



**CITY OF DENISON
CITY COUNCIL MEETING
AGENDA**

Monday, April 15, 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, April 15, 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 April 1, 2024.
- B. Receive a report, hold a discussion and take action on a Services Agreement with Fire Recovery USA, LLC for re-inspection and false alarm billing, and authorize the Interim City Manager to execute the same.
- C. Receive a report, hold a discussion, and take action on reappointing Vincent Rhodes, Joel Luper, Jimmy Cravens, Ryan Cassell, and Charlie Means to the Parks and Recreation Commission.
- D. Receive a report, hold a discussion, and take action on an Agreement for Traffic Control Inventory – Phase 3 Study with Kimley-Horn and Associates, Inc. and the City of Denison and authorize the Interim City Manager to execute the same.

4. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion and take action on the Guaranteed Maximum Price contract with Piazza Construction in the amount of \$3,339,605.00 for the construction of 321 W Main and authorize the Interim City Manager to execute the same.

5. 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 Senate Bill 1145.
- 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 12th day of April 2024, before 6:00 p.m.

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, April 1, 2024

Announce the presence of a quorum.

Mayor Janet Gott called the meeting to order at 6:00 p.m. Council Members present were Mayor Pro Tem Robert Crawley, Brian Hander, Michael Courtright, James Thorne, Joshua Massey and Aaron Thomas. Staff present were Interim City Manager, Bobby Atteberry, Assistant City Manager, Renee Waggoner, City Attorney, Julie Fort, and City Clerk, Christine Wallentine. Department Directors and members of the media were also present.

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Council Member James Thorne gave the invocation which was followed by the Pledge of Allegiance and Texas Pledge led by Grayson College Softball Team Members Sam Hartman, Danleigh Harris and Kamryn Cantu.

2. PUBLIC COMMENTS

Mayor Gott 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.

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 March 18, 2024.
- B. Receive a report, hold a discussion and take action on the appointment of Marq Hoil to fill the remainder of the two-year term on the Main Street Advisory Board of Jimmay Mundine that commenced on January 1, 2024.
- C. Receive a report, hold a discussion and take action on the appointment of Marq Hoil to the Main Street Inc. Board of Directors to fill the remainder of Jimmay Mundine's two-year term that commenced January 1, 2024.
- D. Receive a report, hold a discussion and take action on denying the extraterritorial jurisdiction release petition received from Ray C. Davis and Linda B. Davis for property located at or near Desvoignes Road, Denison, Texas more particularly described as G-1311 Wright William A-G1311, acres 8.83 and G-0919 Oldham William A-G0919, Acres 70.76, GCAD Property ID Nos. 230631 and 230639.

- E. Receive a report, hold a discussion and take action on the appointment of Cindy Salem to the Conventions and Visitors Bureau Advisory Board.
- F. Receive a report, hold a discussion, and take action on entering into an agreement with The C.T. Brannon Corporation (Contract Number 2024-0045) to prepare civil engineering related designs for the repairs of the natatorium structure and enclosure at Waterloo Pool 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 contract with Walker Frozen Ice LLC for Shaved Ice Services at Texoma Health Foundation Park (Contract Number 2024-0046) and authorize the Interim City Manager to execute the same.
- H. Receive a report, hold a discussion, and take action on an Interlocal Agreement with Grayson County for improvements to a portion of Juanita Drive (Contract No. 2024-0042) in the amount of \$58,464.08.
- I. Receive a report, hold a discussion, and take action on the approval of the purchase of a Vermeer Hydrovac trailer, with a total purchase amount of \$61,076.35, from Vermeer Texas, and authorize the Interim City Manager to execute any associated documents.
- J. Receive a report, hold a discussion, and take action on rejecting all bids received for the 2023 THF Park - Parking Improvements and authorize staff to revise and readvertise an Invitation to Bid.

Council Action

On motion by Mayor Pro Tem Crawley, seconded by Council Member Thorne, the City Council unanimously approved the Consent Agenda as presented.

4. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to rezone a ± 3,114.1-acre tract of land more commonly known as being located at the northwest corner of SH 84 and FM 406, from the Agricultural (A) District to a Planned Development Overlay District established as a freestanding Planned Development to allow for a mixed-use development. (Case No. 2024-012PD).

Council Action

Dianne York, Planner, stated the applicant is requesting a rezone from Agricultural District to a Planned Development Overlay District. The subject property is located in the northwest corner of the City. The property was annexed sometime in 2013 and was provided the default zoning of agricultural. In order to prepare the property for development, the applicant is seeking a Planned Development Overlay District for the master planned community Preston harbor. Preston Harbor will be developed utilizing a variety of residential uses, nonresidential uses along the perimeter, along with some less intense nonresidential uses within the interior, the neighborhoods, as well as some open space and park land. For reference, Ms. York provided a slide showing the concept plan together with the conceptual trail master trail plan. Residential uses depicted on the concept plan will include a variety of different types of single-family homes, townhomes, multifamily, and two family. All of these development standards for these specific

residential uses are listed within the Preston Harbor Planned Development District document provided as backup within this agenda. While there is no maximum number or density total for the specified residential uses, at the end of development there will not be any units over 10,000 to be developed. So, the max total number of units is 10,000 for the property. As mentioned, the nonresidential development will take place along the perimeter of the property along FM 84, FM 406 and to the north of the property. These nonresidential uses will comply with the Office Zoning District development standards, Local Retail zoning development standards and the Neighborhood Services development standards listed within the City of Denison code of ordinances, with some deviations and those deviations are listed within the Preston Harbor Planned Development. Landscaping shall comply with the provisions set forth in Section 28.51 of the City of Denison's zoning ordinance. However, natural areas may be included as and counted towards any landscaping requirements. Same thing goes for the perimeter fencing requirements, those will be developed in accordance with the zoning ordinance. However, deviations can be presented through the site plan submittal and staff as well as the Planning and Zoning Commission may be able to approve those deviations. Ms. York reiterated that all deviations or development standards are listed within the Planned Development District associated with this agenda item. Ms. York added that staff feels this PD reflects the intent that Preston Harbor be developed in a manner that offers walkability, connectivity and multimodal options. Hike and bike trails and golf cart paths will be constructed in addition to typical vehicular infrastructure providing residents and visitors multiple transit opportunities. Additionally, the property is intended to be planned and constructed in a manner that ensures adequate open and park spaces. Staff has reviewed the presented PD document against the development agreement that has already been approved and both documents mirror one another. For these reasons, along with the development standards that have been presented, or provided within the agenda, staff recommends approval, as did the Planning and Zoning Commission at their meeting held on March 26, 2024.

