement in accordance with any local, state, or federal statutes, rules, or regulations.

**ARTICLE 13.  
RIGHT OF ENTRY**

- 13.01. At all times during the Term of this Agreement, City shall have the right, through its agents and representatives, to enter into and upon the Complex at any time to fulfill its obligations herein and during reasonable business hours for the purpose of examining and inspecting the same for the purpose of determining whether Licensee shall have complied with all of its obligations hereunder in respect to the use of the Complex.

- 13.02. During any inspection, City may perform any obligations that City is authorized or required to perform under the terms of this Agreement or pursuant to its governmental duties under federal state or local laws, rules, or regulations.

**ARTICLE 14.**  
**CHARITABLE IMMUNITY/ LIMITATION OF LANDOWNERS' LIABILITY**

- 14.01. Licensee agrees that if it is a charitable organization, corporation, entity or individual enterprise having, claiming or entitled to any immunity, exemption (statutory or otherwise) or limitation from and against liability for damage or injury to property or persons under the provisions of the Charitable Immunity and Liability Act of 1987, C.P. R.C., 84.001 et seq., or other applicable law, that Licensee hereby expressly waives its right to assert or plead defensively any such immunity or limitation of liability as against City.
- 14.02. Licensee agrees, consents and acknowledges that City is a Landowner under the Recreational Use Statute, C.P. R.C., 75.001 et seq., or other applicable law, and does not waive any immunity or limitation for liability by entering into this Agreement nor would have entered into this Agreement if this provision was not applicable or enforceable.

**ARTICLE 15.**  
**MISCELLANEOUS PROVISIONS**

- 15.01. Immunity. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15.02. Assignment/Non-Transferable. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City.
- 15.03. Successors and Assigns. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 15.04. Execution and Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 15.05. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand—delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To the City of Denison:

City of Denison  
Attn: City Manager  
300 West Main St.  
Denison, Texas, 75020

With Copy to:

Messer Fort, PLLC  
Attn: Julie Fort  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

To Licensee:

Boys and Girls Club of Denison  
Attn: Ron Nixon  
2100 South Mirick Ave  
Denison, TX 75020

- 15.06. Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 15.07. Fiscal Funding Out. If, for any reason, at any time during any term of this Agreement, the City Council fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement, the City may terminate this Agreement pursuant to this section following (i) delivery by the City of written notice of the City's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.
- 15.08. Independent Contractor. Licensee shall operate hereunder as an independent contractor as to all rights and privileges herein contained and nothing herein shall be construed as creating a partnership or joint enterprise between Licensee and City.
- 15.09. Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 15.10. Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- 15.11. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

- 15.12. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.
- 15.13. Entire Agreement. This Agreement (including all attachments, schedules, and exhibits attached hereto) contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for the use of the Complex only and not any other matters that may exist between the Parties past, present or future.
- 15.14. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.
- 15.15. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 15.16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 15.17. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 15.18. Force Majeure. Neither Licensee nor the City of Denison shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.
- 15.19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- 15.20. Savings/Severability. 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 hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.



15.21. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiples, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

BOYS AND GIRLS CLUB OF DENISON

CITY OF DENISON, TEXAS

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Bobby Atteberry, Interim City Manager

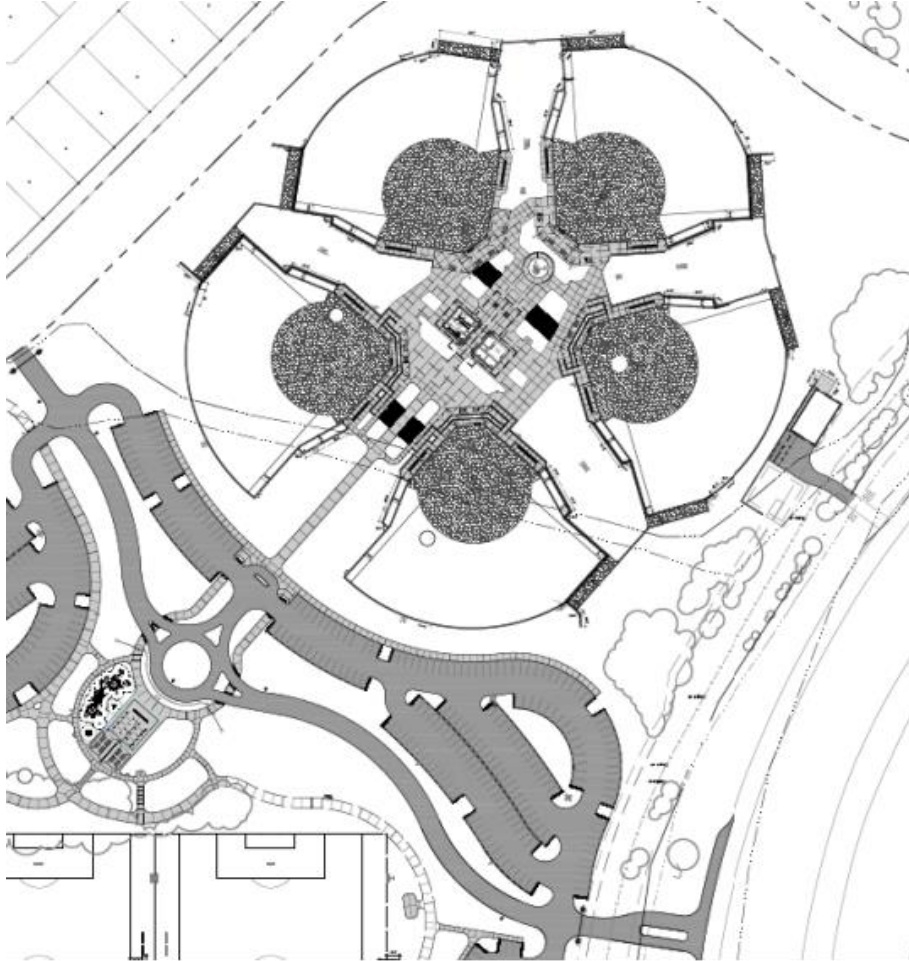
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ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Christine Wallentine, City Clerk

**EXHIBIT "A"**  
**Texoma Health Foundation Park Baseball/Softball Fields**



**LICENSE AGREEMENT WITH BOYS AND GIRLS CLUB OF  
DENISON FOR USE OF CULPEPPER SOFTBALL COMPLEX**

This LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF DENISON, TEXAS** ("City"), a home-rule municipal corporation of the State of Texas, and **BOYS AND GIRLS CLUB OF DENISON** ("Licensee"), a Texas nonprofit corporation. City and Licensee shall be collectively referred to herein as the "Parties".

**WHEREAS**, the City owns Culpepper Softball Complex located at 1625 S. French Ave in Denison, Texas 75020, which consists of two (2) softball fields for use as a recreational area, including public restrooms, batting cages, press box, concession building, storage building, common areas and parking lot (the "Complex"), as depicted on **Exhibit "A"** attached hereto and incorporated herein for all purposes; and

**WHEREAS**, Licensee is a nonprofit tax-exempt organization established to promote and develop the game of softball for the youth of the Texoma area, including the City; and

**WHEREAS**, to serve its mission, the Licensee sponsors a recreational softball program designed to provide healthy activity, emphasizing enjoyment and development over competition for youth softball players and offers a competitive softball program that allows players the opportunity to advance their skills through higher competition (hereinafter "Events"); and

**WHEREAS**, Licensee wishes to utilize the Complex for the Events from August 1, 2024, through July 31, 2025, as further set forth below; and

**WHEREAS**, the City desires to foster an environment for the combination of talents and resources offered by Licensee; and

**WHEREAS**, due to the limited number of personnel and limited funding within the Parks and Recreation Department, partnering with agencies such as Licensee allows the City to greatly increase athletic sports opportunities for the City's residents; and

**WHEREAS**, City desires to recognize partnering agencies within the community that will be given priority use of the parks and recreation facilities to ensure that varied sporting programs may be offered by the City over and above those directly implemented by City staff; and

**WHEREAS**, both Parties desire to foster sportsmanship, skills, teamwork and a sense of community while providing opportunities for young athletes to participate within any sport regardless of his or her physical talents or abilities; and

**WHEREAS**, Events that Licensee will host promote the recreational advantages of the sport of softball and the Complex; therefore, the use of the Complex for Events serves the overall recreational purpose of the Complex; and

**WHEREAS**, the Events will be open and free to public spectators; and

**WHEREAS**, the Parties desire to enter into this Agreement to establish the roles and obligations of each Party; and

**WHEREAS**, the City desires to provide Licensee with use of the Complex for the purposes stated herein and in accordance with the terms of this Agreement.

