



REQUEST FOR QUALIFICATIONS (RFQ)

Construction Manager at Risk Services for the New Cedar Park Public Library

RFQ-09-032-220-RL-013

Issued: September 18, 2020
Due Date: October 16, 2020 at 2:00 PM CST

Respondents must submit one (1) original, five (5) bound hard copies (6 total) and a USB drive with a PDF of their Statements of Qualification (SOQ) in a sealed envelope on or before 2:00 PM (CST) Friday, October 16, 2020. SOQs shall be a maximum of 40 front side pages.

All responses to this Request for Qualifications as well as any questions, clarifications, or requests for general information are to be directed to:

Randall J. Lueders, PE, PMP
Senior Project Manager
City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

E-mail: randall.lueders@cedarparktexas.gov
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SECTION 1 – GENERAL INFORMATION & REQUIREMENTS

- 1.1 **GENERAL INFORMATION:** The City of Cedar Park, Texas, (the “Owner”) is soliciting statements of qualifications (“Qualifications”) for selection of a Construction Manager-at-Risk firm (“Construction Manager”) to provide preconstruction and construction services for the New Cedar Park Public Library (the “Project”), in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications.
- 1.1.1 This Request for Qualifications (“RFQ”) shall be available for viewing and download on the BidNet Direct website (www.bidnetdirect.com) or the Cedar Park (the “City”) website (<https://www.cedarparktexas.gov/departments/finance/purchasing-rfps-rfqs>), and available to interested individuals and entities (“Proposers”) from the Date Issued until the Due Date and Time.
- 1.1.1.1 Proposers are expected to examine all documents that make up this RFQ. Proposers shall promptly notify the City of any omission, ambiguity, inconsistency, or error that they may discover upon examination of the RFQ. The City assumes no responsibility for errors or misrepresentations that result from the use of incomplete Qualifications.
- 1.1.2 This RFQ is the first step in a two-step process for selecting a Construction Manager for the Project as provided by Chapter 2269 of the Texas Government Code. The RFQ provides the information necessary to prepare and submit Qualifications for evaluation, score and rank by the Owner, based on the criteria set forth herein.
- 1.1.3 In the second step of the process, the RFP, the highest scoring five or fewer respondents will be invited to submit additional information to the Owner, including fee proposals and general conditions prices (“Proposals”). The Owner will evaluate and then score the Proposals in the order that they provide the “best value” for the Owner based on the published selection criteria and on the ranking evaluations.
- 1.1.4 In the second step of the process, the “most” qualified respondents may be requested to attend an interview with the Owner to confirm their Proposal and answer additional questions. The Owner will then evaluate and score the remaining “most” qualified respondents in order to identify the “best value” respondent to the City of Cedar Park.
- 1.1.5 Contractors intending on serving as sub-consultants, subcontractors, vendors, or material suppliers should not submit qualifications in response to this request, as it is to short-list prime Construction Managers only.
- 1.2 **PUBLIC INFORMATION:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (TPIA) (Texas Government Code, Chapter 552.001, et seq.) after the solicitation is completed.
- 1.2.1 The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.
- 1.2.2 Respondents recognize that this Project is publicly owned and the Owner is subject to the disclosure requirements of the TPIA. As part of its obligations within the Contract,

Respondents agree, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA.

1.2.3 This provision applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. Respondents must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract; (2) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the Contract, either:

- (i) provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.

1.2.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Request for Qualifications and the vendor agrees that the Contract can be terminated if the vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

1.3 **TYPE OF CONTRACT:** Any contract resulting from this solicitation will be in the form of the Standard Form of Agreement Between Owner and Construction Manager as Constructor described in Section 5 and attached to this RFQ as **Appendix A**. The selected Construction Manager will be expected to negotiate with the City and if negotiations are successful, execute an agreement which will govern both pre-construction and construction services. By submitting a response to this RFQ, the Construction Manager acknowledges acceptance of the terms and conditions presented in the template agreement.