Mayor Gott then asked if there was anyone present who wished to speak on this agenda item. Mr. Roeder came forward and provided the following information for the record:

Name: Bob Roeder, Attorney

Address: Abernathy, Roeder, Boyd and Hullett, P.C.
1700 N. Redbud Blvd., Suite 300
McKinney, TX

Mr. Roeder stated he was speaking on behalf of the applicant. Mr. Roeder started by complimenting the staff, specifically Dianne York, Planner, and Mary Tate, Director of Development Services. Mr. Roeder stated they have been exceptionally good to work with and finds them both to be very knowledgeable about the City's Code of Ordinances as well as state law. These girls know what they are doing, and the Council should be very comfortable with their recommendation. Mr. Roeder commented that each of the Council Members have been involved in this process for some time. We approved a development agreement at the end of last year and this planned development ordinance is really the mechanism that gives them the zoning needed to start construction, to actually start the land use preparation out there. Mr. Roeder stated that Ms. York did a very good job of walking the Council through the particulars. Mr. Roeder stressed this 3100 plus acres is being planned to take advantage of all the natural features that we have, Lake Texoma, the inundations and topography of the property, etc. It is a remote location today but will not be remote for long. All of these things have been folded into this planning document;

walkability, golf cart ability, are all going to be primary modes of transportation within this property. They have had conversations with the school district about a school site and some other things. Nothing has been firmed up, but this will be a very nice place for the residents of Denison, and it should attract a lot of new residents to the City. Mr. Roeder stated he was happy to go through any of the details if the Council would like him to. Otherwise, he would just say he is pleased to be here and would ask for the Council's approval.

There was no discussion or questions from Council.

Mayor Gott 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 Courtright, the City Council unanimously approved Ordinance No. 5341, "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, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY CHANGING THE ZONING CLASSIFICATION FROM AGRICULTURAL (A) TO PLANNED DEVELOPMENT OVERLAY DISTRICT (PD) ON AN APPROXIMATELY 3,114.1-ACRE TRACT; BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A-1" AND DEPICTED IN EXHIBIT "A-2"; PROVIDING DEVELOPMENT STANDARDS, ATTACHED HERETO AS EXHIBIT "B"; PROVIDING A CONCEPT PLAN, ATTACHED HERETO AS EXHIBIT "C"; PROVIDING FOR SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW."

- B. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance to rezone approximately .1148 of an acre tract legally described as Lot 8, Block 1 of the J.P. Dumas Addition, commonly known as 301 E. Shepherd Street, GCAD Property ID No. 146205, from the Local Retail (LR) District to the Single-Family (SF-5) Residential District to allow for residential use. (Case. No. 2024-010Z)

Council Action

Dianne York, Planner, introduced this agenda item. This zoning request is for property located at the corner of East Sheppard and South Crockett Avenue, commonly known as 301 E. Shepard. The applicant is requesting a rezone to the SF-5, Single Family Residential Zoning District. The block has been developed in this manner. The applicant wishes to build a one car garage. A lot of the homes that are built within this block have either one car carport or no covered parking whatsoever. Given that this is a 50 by 100 lot, it fits all the development standards for the SF-5 Zoning District and the Comprehensive Plan does call for this area to be developed in a residential manner. For this reason, staff does recommend approval of the request as did the Planning and Zoning Commission at their March 26, 2024 meeting.

Mayor Gott then asked if there was anyone present who wished to speak to this agenda item. Mr. Johnson came forward and provided the following information for the record:

Name: Aaron Johnson

Address: 1909 Polaris Street
Denison, TX

Mr. Johnson said he was there on behalf of Holly Jolly Homes. As Ms. York stated, the whole area has been developed in the Single Family 5 manner. So, they would like the Council to approve this zoning request in order to build a house with a one car garage.

There was no discussion or questions from Council.

Mayor Gott 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. 5342, "AN ORDINANCE OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY, BY CHANGING THE ZONING CLASSIFICATION ON A CERTAIN TRACT OF LAND LEGALLY DESCRIBED AS LOT 8, BLOCK 1, OF THE J.P. DUMAS ADDITION, AN ADDITION TO THE CITY OF DENISON, GRAYSON COUNTY, TEXAS, ACCORDING TO DEED RECORDED IN VOLUME Y, PAGES 324 AND 325, DEED RECORDS OF GRAYSON COUNTY, TEXAS, COMMONLY REFERRED TO AS 301 E. SHEPHERD STREET, DENISON, TX, AND MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT "A", FROM ITS ZONING CLASSIFICATION OF LOCAL RETAIL (LR) DISTRICT TO SINGLE FAMILY (SF-5) RESIDENTIAL DISTRICT; PROVIDING THAT SUCH TRACT OF LAND SHALL BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY; PROVIDING THAT THE ZONING MAP SHALL REFLECT THE SINGLE FAMILY (SF-5) RESIDENTIAL DISTRICT FOR THE PROPERTY; PROVIDING A PENALTY; PROVIDING REPEALING, SEVERABILITY, AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE."

There being no further business to come before the Council, the meeting was adjourned at 6:15 p.m.