**WHEREAS**, in consideration of the mutual promises and covenants herein and the payment to be made from City to Licensee, Licensee agrees to perform all services as set forth in the City's Request for Proposals for 2024 Fall and 2025 Spring Youth Recreational Softball League Provider, in accordance with the Contract Documents listed below, but generally described as providing a youth softball league (the "Services").

The "Contract Documents" consist of the following items, which items, Licensee acknowledges have previously been provided to or created by Licensee and which items are incorporated into this Agreement by reference as though fully set out in this Agreement:

- A. This Agreement.
- B. City's Request for Proposals including all attachments, specifications, and all addenda issued prior to execution of this Agreement.
- C. Licensee's Executed Proposal in response to City's Request for Proposals.
- D. Proposer's Affidavit of Non-Collusion.
- E. Conflict of Interest Questionnaire Coversheet.
- F. Conflict of Interest Questionnaire.
- G. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- H. All required Insurance Certificates, and affidavits.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

## **ARTICLE 1. COMPLEX**

- 1.01. For and in consideration of the "License Fee" (as hereinafter defined) to be paid hereunder and other valuable promises, covenants, and agreements, the City hereby grants to Licensee a nonexclusive right to use the Complex. Licensee shall use the Complex solely for the purposes of setting up, conducting, and taking down the Events in accordance with the terms of this Agreement.
- 1.02. Notwithstanding anything to the contrary, in the event that inclement weather causes an unsafe playing condition on any of the fields at the Complex, the City will consult with the Licensee concerning the safety of such play and, if deemed necessary by the City in its sole and absolute discretion, the City may cancel or delay Events on any one or all of fields and/or the Complex.
- 1.03. This Agreement does not constitute a sale, lease, assignment or disposal of the Complex in any means whatsoever but is merely intended to grant the Licensee the right to use the Complex in accordance with the terms stated herein.

**ARTICLE 2.**  
**TERM AND TERMINATION**

- 2.01. Subject to earlier termination as hereinafter set forth, this Agreement shall commence on August 1, 2024, and expire on July 31, 2025, ("Initial Term"). Licensee's use of the Complex shall not be continuous through the Initial Term, but shall be restricted to Events scheduled Monday through Friday from 5:00 p.m. until 10:00 p.m. during the Fall and Spring Seasons, and Saturday and Sunday from 8:00 a.m. until 10:00 p.m. during the Spring Season at the Complex, subject to availability of the Complex, as determined by the Director of the City's Parks and Recreation Department or that person's designee ("Director"). Makeup games shall be determined on an as needed basis and if available, with five (5) days advance written notice to the Director.
- 2.02. In the event that Licensee fails to comply with any of the terms and conditions of this Agreement, City shall have the right, without notice, to declare the Agreement immediately terminated. In the event of such termination, all rights and privileges of the Licensee shall cease and terminate, and Licensee shall immediately cease use of the Complex. All funds owed to the City shall be due and payable by Licensee no later than the tenth (10th) calendar day after the date of termination.
- 2.03. Either party may terminate this Agreement, with or without cause, with thirty (30) days' written notice to the other party.
- 2.04. At the end of the Initial Term, the City shall have the sole right and option to renew for four (4) one (1) year terms (each a "Renewal Term" and collectively, the "Term") upon thirty (30) days' written notice to the Licensee prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be.

**ARTICLE 3.**  
**PERMITTED USES**

- 3.01. The Licensee shall have full use of the Complex during the Term to set up, prepare, and conduct the Events, which may include, but not be limited to, the placement of signs and banners; erection of tents for Event officials, volunteers, and refreshments; and other activities that will benefit the conduct of the Events.
- 3.02. Any and all activities and uses hereunder are subject to all applicable laws, rules and regulations, and approval by the Director.
- 3.03. The Licensee shall have shared use of all parking spaces available at the Complex, as detailed on **Exhibit "A"**, to provide for Licensee, Licensee's Event personnel, and patron parking for the Events. All such parking shall be nonexclusive, open to the general public, and on a first come, first served basis. Licensee acknowledges and agrees that the City does not guarantee parking for the Events.

**ARTICLE 4.**  
**RESPONSIBILITIES OF THE PARTIES**

- 4.01. City's Duties.

- a. City staff will:
  - i. Ensure all-natural turf fields located at the Complex are properly maintained as the City's budget allows.
  - ii. Prepare the Complex for Events by dragging infields twice per week, mowing as needed, and chalking and painting of the softball fields one (1) time per week. All field preparations will be conducted Monday through Friday between 6:30 a.m. and 3:00 p.m.
  - iii. Provide and pay for any utility connections or usage of the Licensee associated with this Agreement.
  - iv. Coordinate all the practice scheduling at the Complex during the Term of this Agreement.

#### 4.02. Licensee's Duties.

- a. Licensee's staff and its subcontractors shall, at its sole cost and expense:
  - i. At the start of the Term, attend a scheduling meeting and provide within fourteen (14) days to the Director with estimated team rosters, practice field and leagues schedules. Makeup games rescheduled due to inclement weather cancellations must be approved by the Director five (5) days prior.
  - ii. Licensee shall place a premium on the ethics of its league and ensure that the coaches, participants, and parents demonstrate appropriate behaviors at all times.
  - iii. Have on file within twenty (20) days of the start of the Term, signed copies of sports ethics contracts for coaches and participants. Licensee shall also have on file signed waiver and release forms releasing the City and Licensee for any injuries (including death) or property damage resulting from participation in the Events.
  - iv. Provide copies to its coaches of a set of sports rules by the accredited league organization that represents their sport. A copy will also be provided to the City.
  - v. Provide the City with a copy of the rules of conduct, and disciplinary policy/procedures that will be adopted for the season and be placed on a league's webpage.
  - vi. Ensure coaches have access to a first aid kit near any game field of play and have a cell phone available at all times when coaching. First aid kit must include insta-cold compress, band-aids, tweezers, and wrap. Licensee shall ensure within ten (10) days of the start of the Term that any person who has direct contact with children has cleared a mandatory background check with supporting documentation on file.
  - vii. Offer skills training to league coaches on a yearly basis. Coaches shall be trained in age-appropriate sports skills, coaching techniques, and physical conditioning for their sport.
  - viii. Comply with and cause the Complex to comply with during the Term: (i) all valid federal, state, local and other governmental laws, ordinances, rules, orders and regulations generally affecting the Complex, including all rules, regulations, and requirements of the City and its

Police, Fire, Code Compliance, and Parks and Recreation Departments, (ii) any and all requirements specifically made by the City's Fire Marshal in connection with this Agreement, or a part thereof or the use thereof, and (iii) all rules, orders, and regulations of the National Board of Underwriters or other body exercising similar functions in connection with the prevention of fire or the connection of hazardous conditions that apply to the Complex. If applicable, Licensee shall comply with the requirements of all policies of insurance which, at any time, may be in force with respect to the Complex (other than any policies obtained by City and not approved in writing by Licensee) and, to the extent that Licensee has written notice thereof, with the provisions of any contracts, agreements, and restrictions affecting the Complex or a part thereof or the ownership, occupancy, or use thereof that exist as of the date this Agreement is executed.