1.4 **CLARIFICATIONS AND INTERPRETATIONS:** Any clarifications or interpretations of this RFQ that materially affects or changes its requirements will be posted by the Owner as an addendum on the BidNet Direct website (www.bidnetdirect.com) or the Cedar Park (the "City") website (<https://www.cedarparktexas.gov/departments/finance/purchasing-rfps-rfqs>). It is the responsibility of all respondents to obtain this information in a timely manner. If required in the addendum, respondents shall acknowledge receipt of and incorporate each addendum in its Qualifications.

1.4.1 Respondents shall consider only those clarifications and interpretations that the Owner issues by addenda five (5) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Qualifications.

1.5 **SUBMISSION OF QUALIFICATIONS:**

- 1.5.1 **DEADLINE AND LOCATION:** Qualifications must be received by the City of Cedar Park at or before 2:00 PM CST on October 16, 2020. Qualifications must be properly identified with the subject title and date and time due. Qualifications shall be submitted in written, hard-copy format, and delivered in a sealed envelope via mail, courier service, or hand delivery to:

Randall J. Lueders, PE, PMP
Senior Project Manager
City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

- 1.5.2 All Qualifications shall be labeled as shown below:

Request for Qualifications on:	Construction Manager at Risk Services for the New Cedar Park Public Library
Reference Number:	RFQ # 09-032-220-RL-013
Due Date and Time:	October 16, 2020 at 2:00 PM CST

- 1.5.3 Submit one (1) original, five (5) bound hard copies (6 total) and a USB drive with a PDF electronic format of their Statements of Qualification (SOQ). SOQs shall be a maximum of 40 front side pages. See Section 4 for more information on format requirements.

- 1.5.4 Late received Qualifications will be returned to the respondent unopened.

- 1.5.5 The Owner will not acknowledge or receive Qualifications that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

- 1.5.6 Properly submitted Qualifications will not be returned to respondents.

- 1.5.7 Qualifications materials must be enclosed in a sealed envelope (box or container) addressed to the Point of Contact person; and the package must clearly identify the submittal deadline, the RFQ number, and the name and return address of the respondent.

- 1.5.8 Properly submitted Qualifications will be opened publicly and the names of the respondents will be read aloud via virtual meeting. The meeting may be accessed using the following information:

Meeting link:

<https://cedarparktexas.webex.com/cedarparktexas/j.php?MTID=maf2e6b1ae392b67d0e8b8926eca8b35e>

Meeting number: 133 756 2172

Password: MKg6gpaPD94

Host key: 736552

- 1.6 **POINT-OF-CONTACT:** The Owner designates the following person, as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ, including questions regarding terms and conditions, to the Point-of-Contact person.

Randall J. Lueders, PE, PMP
Senior Project Manager
City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

E-mail: randall.lueders@cedarparktexas.gov
Telephone: (512) 401-5354

- 1.7 **EVALUATION OF QUALIFICATIONS:** All properly submitted Qualification submissions will be reviewed, scored and ranked by the City, using the evaluation criteria and weighting set forth in Section 3. The City's Selection Committee will evaluate, score and rank the Construction Managers in order of the most qualified based on demonstrated competence and qualifications to perform the services in accordance with this RFQ. A total of up to 70 possible points may be awarded for responses to this RFQ. The highest scoring five or fewer respondents will then be selected at the Owner's discretion to participate in step two, the RFP and Interview portion, of the selection process. A total of up to 30 possible points may be awarded for the RFP and interview portion. Only Construction Managers selected to participate in step 2 may be considered for the contract award.
- 1.7.1 Qualifications (step one) shall NOT include any information regarding respondent's fees, pricing, or other compensation. Such information will be solicited from Construction Managers selected to participate in step two of the selection process.
- 1.8 **OWNER'S RESERVATION OF RIGHTS:** The Owner may evaluate the Qualifications based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Qualifications and re-solicit for new Qualifications, or to reject any and all Qualifications and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.
- 1.9 **ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its Qualifications in response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified" Construction Manager(s) will require subjective judgments by the Owner.
- 1.10 **NO REIMBURSEMENT FOR COSTS:** Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFQ process shall be at the sole risk and responsibility of the respondent. Respondents submit Qualifications and Proposals at their own risk and expense.
- 1.11 **PRE-SUBMITTAL CONFERENCE:** A Pre-Submittal Conference will NOT be held.