JANET GOTT, Mayor

ATTEST:

Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on a Services Agreement with Fire Recovery USA, LLC for re-inspection and false alarm billing, and authorize the Interim City Manager to execute the same.

Staff Contact

Kenneth Jacks, Fire Chief
kjacks@cityofdenison.com
(903) 464-4427 Ext. 2201

Summary

- Fire Recovery USA will bill businesses for re-inspections and false alarm calls.
- The billing prices have previously been set and reflect in our City Ordinance.
- We currently use Fire Recovery USA for EMS and Fire billing.

Staff Recommendation

Staff recommends approval of the proposed agreement.

Recommended Motion

“I move to approve the Service Agreement with Fire Recovery USA, LLC, and authorize the Interim City Manager to execute the same.”

Background Information and Analysis

Denison Fire Rescue (DFR) is not currently billing for business re-inspections and false alarm calls. Per our City Ordinance, we are able to bill for both events, but we have yet to utilize this due to not having a company billing for us. It is essential to start charging for both re-inspections and false alarm calls because it takes our time and resources from other potential calls/emergencies. In a typical year, we re-inspect around 200 businesses and run 80 false alarm calls. We will continue to not charge businesses for the first re-inspection, but we will charge if we must re-inspect a second time. Having the ability to charge for these events will help push businesses to keep their buildings up to code and their alarm systems working, which, in turn, will keep our citizens safer. Fire Recovery USA currently does our EMS and Fire billing, so the transition to the additional billing should be seamless.

Financial Considerations

Fire Recovery USA will charge us \$18.95 per re-inspection or false alarm call that we bill.

Prior Board or Council Action

None.

Alternatives

The City Council may table, modify, or deny the proposed agreement.

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made effective as of _____, 2024 (“Effective Date”), by and between **FIRE RECOVERY USA, LLC**, a California limited liability company (“Company”), and the **CITY OF DENISON**, a home-rule municipal corporation of the State of Texas (“Client”). The Company and Client are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Company engages in the business of performing billing services (“Company Services”) for fire departments in connection with fire inspections, false alarms and/or permits performed by department personnel;

WHEREAS, Client seeks the services of Company to assist with the billing for services that Client provides in connection with these inspections, false alarms and/or permits; and

WHEREAS, Company and Client desire to enter into this Agreement to document their agreements regarding the Company Services to be provided to Client.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Client agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement: Client hereby engages Company to provide the Company Services described in Article 4 herein, and Client hereby accepts such engagement, all on the terms and conditions set forth herein. Company will determine the method, detail and means of performing the services detailed below.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Company: Company hereby represents and warrants to Client that, at all times during the term of this Agreement, Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of Client: Client hereby represents and warrants to Company that, at all times during the term of this Agreement, Client is a home-rule municipal corporation with an organized fire department, established pursuant to the laws and ordinances of the state in which Client is located.

**ARTICLE 3
COMPANY STATUS AND QUALIFICATIONS**

3.1. Independent Contractor: Company enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Company agrees that it will not become an employee, partner, agent or principal of Client while this Agreement is in effect.

3.2. Payment of Income Taxes: Company is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by Client to Company for services rendered under this Agreement. On request, Company will provide Client with proof of timely payment. Company agrees to indemnify Client for any claims, costs, losses, fees, penalties, interest, or damages suffered by Client resulting from Company's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Company may, at Company's own expense, use any employees or subcontractors as Company deems necessary to perform the services required of Company by this Agreement. Client may not control, direct, or supervise Company's employees or subcontractors in the performance of those services.

3.4. Qualifications: Company represents that it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of Client.

3.5. Ownership Interest: Company will have no ownership interest in Client.

3.6. No Benefit Contributions: Company shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by Client.

3.7. Attorney-in-Fact: Client appoints Company as Client's attorney-in-fact for the following purposes:

(a) Billing and Collections: To bill and collect ("Collections") all revenue earned by and due to Client, in connection with Client's provision of inspection, false alarms

and permits, and to receive all Collections on Client's behalf and to sue for and give satisfaction for monies due on account and to withdraw any claims, suits, or proceedings pertaining to or arising out of Company's or Client's right to collect such amounts; and

(b) Endorsement: To take possession of and endorse in Client's name any notes, checks, money orders, and any other instruments received as Collections.

**ARTICLE 4
GENERAL RESPONSIBILITIES OF COMPANY**

4.1. Minimum Amount of Service: Company agrees to devote as much time and attention to the performance of the Company Services under this Agreement as may be, in Company's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Company is responsible under this Agreement.

4.2. Company Services: Company agrees to perform the Company Services as set forth in the “List of Company Services” attached hereto as Schedule “A” and incorporated herein by reference; including those additional services requested by Client and accepted in writing by the Company during the term of this Agreement.

4.3. Non-Exclusive Relationship: Company may represent, perform services for, and contract with as many additional clients, persons, or companies as Company, in Company’s sole discretion, sees fit.

4.4. Time and Place of Performing Work: Company may perform the services under this Agreement at any suitable time and location Company chooses.

4.5. Materials and Equipment: Company will supply all materials and equipment required to perform the services under this Agreement.

4.6. Workers’ Compensation: Company agrees to provide workers’ compensation insurance for Company and Company’s employees and agents and agrees to hold harmless and indemnify Client for any and all claims arising out of any injury, disability, or death of any of Company’s employees or agents.

4.7. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Company without the prior written consent of Client, which consent shall not be unreasonably withheld.

4.8 Compliance with Laws: Company agrees to comply with all federal, state and local laws, including the Fair Debt Collection Practices Act and the Texas Finance Code.

ARTICLE 5 COMPENSATION OF COMPANY

5.1. Compensation for Company Services: All Company Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in the “List of Company Services,” attached hereto as Schedule A.