- ix. Provide for the delivery, setup, and removal of all signs and banners, tents, tables, chairs, and the like with the times for setup and removal being approved in advance by the Director.
- x. Ensure that no Licensee-associated vehicles (including, but not limited to, vehicles being used by vendors, sponsors, subcontractors, crewmembers, or patrons) drive or park off designated roadways and on to turf areas unless expressly approved in advance by the Director.
- xi. Provide for the removal of all structures, including, but not limited to, tents, of any kind placed on or at the Complex by the Licensee in connection with the Events prior to the expiration of this Agreement.
- xii. Ensure the Complex is secured when not in use and provide the City with a key or code to access the Complex during the License Term.

## **ARTICLE 5. CONSIDERATION**

- 5.01. In consideration for Licensee's right to use the Complex for the purposes stated herein for the Term, the Licensee agrees to pay the City a License Fee of five dollars (\$5.00) per resident player and eight dollars (\$8.00) per nonresident player for the Term, regardless of the number of games or practices they utilize at the Complex. The player fee will be waived if participant has already paid toward the THF Park license fee for the License Term. Fixed fees are based on one (1) Term and will not increase during the Term of this Agreement. Payment is due to the City not later than fourteen (14) days after the first scheduled game of the Term, otherwise Licensee will forfeit use of the Complex. Payment shall be made by check or credit card, with checks being made payable to the "City of Denison."
- 5.02. Any non-league tournaments or games will be the responsibility of Licensee for paying all costs of the tournament as indicated on the Comprehensive Fee Schedule for tournament rentals. (See Director for Policy & Procedures - Fees). The consideration for an additional term beyond the Initial Term may vary; therefore, any consideration to be paid by the Licensee to the City for the right to use the Complex for any Renewal Term shall be set forth in a written amendment to this Agreement. If the Parties cannot come to a mutual agreement of the consideration to be paid to the City for the Licensee's right to use the Complex thirty (30) days before the start of a Renewal Term, then this Agreement shall automatically terminate.

**ARTICLE 6.**  
**ACCEPTANCE AND PROTECTION OF COMPLEX**

- 6.01 Licensee covenants and agrees that it shall take the Complex as it finds them and that it will leave the Complex in as good or better condition than that which exists prior to Licensee's use of the Complex, normal wear and tear from usage excepted. Licensee further covenants and agrees that it will not do or permit to be done any injury or damage to any of said Complex or suffer any waste to the Complex, normal wear and tear from usage excepted, but in the event any damage is done, Licensee hereby covenants and agrees to reimburse City therefore promptly. Licensee shall keep and maintain the Complex in a good, clean, and sanitary condition at all times. Licensee shall be responsible for all damages caused by Licensee, its agents, servants, employees, contractors, subcontractors, licensees, or invitees, normal wear and tear from usage excepted; Licensee agrees to fully repair or otherwise cure all such damages at Licensee's sole cost and expense. The City shall determine whether any damage has been done, the amount of the damage, and the reasonable costs of repairing the damage. Any damage for which Licensee is responsible hereunder shall be repaired or replaced by the Licensee within thirty (30) days of receipt of written notification from the City; all such repairs or replacements must be made to the reasonable satisfaction of the City.

**ARTICLE 7.**  
**ADVERTISING**

- 7.01. No banners, advertisements, or signs may be hung from trees, fences, or buildings or be displayed on the Complex without the express permission of the Director. In addition, Licensee covenants and agrees that no decorative or other material shall be nailed, tacked, screwed, or otherwise physically attached to any part of the City's property without the consent of the Director. The location and content of such advertisements and announcements are subject to the approval of the Director.

**ARTICLE 8.**  
**COPYRIGHT COMPLIANCE**

- 8.01. Licensee agrees to assume full responsibility for complying with the Federal Copyright Law of 1978 (17 U.S.C. 101, et seq.) and any regulations issued hereunder including, but not limited to, the assumption of any and all responsibilities for paying royalties which are due for the use of copyrighted works in Licensee's performances or exhibitions to the copyright owner, or representative or said copyright owner. City expressly assumes no obligations, implied or otherwise, regarding payment or collection of any such fees or financial obligations. City specifically does not authorize, permit, or condone the performance, reproduction, or other use of copyrighted materials by Licensee or its agents or licensees without the appropriate licenses or permission being secured by Licensee in advance. It is further agreed that LICENSEE SHALL DEFEND, INDEMNIFY AND HOLD CITY HARMLESS FOR ANY CLAIMS ARISING FROM NONPAYMENT TO LICENSING AGENCIES, INCLUDING, BUT NOT LIMITED TO, ASCAP, BMI, AND SESAC OR DAMAGES ARISING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS. City expressly assumes no obligation to review or obtain appropriate licensing, and all such licensing shall be the exclusive obligation of the Licensee.



Licensee understands that they are responsible for securing any and all licenses by all artists/performers giving permission for the recordings. Licensee is responsible for both reporting and payment of any music or other licensing fees that may be required by law.

- 8.02. Licensee understands and agrees that without the proper license obtained by Licensee, there is a risk of an injunction or money damages arising from a copyright lawsuit brought by ASCAP, BMI, SESAC or any other licensing agency or copyright holder.

**ARTICLE 9.  
NON-DISCRIMINATION**

- 9.01. Licensee agrees that during use of the Complex, Licensee will not subject anyone to discrimination in any way because of the person's financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status. No one can be excluded from the Events or denied the benefits of the Events because of financial status, race, color, creed, national origin, age, disability, sex, religion, or marital status.

**ARTICLE 10.  
LIABILITY AND INDEMNIFICATION**

- 10.01. City and Licensee mutually covenant and agree that City shall not be liable or responsible for any property placed on the Complex.
- 10.02. LICENSEE SHALL AND DOES AGREE TO RELEASE, INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS CITY AND CITY'S EMPLOYEES, REPRESENTATIVES, OFFICERS, AGENTS, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY (1) RELATING TO THE USE OR OCCUPANCY OF THE COMPLEX BY LICENSEE, ITS EMPLOYEES, PATRONS, AGENTS, INVITEE, LICENSEES, VOLUNTEERS, SUBCONTRACTORS, AND ANY PARTY USING THE COMPLEX OR (2) BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION ON THE PART OF LICENSEE OR ANY INVITEE, LICENSEE, EMPLOYEE, DIRECTOR, OFFICER, SERVANT, VOLUNTEER, OR CONTRACTOR OF LICENSEE, OR ANYONE LICENSEE CONTROLS OR EXERCISES CONTROL OVER OR (3) BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LICENSEE UNDER THIS AGREEMENT.
- 10.03. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO LICENSEE'S OBLIGATIONS UNDER THIS SECTION 10, NEITHER PARTY WILL BE LIABLE

TO THE OTHER FOR ANY EXEMPLARY OR PUNITIVE DAMAGES FOR BREACH OF CONTRACT.

## **ARTICLE 11. INSURANCE**

1 1.01. Licensee covenants and agrees to obtain and keep in force and to ensure its contractors, as applicable, keep in force during the term of this Agreement one or more policies of insurance as follows:

- a) Commercial General Liability
  - i. \$1,000,000 each occurrence
  - ii. \$2,000,000 aggregate
  
- b) Automobile Liability
  - i. \$1,000,000 each accident on a combined single limit, or
  - ii. \$250,000
  - iii. \$500,000
  - iv. Property Damage
  - v. Bodily Injury per person per occurrence

A commercial business policy shall provide coverage on "Any Auto," defined as autos owned, hired and non-owned, when said vehicle is used in the course of the Events licensed herein.