- 1.12 **ELIGIBLE RESPONDENTS**: Only individual Construction Managers or lawfully formed business organizations may apply (This does not preclude a respondent from using consultants.) The Owner will contract only with the individual Construction Manager or formal organization that submits a Qualification.
- 1.13 **REQUIRED NOTICES OF WORKERS' COMPENSATION INSURANCE COVERAGE**: Respondents are advised that workers' compensation insurance coverage is required for all persons providing services on a building or construction project for a governmental entity. The requirements are set forth in the Insurance Rider, attached to the Standard General Conditions of the Construction Contract.
- 1.14 **PREVAILING WAGE RATE DETERMINATION**: Respondents are advised that compliance with Texas Government Code Chapter 2258, as amended, is required.

SECTION 2 – EXECUTIVE SUMMARY

2.1 GENERAL INFORMATION:

The City of Cedar Park is soliciting Statements of Qualifications (SOQ) from qualified construction managers who are interested in the opportunity to provide pre-construction and construction services for the construction of the New Cedar Park Public Library. Included in the scope of services is collaboration with the design team during the design phase, attendance at design coordination meetings and constructability reviews, value engineering participation, construction scheduling, cost estimating, and development of a guaranteed maximum price (GMP) proposal.

Responses to the Request for Qualifications (RFQ) will be evaluated to identify applicants with the requisite experience, qualifications, and resources to complete the Project successfully. The Owner will identify and select a short-list, from the list of respondents, based on an evaluation of each respondent's SOQ. Construction Managers on the short-list will be invited to respond to a detailed Request for Proposal (RFP) which will be subsequently issued. This RFQ places emphasis on the applicant's demonstrated ability on past projects of similar size and scope to perform on this Project to meet or exceed Owner expectations. Furthermore, it is imperative that the selected CMAR work seamlessly with the Owner and design team in a collaborative fashion throughout the design, construction and closeout processes.

A construction budget of \$22,000,000 has been allocated to a new multi-story approximately 40,000 square foot library facility. The proposed schedule for design and construction of the project is included in Section 2.2. Additionally, the City has established guiding principles for the Library and they are included in **Appendix B** of this RFQ. The Library will be located within the Bell District, a vibrant 40+ acre redevelopment in the heart of Cedar Park, which will be the community's primary gathering place.

The District is located in central Cedar Park, with a newly constructed, realigned Bell Boulevard (US 183) to the east, Park Street to the north, Buttercup Creek to the south, and Cluck Creek as the western border. Within this development, the library is slated to be located in the southern portion of the development, as a key element of the social hub. The social hub will be an area with a community green nestled amongst a majestic grove of heritage trees and the nearby Cluck Creek. Restaurants, shops, and other pedestrian friendly uses will line the open space, ensuring its activation throughout the day and evening. Adjacent to the library will be a 15-acre City park, and several blocks of urban-style mixed-use development that is pedestrian oriented and relies upon structured parking rather than surface lots. The structured parking required for the Library will be designed and constructed as part of the Bell District and is not included in the scope of the Library Project.

The Bell District is a public-private partnership between the City of Cedar Park and Red Leaf Properties, LLC. More detailed descriptions of the background, vision, and plan for the redevelopment can be found at <http://destinationbellblvd.cedarparktexas.gov/> and attached to the RFQ as Appendix C – Bell Boulevard Design Book.

2.2 **PROJECT PLANNING SCHEDULE:** Anticipated Key Project planning schedule milestones are:

- CMAR Solicitation
 - Owner issues Request For Qualifications September 18, 2020
 - Owner receives Request For Qualifications October 16, 2020
 - Owner issues Request For Proposals (to short-listed firms) November 4, 2020
 - Owner receives Request For Proposals December 4, 2020
 - Owner interviews Respondents (if applicable) December 7-18, 2020
 - Owner recommends Agreement w/ CMAR to City Council January 14, 2021
- Pre-Construction
 - Public Outreach and Conceptual Design January-July 2021
 - Design Development July- November 2021
 - Final Design Nov. 2021- Mar. 2022
 - Permit Review March- June 2022
 - Negotiate GMP (Including Council Authorization) June- Sept. 2022
- Construction Sept. 2022- Feb. 2024
- Move In March 2024

****Please note that Schedule is an estimate and may be subject to change at Owner's Discretion.***

SECTION 3 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of Qualifications to all questions in Section 3 formatted as directed in Section 4. Incomplete Qualifications will be considered non-responsive and subject to rejection.