5.2. The provisions of Article 11 of this Agreement will govern any dispute associated with compensation.

ARTICLE 6 OBLIGATIONS OF CLIENT

6.1. Cooperation of Client: The Client agrees to comply with all reasonable requests of Company and provide access to all documents reasonably necessary to the performance of Company’s duties under this Agreement. The Client agrees to adopt, implement and enforce policies and procedures to assure Client personnel perform the steps necessary to provide Company with a database of inspection, false alarms and/or permit businesses in a format acceptable to company and to perform the inspections in a full and complete manner to facilitate the provisions of Company Services.

6.2 Assignment: Neither this Agreement nor any duties or obligations under this

Agreement may be assigned by Client or Company without the prior written consent of the other.

ARTICLE 7 CLIENT AUTHORIZATION

7.1. Authorization: Notwithstanding other provisions of this Agreement, Company shall obtain authorization from Client prior to performing any of the following:

- (a) The sale conveyance, transfer, pledge exchange, assignment, hypothecation, or encumbrance of Client's interest in any sums owed to Client; and
- (b) All other limitations as stated by the terms of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT

8.1. Termination on Notice: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving sixty days (60) written notice to the other party. Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue for a period of three (3) years thereafter. This Agreement shall automatically renew for successive one (1) year periods, unless either party provides written notification to the other party of its decision not to renew this Agreement.

8.2. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events;

- (a) Bankruptcy or insolvency of either party;
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

8.3. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days (5) after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Company's failure to complete the services specified in the Description of Services;
- (b) Client's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Company's material breach of any representation, warranty or agreement contained in this Agreement;
- (d) Client's failure to make payments as described in Schedule A Section 7.

**ARTICLE 9
PROPRIETARY RIGHTS**

9.1. Confidential Information: Any written, printed, graphic, or electronically or magnetically recorded information furnished by Client for Company's use are the sole property of Client. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Client's employees, products, services, prices, operations, and subsidiaries. Company will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the Client's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to Company's employees, agents, and subcontractors. On termination of this Agreement, Company will return any confidential information in Company's possession to Client.

9.2. Confidential Information: Any written, printed, graphic, electronically or magnetically recorded information, computer-based hardware, software, applications, software scripts, or software links furnished by Company for Client's use are the sole property of Company. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Company's employees, products, services, prices, operations, and subsidiaries. Client will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the Company's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to Client's employees, agents, and subcontractors. On termination of this Agreement, Client will return any confidential information in Client's possession to Company.

**ARTICLE 10
INDEMNIFICATION**

10.1. Indemnification: The Company will indemnify and hold the Client harmless from and against any and all loss, damage, liability, claims and/or personal injury resulting from all negligent actions performed by the Company, or its agents on the Company's behalf, in connection with this Agreement. However, this indemnification shall not apply with respect to any legal cause, action or consequential liability or losses as a result from inaccurate or incomplete information or unfounded or unreasonable submissions furnished to the Company by the Client nor shall it apply to any act, omission or negligence of the Client.

**ARTICLE 11
GENERAL PROVISIONS**

11.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of Texas). The parties expressly agree that the exclusive venue and forum for resolving any legal disputes under this Agreement shall be the state or federal courts serving Grayson County, Texas.

11.2. Incorporation of Recitals and Entire Agreement: The Recitals set forth above are incorporated into and are made part of this Agreement. This Agreement constitutes the entire

agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the Parties.

11.3. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

11.4. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Company to:

Fire Recovery USA, LLC
2271 Lava Ridge Court, Suite 120
Roseville CA 95661
Attention: Craig Nagler

with a copy to:

The Watkins Firm, APC
9915 Mira Mesa Boulevard, Suite 130
San Diego, CA 92131
Attention: Chris Popov, Esq.

If to Client to:

City of Denison
300 W Main St
Denison, TX 75020
Attention: City Manager _____

with a copy to:

Messer Fort PLLC
6371 Preston Rd., Suite 200
Frisco, TX 75034 _____
Attention: Julie Fort _____

Or, if delivered by telecopy, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday or a Federal Holiday.

11.5. Waiver; Amendments: This Agreement, and the Transaction Documents, (i) set forth the entire agreement of the parties respecting the subject matter hereof, (ii) supersede any prior and contemporaneous understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof, and (iii) may not be amended orally, and no right or obligation of any party may be altered, except as expressly set forth in a writing signed by such party.

11.6. Counterparts: This Agreement may be signed in counterparts.

11.7. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

11.8. Arbitration:

(a) If at any time there shall be a dispute arising out of or relating to any provision of this Agreement, any Transaction Document or any agreement contemplated hereby or thereby, such dispute shall be submitted for binding and final determination by arbitration in accordance with the regulations then obtaining of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) resulting from such arbitration shall be in writing, and shall be final and binding upon all involved parties. The site of any arbitration shall be at a site agreed to by the parties and the arbitration decision can be enforced in a "court of competent jurisdiction".

(b) This arbitration clause shall survive the termination of this Agreement, any Transaction Document and any agreement contemplated hereby or thereby.

11.9. Waiver of Jury Trial; Exemplary Damages: THE PARTIES HERETO HEREBY WAIVE THEIR RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY TRANSACTION DOCUMENT. NO PARTY SHALL BE AWARDED PUNITIVE OR OTHER EXEMPLARY DAMAGES RESPECTING ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY TRANSACTION DOCUMENT CONTEMPLATED HEREBY.

11.10 Cooperative Purchases: This Agreement may be used by other government agencies. Company has agreed to offer similar serves to other agencies under the same or similar terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between the Company and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The Client/County/or Client/Protection District will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchase by other agencies.