1 1.02. Terms and Conditions Applicable to All Insurance

- a) Certificates of insurance evidencing all required insurance shall be delivered to the City at least two (2) weeks prior to the Term.
  
- b) Applicable policies shall be endorsed to name the City and the Licensee as Additional Insureds thereon, as its interests may appear. The term "City" shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
  
- c) Applicable policies shall be endorsed to name the City an Additional Insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents and volunteers as respects the contracted services.
  
- d) Certificate(s) of insurance shall document that insurance coverage specified in this Agreement are provided under applicable policies documented thereon.
  
- e) Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements.
  
- f) A minimum of thirty (30) days' notice of cancellation or material change in coverage affecting the required lines and limits of insurance shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of nonpayment of premium. Notice shall be sent to the City Manager at the address in Section 15.05.

- g) Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A: VII in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of the City's Risk Management Division.
- h) Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the City in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups must also be approved. Dedicated financial resources or letters of credit may also be acceptable to the City.
- i) Applicable policies shall each be endorsed with a waiver of subrogation in favor of the City.
- j) The City shall be entitled, upon its request and without incurring expense, to review the Licensee's insurance policies including endorsements thereto and, at the City's discretion, the Licensee may be required to provide proof of insurance premium payments.
- k) The Commercial General Liability insurance policy shall have no exclusions by endorsements that have effect on the lines and limits of insurance required in this Agreement, unless the City approves such exclusions.

**ARTICLE 12.  
COMPLIANCE WITH LAW AND POLICIES**

- 12.01. Licensee covenants and agrees that it shall not engage in any unlawful use of the Complex. Licensee further agrees that it shall not permit its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees or invitees to engage in any unlawful use of the Complex and Licensee shall immediately remove from the Complex any person engaging in such unlawful activities. Unlawful use of the Complex by Licensee itself shall constitute an immediate breach of this Agreement.
- 12.02. Licensee shall comply with all City regulations, policies, and specific requirements for the Events and shall coordinate with City staff with regard to arrangements for site use. Licensee covenants and agrees that during the Term of this Agreement that if the City calls to the attention of Licensee any such violation on the part of Licensee or any person employed by or admitted to said Complex by said Licensee, then Licensee shall immediately desist from and correct such violation or vacate the Complex.
- 12.03. Each party shall be responsible for obtaining and maintaining any and all applicable permits, licenses, or approvals necessary to fulfill its own individual obligations under this Agreement in accordance with any local, state, or federal statutes, rules, or regulations.

**ARTICLE 13.  
RIGHT OF ENTRY**

- 13.01. At all times during the Term of this Agreement, City shall have the right, through its agents and representatives, to enter into and upon the Complex at any time to fulfill its obligations herein and during reasonable business hours for the purpose of examining and inspecting the same for the

purpose of determining whether Licensee shall have complied with all of its obligations hereunder in respect to the use of the Complex.

- 13.02. During any inspection, City may perform any obligations that City is authorized or required to perform under the terms of this Agreement or pursuant to its governmental duties under federal state or local laws, rules, or regulations.

#### **ARTICLE 14.**

#### **CHARITABLE IMMUNITY/ LIMITATION OF LANDOWNERS' LIABILITY**

- 14.01. Licensee agrees that if it is a charitable organization, corporation, entity or individual enterprise having, claiming or entitled to any immunity, exemption (statutory or otherwise) or limitation from and against liability for damage or injury to property or persons under the provisions of the Charitable Immunity and Liability Act of 1987, C.P. R.C., 84.001 et seq., or other applicable law, that Licensee hereby expressly waives its right to assert or plead defensively any such immunity or limitation of liability as against City.
- 14.02. Licensee agrees, consents and acknowledges that City is a Landowner under the Recreational Use Statute, C.P. R.C., 75.001 et seq., or other applicable law, and does not waive any immunity or limitation for liability by entering into this Agreement nor would have entered into this Agreement if this provision was not applicable or enforceable.

#### **ARTICLE 15.**

#### **MISCELLANEOUS PROVISIONS**

- 15.01. Immunity. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15.02. Assignment/Non-Transferable. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City.
- 15.03. Successors and Assigns. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 15.04. Execution and Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 15.05. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand—delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To the City of Denison:

City of Denison  
Attn: City Manager  
300 West Main St.  
Denison, Texas, 75020

With Copy to:

Messer Fort, PLLC  
Attn: Julie Fort  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

To Licensee:

Boys and Girls Club of Denison  
Attn: Ron Nixon  
2100 South Mirick Ave  
Denison, TX 75020

- 15.06. Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 15.07. Fiscal Funding Out. If, for any reason, at any time during any term of this Agreement, the City Council fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement, the City may terminate this Agreement pursuant to this section following (i) delivery by the City of written notice of the City's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.
- 15.08. Independent Contractor. Licensee shall operate hereunder as an independent contractor as to all rights and privileges herein contained and nothing herein shall be construed as creating a partnership or joint enterprise between Licensee and City.
- 15.09. Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 15.10. Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

- 15.11. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- 15.12. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.
- 15.13. Entire Agreement. This Agreement (including all attachments, schedules, and exhibits attached hereto) contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for the use of the Complex only and not any other matters that may exist between the Parties past, present or future.
- 15.14. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.
- 15.15. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 15.16. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 15.17. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 15.18. Force Majeure. Neither Licensee nor the City of Denison shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.
- 15.19. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

15.20. Savings/Severability. 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 hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.21. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiples, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

BOYS AND GIRLS CLUB OF DENISON

CITY OF DENISON, TEXAS

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Bobby Atteberry, Interim City Manager

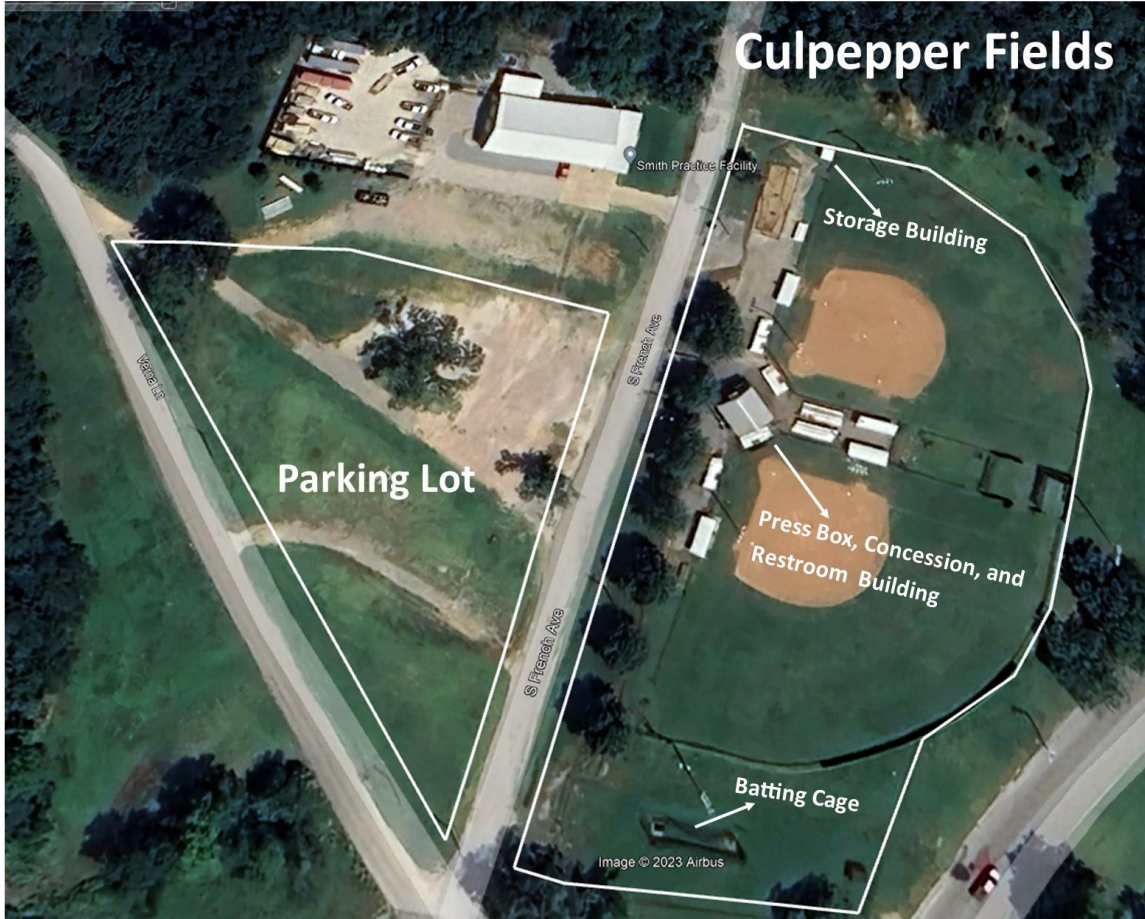
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ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Christine Wallentine, City Clerk

**EXHIBIT "A"**  
**Culpepper Softball Complex**





# City Council Meeting Staff Report



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## Agenda Item

Receive a report, hold a discussion, and take action on awarding a proposal and entering into a General Construction Services Agreement with Piazza Construction, LLC (Contract No. 2024-0079) for the 2024 THF Park Parking Improvements, and authorize the Interim City Manager to execute the same.

## Staff Contact

Chip Egger, Parks Administrative Superintendent  
[gegger@cityofdenison.com](mailto:gegger@cityofdenison.com)  
903-465-2720 Ext. 2097

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## Summary

- Staff initiated a request for proposals and invited proposals for the 2024 THF Park Parking Improvements on May 5, 2024.
- The City of Denison requested proposals from qualified contractors to provide construction, demolition, and alteration services to increase parking availability and efficiency within THF Park in Denison, Tx. Services may include but are not limited to: Professional surveying services, demolition, hauling, grading, concrete placement, drilling, boring, pavement, construction joints, striping, irrigation, and landscaping.
- Proposals were opened on May 22, 2024.
- The City received one bid from Piazza Construction, LLC.
- Piazza Construction, LLC submitted a total bid of \$ 367,000.00, which is manageable within the current approved funding.

## Staff Recommendation

Staff recommends entering into an agreement with Piazza Construction, LLC.

## Recommended Motion

“I move to approve awarding a proposal and entering into a General Construction Services Agreement with Piazza Construction, LLC (Contract No. 2024-0079) for the 2024 THF Park Parking Improvements and authorize the Interim City Manager to execute the same subject to final legal review and approval.”

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## Background Information and Analysis

Staff determined that additional parking was required to provide the best possible experience for park patrons and the adjacent neighborhood.

## Financial Considerations

The bid received from Piazza Construction, LLC in the amount of \$367,000.00 is manageable within the approved funds.

**Prior Board or Council Action**

None.

**Alternatives**

Council can reject the bid from Piazza Construction, LLC and instruct staff to create an alternative program and go back out for proposals.

**GENERAL CONSTRUCTION SERVICES AGREEMENT  
BY AND BETWEEN PIAZZA CONSTRUCTION, LLC  
AND THE CITY OF DENISON, TEXAS**

This **2024 THF Park – Parking Improvements Agreement** (“Agreement”) is entered into effective June 12, 2024 (“Effective Date”), by and between Piazza Construction, LLC, (“Contractor”), and the City of Denison, Texas (“City”), for parking improvements at Texoma Health Foundation Park, located at 3801 US-75, Denison, TX 75020 (“THF Park”). For convenience, Contractor and City may hereinafter be referred to collectively as “Parties”, and individually as a “Party”.

**WHEREAS**, the City desires to engage Contractor for services related to construction of parking improvements at THF Park (the “Project”); and

**WHEREAS**, the Contractor submitted a proposal to the City for the provision of certain services for the Project; and

**WHEREAS**, given the unique nature of the Project and the qualifications of Contractor, City has determined it to be in the best interests of the City to enter into this Agreement with Contractor.

**NOW, THEREFORE**, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**A. Employment of Contractor and Scope of the Project.**

City agrees to engage Contractor and Contractor hereby agrees to perform the work and services for completion of the Project described in the Scope of Services, attached hereto and incorporated herein as **Exhibit “A”** and the proposal submitted by the Contractor, attached hereto and incorporated herein as **Exhibit “A -1”**.

**B. Agreement Documents.**

The “Agreement Documents” consist of this Agreement and following exhibits attached hereto:

- i. Exhibit “A” – Scope of Services as outlined in the Request for Proposals for 2024 THF Park – Parking Improvements in Denison, Texas;
- ii. Exhibit “A-1” – Contractor’s Quote;
- iii. Exhibit “A-2” – Performance, Payment, and Maintenance Bonds
- iv. Exhibit “B” – Project Inspection Form
- v. Exhibit “C” – Conditional Waiver & Release Upon Final Payment Form

This Agreement, including **Exhibits “A”** through **“B”**, represents the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. In the event a conflict exists between the Agreement Documents, except a modification or amendment, this Agreement shall

govern.

### **C. Time for Completion**

1. The Project shall be commenced on or before July 12, 2024, shall be substantially complete on or before September 13, 2024 (“Date of Substantial Completion”), and shall be fully complete on or before October 13, 2024 (“Date of Completion” or “Completion”). Time is of the essence for all deadlines stated in this Agreement. For purposes of this Agreement, the term “substantially complete” shall mean that the improvements and facilities are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the City inspector’s “punch list” which shall be addressed prior to Completion by Contractor, final approval, and acceptance of the Project by the City. “Date of Completion” or “Completion” shall mean that the Contractor has completed the Project in accordance with this Agreement and obtained final approval and acceptance of the Project by the City.
2. Contractor acknowledges and agrees that it shall be liable to Owner in an amount equal to the sum of **ONE HUNDRED AND NO/100 DOLLARS (\$100.00)** per day for each day that the Project is not complete after the Date of Completion. Contractor further agrees that any damages incurred by Owner as a result of Contractor’s delay are not easily calculable and that these liquidated damages amount does not constitute a penalty, but rather constitutes a fair and reasonable estimate of the Owner’s actual damages resulting from Contractor’s unreasonable delay.

### **D. Compensation and Payment Procedure**

1. The City shall pay the Contractor in current funds for the performance of the work in accordance with the payment procedures provided in this Section. The total contract sum shall be **THREE HUNDRED SIXTY-SEVEN THOUSAND DOLLARS AND ZERO CENTS (\$367,000.00)** (the “Compensation”), subject to additions and deductions by Change Orders (as hereinafter defined) as provided in the Agreement Documents. The Compensation, including any Change Orders, shall include all fees and percentages, as well as the costs for general conditions and all work to complete the Project according to the Agreement Documents, and shall constitute full compensation for all work to be performed under this agreement. The City shall not be liable for any additional expenses of the Contractor not specified by this Agreement unless the City first approves such expenses in writing.
2. The designated representatives of the Parties shall meet at a minimum of one (1) time per month, but no more than two (2) times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign the Project Inspection Form attached hereto as **Exhibit “B”**.
3. Contractor shall then submit to City an invoice in a form no more than once a month. The invoice shall identify the percentage of the work completed by Contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion and the Compensation less ten

percent (10%) retainage.