11.11 Insurance: Company will maintain General Liability in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate; Commercial Auto w/hired non-owned coverage of \$1,000,000; Workers Compensation \$500,000/\$500,000; Professional Liabilit of \$1,000,000; Employment Practices Liability of \$250,000, and an umbrella policy of \$1,000,000 per occurrence/ \$1,000,000 aggregate. Proof of insurnacem including Certificates of Insurance, in a form acceptable to the Client, shall be provided to Client upon written request by the Client. Such insurance policies will include a waiver of subrogateion, name fhte Client as an additional insured and shall provide a thirty (30) day notice to Client prior to expiration, cancellation, non-renewal, or material change in coverage, and such notice shall be mailed by certified mail to the Client at the addresses for notice provided by this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

COMPANY:

FIRE RECOVERY USA, LLC.
a California limited liability company

By: M. Craig Nagler
03 / 27 / 2024

Name: M. Craig Nagler

Title: CEO

CLIENT:

City of Denison, TX

By: _____
Bobby Atteberry, Interim City Manager

SCHEDULE A

LIST OF COMPANY SERVICES

1. Company agrees to bill the responsible party on the Client's behalf for fire inspection, false alarms and/or permit services rendered by the Client and recorded and processed by Company. The inspection, false alarm and/or permit fees are listed in EXHIBIT A, but may change over time. Client will provide notice to Company of changes to its fee schedule.
2. Company will provide, as a normal matter of business; processing and invoicing of inspections, false alarms and/or permits and submission to the responsible party for payment, receipts of monies deemed due to the Client, payments of the agreed upon amounts of said monies to Client, and reporting of progress via RecoveryHub.
3. Company agrees to bill to the best of its ability all inspections, false alarms and/or permits provided to Company by the Client.
4. Company agrees to remit to Client the full amount collected for each invoice less a processing fee of Eighteen dollars and Ninety-five cents (\$18.95) for each paid invoice. Company will also collect Fifty Percent (50%) of any late fee assessed by the Client and paid by the client as compensation for Company's billing efforts.
5. If paid by credit card, a credit card fee of 3% will be passed along to the customer as a "convenience fee".
6. Company agrees to pay the funds due to the Client for its inspections, false alarms and/or permits on a monthly basis, within seven (7) working days after the close and accounting of the monthly billing cycle.
7. Company agrees to make reports available via RecoveryHub, a password protected website, for the Client which will set forth the status of all inspections, false alarms and/or permits and provide an accounting of all payments and amounts due the Client under the terms of this Agreement.
8. Company will not be responsible for, nor accept any liability for, any erroneous, invalid, or illegal inspections, false alarms or permits issued by Client.
9. Parties acknowledge a critical component to the success of the billing effort is the acquisition by the Client of the necessary contact information for the responsible party at each inspection, false alarms and/or permit location to whom the invoice will be sent. The Client agrees to obtain, for each business location, the e-mail address and telephone number for the responsible party for payment. If the Client does not maintain an 80% success rate for obtaining accurate contact information, the Company reserves the right to charge a fifteen-dollar (\$15) processing charge for attempting to identify the responsible party, whether that effort is successful or not. If this fee is charged by the Company the total fee for each month will be documented and subtracted from the monthly payment set forth in 4, above.
10. Client will, to the extent it deems appropriate and necessary, expend the resources and take the required actions to obtain payment for all invoices that remain unpaid after 60 days of the invoice date and arrange for those payments to be forwarded to the Company for processing under the terms of this Agreement.

EXHIBIT A

CLIENT FEE SCHEDULE

(See Following Pages)

Title	Inspection Billing Agreement - City of Denison (TX)
File name	Inspection_Services_Agreement_Final.pdf
Document ID	2cf5d6308994699c3c6c45213cc3feb0ca47ab5a
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

03 / 27 / 2024

15:26:45 UTC

Sent for signature to M. CRAIG NAGLER (cnagler@firerecoveryusa.com) from j.powell@firerecoveryusa.com
IP: 198.44.128.13



VIEWED

03 / 27 / 2024

15:31:27 UTC

Viewed by M. CRAIG NAGLER (cnagler@firerecoveryusa.com)
IP: 184.169.45.4



SIGNED

03 / 27 / 2024

15:32:15 UTC

Signed by M. CRAIG NAGLER (cnagler@firerecoveryusa.com)
IP: 184.169.45.4



COMPLETED

03 / 27 / 2024

15:32:15 UTC

The document has been completed.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on reappointing Vincent Rhodes, Joel Luper, Jimmy Cravens, Ryan Cassell, and Charlie Means to the Parks and Recreation Commission.

Staff Contact

Justin Eastwood, Director of Parks & Recreation
jeastwood@cityofdenison.com
903-465-2720

Summary

- The Parks and Recreation Commission was established by Ordinance No. 4632 and consists of five members and serves in an advisory capacity to Council and staff on matters related to Parks and Recreation.
- Terms of office are two-year terms, with no more than three (3) consecutive full terms of office for a total of six (6) years. Commissioners are required to reside inside the Denison City limits.
- All commissioners are in good standing and eligible to serve another two-year term.

Staff Recommendation

Staff recommends the reappointment of Vincent Rhodes, Joel Luper, Jimmy Cravens, Ryan Cassell, and Charlie Means to the Parks and Recreation Commission.

Recommended Motion

“I move to reappoint Vincent Rhodes, Joel Luper, Jimmy Cravens, Ryan Cassell, and Charlie Means to the Parks and Recreation Commission.”

Background Information and Analysis

The Parks and Recreation Commission was established by Ordinance No. 4632. It consists of five members and serves in an advisory capacity to staff and the Council in all matters related to parks and recreation. Terms of office are two-year terms, with no more than three consecutive full terms. All commissioners’ terms will expire April 30, 2024. They are each in good standing and eligible to serve another two-year term.

Financial Considerations

None.

Prior Board or Council Action

The Council reappointed Vincent Rhodes, Joel Luper, and Jimmy Cravens to their second term and appointed Ryan Cassell and Charlie Means to their first term to the Parks and Recreation Commission in April 2022.

Alternatives

Council may table, deny, or modify the item.

City Council Meeting Staff Report



April 15th, 2024
Regular Council Meeting

Agenda Item

Receive a report, hold a discussion, and take action on an Agreement for Traffic Control Inventory – Phase 3 Study with Kimley-Horn and Associates, Inc. and the City of Denison and authorize the Interim City Manager to execute the same.

Staff Contact

Ronnie Bates, Director of Public Works
rbates@cityofdenison.com
903-465-2720 Ext. 2441

Summary

- The City of Denison has requested that Kimley-Horn provide professional engineering services that includes data collection of existing intersection traffic control devices and improvements. Research of existing ordinances to determine which intersections are controlled and provide recommendations for traffic control at each intersection in the study area.
- This is phase 3 of a 5-phase project and this contract is for \$99,000 and has been budgeted from the FY24 Street Improvement Fund 015.

Staff Recommendation

Staff recommends approval.

Recommended Motion

"I move to approve the Agreement for Traffic Control Inventory – Phase 3 Study with Kimley-Horn and Associates, Inc. and the City of Denison and authorize the Interim City Manager to execute the same.

Background Information and Analysis

The City of Denison has requested that Kimley-Horn provide professional engineering services that include data collection of existing intersection traffic control devices and improvements, such as, type of sign, condition of sign, and location of each sign. Each sign location will be photographed, logged, and geo-referenced and Kimley-Horn will provide the inventory in a GIS format data set. Kimley-Horn will research existing ordinances to determine which intersections are controlled and provide recommendations for traffic control at each intersection in the study area. Kimley-Horn will also provide traffic volume collection by utilizing 24-hour traffic counts for up to fifteen locations. Phase 3 of the 5-phase project will be bounded by Katy Memorial Expressway to the west, Texoma Parkway / 9th Street to the east, Shawn Drive and Brock Street to the north and Woodlake Road to the south. The final findings will be documented in a technical memorandum and presented to the City for review.

Financial Considerations

The expense of the Traffic Control Inventory – Phase study is \$99,000 and will be paid with funds in in Street Improvement Fund 015 for Traffic Control Inventory Phase 3.

Prior Board or Council Action

None.

Alternatives

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

INDIVIDUAL PROJECT ORDER (IPO) #25
TRAFFIC CONTROL INVENTORY – PHASE 3
DATE PREPARED: MARCH 27, 2024

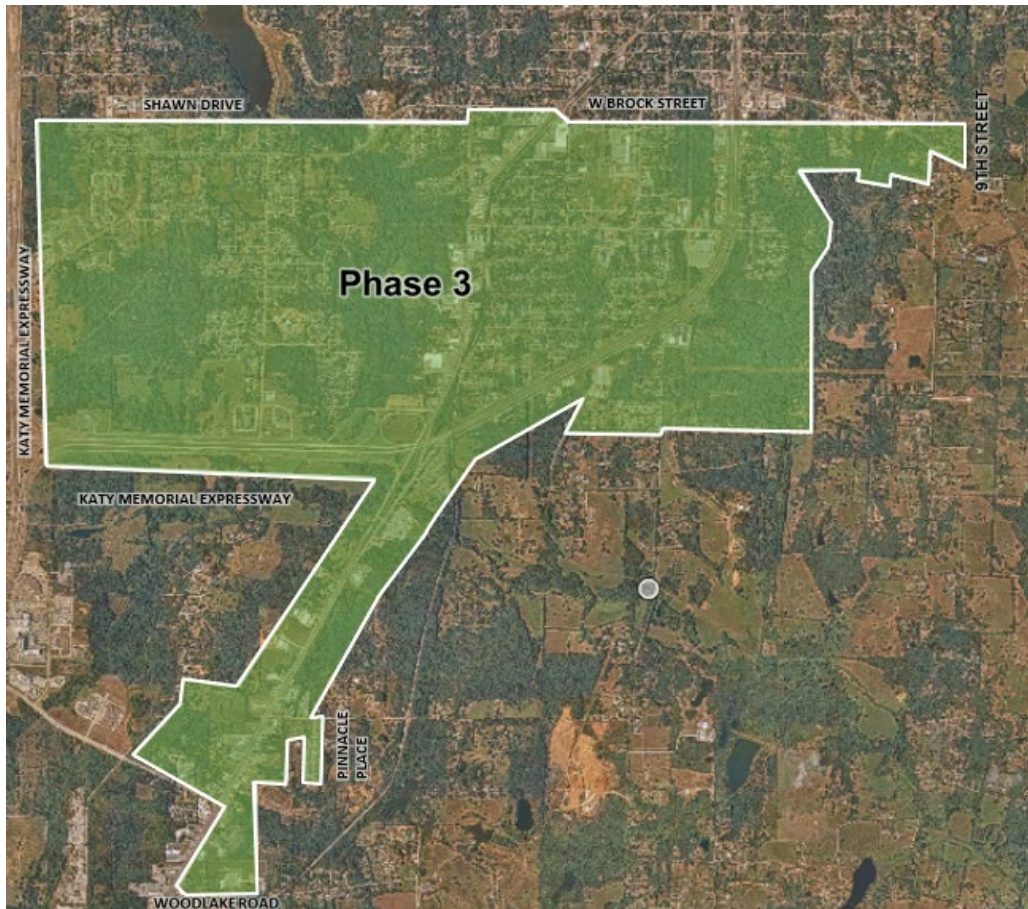
Describing a specific agreement between Kimley-Horn and Associates, Inc. (Consultant), and the City of Denison (Client) in accordance with the terms of the Master Agreement for Continuing Professional Services dated May 26, 2022, which is incorporated herein by reference.