4. The City shall pay the amount due to Contractor within thirty (30) days from the date of the City's receipt of the invoice, if the invoice is not disputed. If the City disputes an invoice, the City shall notify the Contractor within a reasonable amount of time from the City's receipt of the invoice.
5. Contractor shall provide performance, payment and maintenance bonds in an amount no less than one hundred percent (100%) of the Agreement Sum set forth in this Section, prior to commencement of work on the Project. Performance and payment bonds shall be conditioned upon the faithful performance of the Agreement, and upon payment of all persons supplying labor or furnishing materials. The maintenance bond shall be for a period of two (2) years following City's acceptance of the Project. Bonds shall be in a form provided by City and shall be executed by a surety company acceptable to and approved by City and authorized to do business in the State of Texas. Contractor's bonds are attached hereto and incorporated herein as **Exhibit "A-2"**.
6. After the Date of Completion, as determined by the City's inspector, the City shall release the final payment to Contractor, including retainage, upon completion of the following:
  - i. Owner's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment form (attached hereto as **Exhibit "C"**) confirming that all bills for labor and materials have been paid and that no liens were filed on the Project;
  - ii. The Contractor's completion of any items listed on the City inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and
  - iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.
7. City shall make payments in accordance with the Texas Prompt Payment Act. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in this Section) and the City does not timely pay Contractor in accordance with this Section.

#### **E. Change Orders**

1. Neither the scope of the Project, the Date of Substantial Completion, the Completion Date, nor the Compensation under this Agreement may be modified by Contractor without the written consent of the City. The City's consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative ("Change Order"). If a Change Order is requested to modify the Date of Substantial Completion or the Completion Date the change order shall specify the reason(s) for the delay.
2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of

additional compensation that would be required to perform the additional work. This change must be set forth in a Change Order executed in conformance with this Section, and subject to the limitations forth in Chapter 252 of the Texas Local Government Code.

3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Compensation in accordance with the reduction of work requested. This change shall only be valid if set forth in a change order executed in conformance with this Section.

**F. Construction Management.**

The City and Contractor shall each designate a representative to be the primary contact for all matters related to the Project. The City's representative, or their designee, shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a "Stop Work Order" if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Agreement Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

**G. Contractor's Rights, Duties and Warranties**

1. Contractor warrants and represents that:
  - i. the materials and equipment furnished under this Agreement will be of good quality and new unless the Agreement Documents require or permit otherwise;
  - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Agreement Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
  - iii. the Project will conform to the requirements of the Agreement Documents and will be free from defects.
2. Contractor further warrants and represents to City that:
  - i. it has all personnel required to perform the work to complete the Project as required under and in accordance with the quality and time frame required under this Agreement;
  - ii. all of the services required hereunder shall be performed by Contractor or under Contractor's supervision; and
  - iii. that all personnel engaged in the work shall be qualified to perform such work.
3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Agreement Documents. Contractor shall provide insurance meeting the requirements set forth in **Section I** of this Agreement.

4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work.
5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage. Contractor shall maintain insurance as required by **Section I** of this Agreement to cover such damages.
6. Upon completion of the Project, Contractor shall remove from the jobsite all, materials, tools, and equipment belonging to Contractor and restore the jobsite to an appearance and condition as specified in the Agreement Documents or, if none is specified, to an appearance and condition acceptable to the City, in City's sole reasonable discretion.
7. Contractor shall have on the jobsite at all times, as its agent, a competent superintendent capable of reading and thoroughly understanding the Agreement Documents, and who is thoroughly experienced in the type of work being performed ("Superintendent"). The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required to complete the Project.

#### **H. INDEMNITY.**

**TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.**

**IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS**

**AGREEMENT. CONTRACTOR SHALL RETAIN CITY APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.**

**I. Insurance**

1. Contractor shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

a. Coverage and Limits

i. Commercial General Liability

1. \$1,000,000 Each Occurrence
2. \$1,000,000 Aggregate

ii. Automobile Liability

1. \$1,000,000 Each occurrence on a combined single limit basis

Coverage shall be on any vehicle used by the Contractor, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

iii. Worker's Compensation - Statutory limits

1. Employer's liability

- a. \$100,000 Each accident/occurrence
- b. \$100,000 Disease - per each employee
- c. \$500,000 Disease - policy limit

This coverage may be written as follows: Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee.

iv. Professional Liability (Errors & Omissions)

1. \$1,000,000 Each Claim Limit
2. \$1,000,000 Aggregate Limit

Professional Liability coverage may be provided through an endorsement to the Commercial General Liability (CGL) policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage shall be claims-made and maintained for the duration of the contractual agreement and for two (2) years following



completion of services provided. An annual certificate of insurance shall be submitted to the City to evidence coverage.

b. **General Requirements**

- i. The commercial general liability and automobile liability policies shall name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents, and volunteers in respect to the contracted services.
  - ii. The workers' compensation policy shall include a Waiver of Subrogation (Right of Recovery) in favor of the City of Denison.
  - iii. A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the City Manager in accordance with **Section M(5)**.
  - iv. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
  - v. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.
2. Certificates of Insurance evidencing that the Contractor has obtained all required insurance shall be delivered to the City prior to Contractor proceeding with any work pursuant to this Agreement.

**J. Subcontractors**

Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Prior to commencing the work, Contractor shall submit a list of subcontractors that Contractor intends to retain to work on the Project. Contractor shall not utilize any objectionable subcontractor on the Project.

**K. Dispute Resolution**

The Parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the Parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the Parties may utilize mediation and/or litigation in a court of competent jurisdiction.

**L. Termination of Agreement.**

1. This Agreement may be terminated without cause by the City. Such termination shall be effective thirty (30) days from the date of written notice to the Contractor by certified mail, return receipt requested, at the address specified below.

2. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligations under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which notice shall specify the effective date thereof, and which notice shall be delivered to Contractor at least three (3) calendar days before the effective date of such termination.
3. In the event City shall fail to pay Contractor in accordance with **Section D**, Contractor may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.
4. Upon the City's termination pursuant to this Section, Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination is effective under this Section.
5. In the event this Agreement is terminated by either Party as a result of the material breach of this Agreement by the other Party and after compliance with the Dispute Resolution provisions of **Section K**, the non-breaching Party may elect to file suit in a court of competent jurisdiction and recover its damages from the breaching Party as allowed by law.

**M. Miscellaneous Provisions:**

1. **No Third-Party Beneficiaries.** For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) the Agreement only affects matters/disputes between the Parties to this Agreement, and it is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City, Contractor, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Contractor, or both.
2. **Non-Waiver.** In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.
3. **Force Majeure.** In the event that the performance by either Party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either Party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such Party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each Party shall bear the cost of any expense it may incur due to the occurrence. The Parties agree that should such event occur, the date

of Substantial Completion and/or Completion shall be extended by Change Order for the number of days the Project is delayed pursuant to this paragraph, as agreed upon by the Parties, but not otherwise, and no penalty will be assessed to Contractor for delays as set forth in this Section. However, Contractor shall still be required to submit Change Orders requesting extensions of time in accordance with **Section E** of this Agreement.

4. **Assignability.** Contractor may not assign, convey or transfer its interest, rights and duties under this Agreement without the prior written consent of City.
5. **Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the Parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

TO CITY:

City of Denison  
300 W. Main Street  
Attn: City Manager

WITH A COPY TO:

Julie Fort, City Attorney  
Messer Fort PLLC  
6371 Preston Road, Suite 200  
Frisco, TX 75034

TO CONTRACTOR:

PIAZZA CONSTRUCTION, LLC  
Attn: Rod White  
2811 S. Woodlawn,  
Denison, TX 75020

Either Party may change the address and contact information stated in this paragraph by providing notice to the other Party in accordance with this Section.