Identification of Project: Traffic Control Inventory – Phase 3

Project Understanding: The City of Denison has requested that Kimley-Horn provide professional engineering services that include:

- Data collection of existing intersection traffic control devices,
- Data collection of existing intersection traffic control improvements,
- Research existing city ordinances to determine which intersections are controlled, and
- Provide recommendation for traffic control at each intersection in the study area.

Phase 3 is bounded by Katy Memorial Expressway to the west, Texoma Parkway / 9th Street to the east, Shawn Drive and Brock Street to the north and Woodlake Road to the south. Please see image below.



Scope of Services:

LS = Lump Sum Fee Type

Task 1 – Phase 3 Study Area

\$99,000 LS

1.1 Data Collection

1.1.1 Collection

Kimley-Horn will perform an in-field review of the existing traffic control devices and improvements of the Phase 3 city-maintained roads that intersect with another city-maintained road (i.e., Walker Street & Armstrong Ave). Kimley-Horn will inventory and verify existing intersection traffic control and collect the following data:

- Existing traffic control sign (stop, yield, etc.)
- Condition of existing sign and sign structure (if applicable)
- Location of existing signs

Each sign location will be photographed, logged, and georeferenced. Kimley-Horn will provide the inventory to the Client in a GIS format data set.

1.1.2 Traffic Volume Collection

Kimley-Horn will collect 24-hour traffic counts at up to twenty locations. The exact locations of the counts will be determined through coordination with the Client. If additional roadways need to be included as part of this analysis it will be considered additional services and it will impact the proposed project schedule.

Kimley-Horn will perform the following tasks:

- Evaluate (at an elevated level) the existing traffic control devices based on engineering judgment, existing traffic patterns, and the obtained traffic counts.
- Provide one or two overall study area exhibits that identify the proposed intersection control for each location using the data collected above.

1.2 Recommendations

1.2.1 Prepare Technical Memorandum

The final findings of Task 1.1.1 and 1.1.2 will be documented in a draft technical memorandum and presented to the Client for review. Comments from the Client will be addressed, and a final technical memorandum will be prepared and submitted. Should the Client request revisions to the final technical memorandum Kimley-Horn will make one round of revisions and resubmit the updated study.

1.2.2 Meetings

Kimley-Horn will prepare for and attend up to two meetings.

Additional Services if required: Currently there are no Additional Services required.

Schedule: Project to begin upon receipt of signed IPO #25. We will provide our services as expeditiously as practicable.

Deliverables: Kimley-Horn will deliver in a timely manner the results of services authorized as a part of this IPO. Deliverables will be as required.

Terms of compensation:

Kimley-Horn will perform the task identified in the Scope of Services for the fee type shown as follows:

Task 1 – Phase 3 Study Area **\$99,000 LS**

Total Lump Sum **\$99,000 LS**

Compensation for Services and Method of Payment shall be as referenced in the Master Agreement.

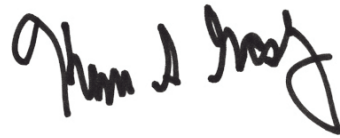
Invoices will be submitted with Lump Sum Tasks shown as a percentage of work completed.

Other special terms of Individual Project Order: None

ACCEPTED:

CITY OF DENISON

KIMLEY-HORN AND ASSOCIATES, INC.



BY: _____

BY: _____

TITLE: _____

TITLE: Senior Vice President

DATE: _____

DATE: March 27, 2024

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on the Guaranteed Maximum Price contract with Piazza Construction in the amount of \$3,339,605.00 for the construction of 321 W Main and authorize the Interim City Manager to execute the same.

Staff Contact

Bobby Atteberry, Interim City Manager
batteberry@cityofdenison.com
(903) 464-4440

Summary

- The City of Denison acquired the property located at 321 W. Main Street through the eminent domain process in order to build a visitor's center and public restrooms.
- On December 4th, 2023 the City Council awarded the design/build contract to Piazza Construction and approved preconstruction services and design. This GMP is the final price of the project.

Staff Recommendation

Staff recommends accepting the guaranteed maximum price contract with Piazza Construction in the amount of \$3,339,605.00 for the construction of 321 W Main.

Recommended Motion

“I move to accept the Guaranteed Maximum Price contract with Piazza Construction in the amount of \$3,339,605.00 for the construction of the building at 321 W Main and authorize the Interim City Manager to execute the same.”

Background Information and Analysis

The City of Denison acquired the property located at 321 W. Main Street through the eminent domain process in order to build a visitor's center and public restrooms. City staff received directions to prepare a request for qualifications/request for proposals for a design-build project for the proposed site. The City issued an RFQ/RFP on August 27, 2023, with submittals due by 2:00 p.m. on September 12, 2023. The City received 3 submittals for this project. A selection committee was comprised and reviewed the submittals. During Phase 1 of the selection process, one of the proposers was eliminated by the committee, leaving two finalists – C1S, Inc. and Piazza Construction. The committee then conducted a site visit with the two finalists on October 3rd and provided the finalists with a design criteria package and conceptual drawings and the finalists were given 1 week to provide any questions about the project. Staff provided answers to the questions received through an addendum and gave the finalists two weeks to provide their proposals, to be received by close of business on Monday, October 30, 2023. After receiving the proposals, and as Phase 2 of the selection process, the committee interviewed each proposer and scored the proposers based on their proposals submitted. Piazza Construction ended up with a higher average score than C1S and came in lower in overall price than C1S. Because of this, and because Piazza Construction is local, more weight was given to Piazza Construction as required under procurement laws.

On December 4th, 2023 the City Council awarded the design/build contract to Piazza Construction and approved preconstruction services and design. This GMP is the final price of the project.

Financial Considerations

The cost for preconstruction services is budgeted to come out of the Hotel Occupancy Tax (HOT) Fund.

Prior Board or Council Action

Council awarded the design/build contract at their December 4, 2023 meeting.

Alternatives

Council may table, deny or modify the agenda item.

AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 5th day of April in the year 2024 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

Denison Visitors Center, Public Restrooms and Offices
321 West Main Street, Denison, Texas 75020

THE OWNER:
(Name, legal status and address)

City of Denison, Texas 300 West Main Street
Denison, Texas 75020

THE DESIGN-BUILDER:
(Name, legal status and address)

Piazza Construction, LLC 2811 S. Woodlawn Ave.
Denison, Texas 75020

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

[] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be (\$ 3,339,605.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

N/A

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
18" Drilled Piers, Greater Depth	+ LF	\$54.00
18" Drilled Piers, Lesser Depth	- LF	-\$11.11
18" Drilled Piers, Cased	+ LF	\$60.00

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

N/A

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

N/A

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed N/A (\$ N/A), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

N/A

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

Init.

N/A

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

N/A

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

N/A

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

25th Day of each Month

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 25th day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 25th day of the Following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than (30) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to

init.

have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (10 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

N/A

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of N/A percent (N/A %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;

Init.

- .3 Subtract retainage of N/A percent (N/A %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of N/A percent (N/A %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of N/A percent (N/A %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than (270) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

270 Calendar Days from Notice to Proceed Date

Portion of Work	Substantial Completion Date
N/A	N/A

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

N/A

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

N/A, Specifications are on Drawings

Section	Title	Date	Pages
N/A			

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

See Exhibit "A" attached

Number	Title	Date
N/A		

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The

Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

N/A

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

\$55,000.00, Fire Sprinkler Pump, \$125,000.00, IT and Access Controls

.2 Contingencies

\$325,000.00 Construction Contingency

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Items Excluded from Contract; Geotechnical Report, Materials Testing, Tap / Impact Fees, All Permit Fees, Franchise Utility Provider Fees, Temporary Construction Water, Dumpster Service.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

N/A

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

N/A

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

TBD

.2 Project Manager

TBD

.3 Others

TBD

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

Init.

BACA Architects & Planners, 100 N. Travis Street, Suite 500, Sherman, Texas 75090

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
N/A			

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

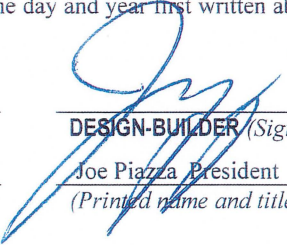
The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*
Bobby Atteberry Interim City Manager
(Printed name and title)



DESIGN-BUILDER *(Signature)*
Joe Piazza, President
(Printed name and title)

EXHIBIT A

LIST OF DRAWINGS

A0.0 COVER SHEET
A0.1 CODE SUMMARY
A0.2 CODE SUMMARY

STRUCTURAL

S-1 FOUNDATION PLAN
S-2 SECOND FLOOR FRAMING & SHEAR WALL PLAN
S-3 THIRD FLOOR FRAMING & SHEAR WALL PLAN
S-4 ROOF FRAMING & SHEAR WALL PLAN
S-5 NOTES AND DETAILS
S-6 FRAMING NOTES

ARCHITECTURAL

A1.0 FLOOR PLAN - FIRST & SECOND FLOORS
A1.1 FLOOR PLAN - THIRD FLOOR
A2.0 ENLARGED FLOOR PLANS
A2.1 INTERIOR ELEVATIONS
A2.2 INTERIOR ELEVATIONS
A2.3 MILLWORK DETAILS
A2.4 FLOOR FINISH PLAN - FIRST & SECOND FLOORS
A2.5 FLOOR FINISH PLAN - THIRD FLOOR
A2.6 WALL FINISH PLAN - FIRST & SECOND FLOORS
A2.7 WALL FINISH PLAN - THIRD FLOOR
A3.0 ROOF PLAN
A4.0 EXTERIOR ELEVATIONS
A4.1 EXTERIOR ELEVATIONS
A4.2 BUILDING SECTIONS
A5.0 WALL SECTIONS
A5.1 WALL SECTIONS
A5.2 WALL SECTIONS
A5.3 SECTION DETAILS
A6.0 STAIRS SECTIONS & DETAILS
A6.1 STAIRS SECTIONS & DETAILS
A6.2 STAIRS SECTIONS & DETAILS
A6.1 ELEVATOR SECTIONS & DETAILS
A7.0 DOOR & WINDOW SCHEDULES

MECHANICAL/ELECTRICAL/PLUMBING

M1.1 FIRST & SECOND FLOOR MECHANICAL PLANS
M1.2 THIRD FLOOR & ROOF MECHANICAL PLANS
M2.1 MECHANICAL SCHEDULES AND NOTES
M2.2 MECHANICAL SCHEDULES
M2.3 MECHANICAL DETAILS

E1.1 ELECTRICAL LIGHTING PLANS
E1.2 ELECTRICAL LIGHTING PLANS
E2.1 ELECTRICAL POWER PLANS
E2.2 ELECTRICAL POWER PLANS
E3.0 ELECTRICAL SCHEDULES, NOTES, AND DETAILS
E4.0 ELECTRICAL RISER
E5.0 ELECTRICAL DETAILS

FIRE PROTECTION

FP1.1 FIRE PROTECTION PLANS
FP1.2 FIRE PROTECTION PLANS
FP2.0 FIRE PROTECTION PLANS

MEP1.1 ELECTRICAL POWER PLANS

P1.1 PLUMBING WATER PLANS
P1.2 PLUMBING WATER PLANS
P1.3 PLUMBING WATER RISER
P2.1 PLUMBING WASTE/VENT PLANS
P2.2 PLUMBING WASTE/VENT PLANS
P2.3 PLUMBING WASTE/VENT RISER
P3.1 PLUMBING GAS RISER
P4.1 PLUMBING SCHEDULES NOTES AND DETAILS
P4.2 PLUMBING SCHEDULES NOTES AND DETAILS
P4.3 PLUMBING SCHEDULES NOTES AND DETAILS