6. **Independent Contractor.** Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

7. **Public Information Act.** Contractor acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Contractor (and Contractor's professional associates and/or Subcontractors) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552). Contractor agrees that City is under no obligation to notify Contractor of a request for information or to otherwise ensure confidentiality.
8. **Severability.** If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalidated by such holding.
9. **Amendment.** The Agreement Documents may not be amended or altered except by a written document signed by authorized representatives of both Parties.
10. **Authority to Execute.** The Parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the Parties.
11. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action, including without limitation, mediation or litigation, brought hereunder shall lie in Grayson County, Texas.
12. **Attorney's Fees.** If it becomes necessary for any Party to file suit to interpret or enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to recover from the non-prevailing Party, reasonable attorney's fees and costs of court.
13. **Form 1295 Certificate.** The Parties acknowledge that the Contractor is not a publicly traded entity, and as such, completion of a Form 1295 is required pursuant to Section 2252.908, Texas Government Code.
14. **Verifications of Statutory Representations and Covenants.** The Contractor makes the following representations and verifications to enable to City to comply with Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the "Government Code"), in entering into this Agreement. As used in such verifications, "affiliate" means an entity that controls, is controlled by, or is under common control with the Contractor, respectively within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.
  - (a) Not a Sanctioned Company. Contractor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Contractor and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States

government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

- (b) No Boycott of Israel. The Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.
- (c) No Discrimination Against Firearm Entities. The Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.
- (d) No Boycott of Energy Companies. The Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

*[Signature Page Follows]*

In witness whereof, the Parties have executed this Agreement on the dates set forth below.

**CITY OF DENISON, TEXAS**

By: \_\_\_\_\_  
Bobby Atteberry, Interim City Manager

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

ATTEST:

\_\_\_\_\_  
Christine Wallentine, City Clerk

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF GRAYSON**         §

Before me, the undersigned authority in and for Grayson County, Texas, on this day personally appeared BOBBY ATTEBERRY, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the Interim City Manager of the City of Denison, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the \_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Printed Name:  
My Commission Expires:

**PIAZZA CONSTRUCTION, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**STATE OF TEXAS**

§

§

**COUNTY OF GRAYSON**

§

Before me, the undersigned authority in and for Grayson County, Texas, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the \_\_\_\_\_ of PIAZZA CONSTRUCTION, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Printed Name:  
My Commission Expires:

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

Scope of Services as outlined in the Request for Proposals for 2024 THF Park – Parking Improvements in Denison, Texas, including, but not limited to the following:

- Mobilization
- Construction Material Testing
- Professional Surveying Services - field staking and layout of proposed grading, pavement, construction joints, and final grade, complete in place
- Sawcut, remove and dispose of existing concrete curb and gutter, complete and in place
- Perform and complete landscape and irrigation demolition, complete and in place
- Purchase and install filling of existing grout holes from replacement of adjusting wheel stops, complete and in place
- Remove existing painted parking stripes, complete and in place
- Perform and complete mass site grading, compaction and backfill, complete and in place
- Purchase and install the construction entrance, complete and in place
- Purchase and install all silt fence per plan and detail, complete and in place
- Purchase and install all inlet protection per plan and detail, complete and in place
- Purchase and install all tree protection fencing per plan and detail, complete and in place
- Remove construction entrance, complete and in place
- Remove all tree protection fencing per plan and detail, complete and in place
- Remove erosion control fence, complete and in place
- Remove inlet protection, complete and in place
- Purchase and install 5" reinforced concrete pavement per plan (4000 psi), detail and specification, complete and in place
- Purchase and install 7" reinforced concrete pavement per plan (4000 psi), detail and specification, complete and in place
- Purchase and install 4" concrete trails and sidewalks (4000 psi), complete and in place
- Purchase and install 6" concrete curb (4000 psi), complete and in place
- Purchase and install 6" required depth subgrade preparation per plan, detail and specification, complete and in place
- Purchase and install required Hydrated lime material (6" depth) per plan, detail and specification, complete and in place
- Purchase and install concrete ramps and landings, medium brush finish, per plan, detail and specification, complete and in place
- Purchase and install handicap parking signage, steel galvanized pole, all attachments brackets, screws/bolts, concrete footings, complete and in place
- Purchase and install all parking lot striping, loading space striping, no parking striping, ADA logos and decals per plan and detail, complete and in place
- Purchase and install new speed bumps and attachments, complete and in place
- Purchase and install new steel bollards per manufacturers detail and specifications, complete and in place
- Install existing concrete parking wheel stops per plan and detail, complete and in place
- Purchase and install concrete parking wheel stops per plan and detail, complete and in place
- Perform fine grading for lawn replacement areas, complete and in place
- Purchase and install steel edge (5") and staking, complete and in place



- Purchase and install decomposed granite, complete and in place
- Purchase and install crushed rock aggregate base, complete and in place
- Purchase and install filter fabric, complete and in place
- Purchase and install Bermuda Sod, Tifway 419, complete and in place
- Purchase and install irrigation system renovations, adjustments and replacements, all required piping, irrigation heads and drip lines, controller adjustments/accommodations, electrical/communication lines, moisture control sensors, and all other parts and accessories planned, designed and detailed, match existing equipment specifications complete and in place

**EXHIBIT "A-1"**  
**PROPOSAL**

**Summary**  
**Hardscape and Landscape for THF Park - Parking Improvements**

- 1 SUBTOTAL Mobilization and Bonds
- 2 SUBTOTAL - Hardscape
- 3 SUBTOTAL - Landscape

✓  
\_\_\_\_\_  
✓  
\_\_\_\_\_  
✓  
\_\_\_\_\_  
\$ 367,000.00

**TOTAL BASE PROPOSAL**

Proposer acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Proposals, and final payment for all unit price Proposal items will be based on actual quantities, determined as provided in the Contract Documents. Proposer also acknowledges that each unit price includes an amount considered by Proposer to be adequate to cover Proposer's overhead and profit for each separately identified item.

**ARTICLE 6-TIME OF COMPLETION**

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- 6.01 Proposer agrees that the furnishing of Goods and Special Services will conform to the schedule set forth in Article 5 of the Request for Proposals. ✓

**ARTICLE 7 - ATTACHMENTS TO THIS PROPOSAL**

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- 7.01 The following documents are attached to and made a condition of this Proposal:
  - A. 2023 Conflict of Interest Questionnaire and Form
  - B. Notice of HB 1295 Disclosure
  - C. Sample Agreement

**ARTICLE 8 - PROPOSAL SUBMITTAL**

8.01 Within twenty (20) business days after acceptance of this Proposal, the undersigned will execute an Agreement for the faithful performance of this Agreement.

8.02 The owner reserves the right to reject any and/or all proposals and waive any and/or informalities. No proposal may be withdrawn until the expiration of sixty (60) days from the date proposals are due/received.

Initials

*RW*

Statement 9.02


8.03 This Proposal submitted by:

A Corporation  
(SEAL)

Respectfully submitted,

Corporation Name: Pizza Construction, LLC

State of Incorporation: Texas

By:  \_\_\_\_\_ (signature)

Name: Robert White

Title: UP

Address: 2811 S. Woodlawn

Danison, Texas 75020

Telephone: 903-463-2584

Fax: 903-463-1870

Email: rod@pizza-construction.com

**EXHIBIT "A-2"**  
**PERFORMANCE, PAYMENT AND MAINTENANCE BONDS**

**PERFORMANCE BOND**

**THE STATE OF TEXAS §**  
**COUNTY OF GRAYSON §**

**KNOW ALL MEN BY THESE PRESENTS:** THAT  
\_\_\_\_\_ whose address is \_\_\_\_\_, of the City of  
\_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter  
referred to as "PRINCIPAL", and \_\_\_\_\_,  
a corporate surety/sureties organized under the laws of the State of \_\_\_\_\_ and authorized to  
do business in the State of Texas, hereinafter referred to as "SURETY" (whether one or more), are  
jointly and severally held and firmly bound unto the **CITY OF DENISON, TEXAS**, a municipal  
corporation organized and existing under the laws of the State of Texas, hereinafter referred to as  
"OWNER". in the amount of \_\_\_\_\_ DOLLARS  
(\$ \_\_\_\_\_), lawful money of the United States, to be paid in the City of Denison, Grayson  
County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs,  
executors, assigns, administrators and successors, jointly and severally; and firmly by these presents.  
This Bond shall automatically be increased by the amount of any Change Order or Supplemental  
Agreement which increases the Agreement price, but in no event shall a Change Order or  
Supplemental Agreement which reduces the Agreement price decrease the penal sum of this bond.

**THE OBLIGATION TO PAY SAME** is conditioned as follows:

**WHEREAS, PRINCIPAL** entered into a certain written Agreement with Owner, dated the \_\_\_\_ day  
of \_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials,  
equipment, labor, supervision, and other accessories necessary for the construction of:

THF Park Parking Improvements

**NOW, THEREFORE:**

If Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms,  
conditions and agreements of the above referenced Agreement in accordance with all plans,  
specifications and Agreement documents, during the original term thereof, and any extension thereof  
which may be granted with or without notice to Surety, and during the life of any guaranty required  
under the Agreement, and shall also well and truly perform and fulfill all the covenants, terms,  
conditions and agreements of any and all authorized modifications of such Agreement that may  
hereafter be made, notice of which modifications to Surety being hereby waived, and, if Principal  
shall fully indemnify and save harmless the Owner from all costs and damages which Owner may  
suffer by reason of failure to so perform herein and shall fully reimburse and repay Owner all outlay  
and expense which the Owner may incur in making good any default or deficiency, and then this  
obligation shall be void, otherwise to remain in full force and effect; and in case Principal shall fail  
to do so, it is agreed that Owner may do such work and supply such materials and charge the same

against Principal and Surety on this obligation, and Principal and Surety hereon shall be subject to all damages allowed by law for each day's failure on its part to comply with the terms and provisions of such Agreement.

**PROVIDED, FURTHER,** that if any legal action be filed on this Bond, exclusive venue shall lie in Grayson County, Texas.

And, that SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the agent resident in Grayson County to whom any requisite notice may be delivered and on whom service of process may be had in matters arising out of such suretyship.

**PRINCIPAL:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Name

**ATTEST:**  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SURETY:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Name

**ATTEST:**  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

The Resident Agent of the Surety in Grayson County, Texas, for delivery of notice and service of the process is:

NAME: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
TOWN, STATE, ZIP: \_\_\_\_\_

\*\*\*\*\**Date of bond must be on or after date of contract.*\*\*\*\*\*

**PAYMENT BOND**

STATE OF TEXAS           §  
  §  
COUNTY OF GRAYSON   §

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Principal", and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and fully licensed to transact business in the State of Texas, hereinafter "Surety", are jointly and severally held and firmly bound unto the **CITY OF DENISON, TEXAS**, a home rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter called "Owner", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements described below, in the penal sum of \_\_\_\_\_ **DOLLARS** (\$\_\_\_\_\_) in lawful money of the United States, to be paid in Grayson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Agreement price, but in no event shall a Change Order or Supplemental Agreement which reduces the Agreement price decrease the penal sum of this Bond.

**WHEREAS, PRINCIPAL** entered into a certain written Agreement with Owner dated the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

THF Park Parking Improvements

**NOW, THEREFORE**, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Project provided for in such Agreement and any and all duly authorized modifications of such Agreement that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, exclusive Venue shall lie in Grayson County, Texas.

**AND PROVIDED FURTHER**, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to Agreement or to the Project performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the Project to be performed thereunder.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Grayson County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

**IN WITNESS WHEREOF**, this instrument is executed in copies, each one of which shall be deemed

an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Name

**ATTEST:**  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SURETY:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Name

**ATTEST:**  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

The Resident Agent of the Surety in Grayson County, Texas, for delivery of notice and service of the process is:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

TOWN, STATE, ZIP: \_\_\_\_\_

\*\*\*\*\**Date of bond must be on or after date of contract.*\*\*\*\*\*



**MAINTENANCE BOND**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF GRAYSON §**

**KNOW ALL MEN BY THESE PRESENTS:** THAT \_\_\_\_\_ whose address is \_\_\_\_\_, of the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter referred to as "PRINCIPAL", and \_\_\_\_\_, a corporate surety/sureties organized under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of Texas, hereinafter referred to as "SURETY" (whether one or more), are jointly and severally held and firmly bound unto the **CITY OF DENISON, TEXAS**, a home rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "OWNER", in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, to be paid in the City of Denison, Grayson County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, assigns, administrators and successors, jointly and severally; and firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Agreement price, but in no event shall a Change Order or Supplemental Agreement which reduces the Agreement price decrease the penal sum of this bond.

**THE OBLIGATION TO PAY SAME** is conditioned as follows:

**WHEREAS, PRINCIPAL** entered into a certain written Agreement with OWNER dated the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

THF Park Parking Improvements

**NOW, THEREFORE:**

**IF PRINCIPAL** shall maintain and keep in good repair the work herein contracted to be done in the Agreement referenced in the preceding paragraph and performed for a period of two (2) years from the date of final acceptance by OWNER and do and perform all necessary work and repair any defective condition growing out of or arising from the construction or installation of same, or on account of any breaking of same caused by PRINCIPAL in lying or building same, or on account of any defect arising in any of such work laid or constructed by PRINCIPAL, or on account of improper excavation or backfilling, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by PRINCIPAL and specific items are not exclusive; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case PRINCIPAL shall fail to do so it is agreed that the OWNER may do such work and supply such materials and charge the same against PRINCIPAL and SURETY on this obligation, and in addition, PRINCIPAL and SURETY herein shall be subject to the liquidated damages as provided in the Agreement referred to herein for each day's failure on its part to comply with the terms and provisions of such Agreement and Subdivider's Agreement.

**PROVIDED, FURTHER,** that if any legal action be filed on this Bond, exclusive venue shall lie in

Grayson County, Texas.

And, that SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in Grayson County to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

IN WITNESS WHEREOF, this instrument is executed on this the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

**WITNESS:**

**PRINCIPAL:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

COMPANY

Signature

Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City, State, Zip Code

City, State, Zip Code

**WITNESS:**

**SURETY:**

Signature

Signature

_____	_____
Typed/Printed Name	Typed/Printed Name
_____	_____
Title	Title
_____	_____
Address	Address
_____	_____
City, State, Zip Code	City, State, Zip Code

The Resident Agent of the Surety in Grayson County, Texas, for delivery of notice and service of the process is:

NAME: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
TOWN, STATE, ZIP: \_\_\_\_\_

\*\*\*\*\* *Date of bond must be on or after date of contract.* \*\*\*\*\*

**EXHIBIT "B"**  
**PROJECT INSPECTION FORM**

## Project Inspection Form

Project: \_\_\_\_\_

Inspection # \_\_\_\_\_

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

Name of Inspectors: \_\_\_\_\_

\_\_\_\_\_

Draw #: \_\_\_\_\_

Percentage of work completed \_\_\_\_\_ %.

### Description

Please describe the current status of the Project since last inspection below

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\_\_\_\_\_  
Contractor Inspector's Signature

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

\_\_\_\_\_  
Denison, Texas City Representative

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

If you need addition space, use the back of this form.

Please attach Photographs and/or other information that pertains to this Inspection report. Send all documentation to Contractor.

**EXHIBIT "C"**  
**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

PROJECT: \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$ \_\_\_\_\_, payable to PIAZZA CONSTRUCTION, LLC, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the job of \_\_\_\_\_ to the following extent:  
\_\_\_\_\_  
\_\_\_\_\_.

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

**PIAZZA CONSTRUCTION, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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