A total of up to 70 possible points may be awarded for responses to this RFQ. The top five or fewer ranked respondents may then be selected at the Owner’s discretion to participate in step two, the RFP and Interview portion, of the selection process.

	Max Points
CRITERION 1: Firm and Personnel Experience	15
CRITERION 2: Financial and Fiscal Responsibility	10
CRITERION 3: Experience on Representative CMAR Projects	15
CRITERION 4: Ability to Establish Budgets, Control Costs, and Meet Schedules	10
CRITERION 5: Project Execution	5
CRITERION 6: Safety Management	5
CRITERION 7: Execution of Offer	5
CRITERION 8: Adherence To RFQ Requirements	5
TOTAL	70

3.1 **CRITERION 1: Firm and Personnel Experience**

15 Points

- 3.1.1 Provide basic information for the Construction Manager including: legal entity name, address, zip code, telephone number, email address, name of primary contact, number of years in the business, form of ownership - including state of residency or incorporation, and general statements of firm history.
- 3.1.2 If the Construction Manager has multiple offices, the qualifications statement should include information about the parent company and branch office separately as well as identity the branch office responsible for this project.
- 3.1.3 Provide a statement confirming that the Construction Manager is licensed or authorized to do business in the state of Texas.
- 3.1.4 Provide a statement of interest for the Project including a narrative describing the Construction Manager's unique qualifications as they pertain to this particular Project and why the proposing Construction Manager should be selected.
- 3.1.5 Provide general information and a statement on the availability and commitment of the Construction Manager.
- 3.1.6 Provide management philosophy for the Construction Manager-at-Risk construction delivery method.
- 3.1.7 Provide brief resumes for the Construction Manager's executive in charge, project manager, estimator/preconstruction manager, project superintendent, and project engineer that will be directly involved in the Project, including their experience with similar projects, the number of years with the Construction Manager, and their office location(s). Multiple personnel may be listed for the same position.
- 3.1.8 Describe, in graphic and written form, the proposed Project assignments and lines of authority and communication for each team member to be directly involved in the Project. Indicate the estimated percent of time these team members will be involved in the Project for Pre-construction and Construction Services.
- 3.1.9 Identify the proposed team members (including consultants) who worked on the Projects listed in Section 3.3 of this RFQ, and describe their responsibility in those projects compared to this project.
- 3.1.10 Identify any consultants that are included as part of the proposed team, their role related experience for this Project. List projects for which the consultant(s) has worked with the respondent.

3.2 **CRITERION 2: Financial and Fiscal Responsibility**

10 Points

- 3.2.1 Describe your fiduciary responsibility as a Construction Manager-at-Risk using Guaranteed Maximum Price contracts for publicly funded projects.
- 3.2.2 Provide the following information for the Construction Manager for the past **five** (5) fiscal years:

Volume

- Annual number, value and percent change of contracts in Texas per year;
- Annual number, value and percent change of contracts nationally per year;

Revenues

- Annual revenue totals and percent change per year;

Bonding

- Total bonding capacity;
- Available bonding capacity and current backlog.

- 3.2.2 Attach a letter of intent from a surety company indicating your Construction Manager's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the Construction Manager may be bonded for each stage/phase of the project, with a potential maximum construction cost of \$25,000,000. Bonding requirements are set forth in Article 14 of the Standard Form of Agreement Between the Owner and Construction Manager as Constructor and Article 11 of the General Conditions of the Contract for Construction.
- 3.2.3 Identify if Construction Manager has made payments of actual or liquidated damages in the last five (5) years for failure to complete by the contract completion date. If so, provide explanation.
- 3.2.4 Identify if Construction Manager is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If so, please explain the impact both in organization and company direction.
- 3.2.5 Provide details of any past or pending litigation, or claims filed, against Construction Manager that may affect performance under a Contract with the Owner.
- 3.2.6 Identify if Construction Manager is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.
- 3.2.7 Have there been convictions or debarments of the Construction Manager, its officers, or its principals for building code violations, safety violations, bid-rigging, or bribery in the last 10 years? If so, provide explanation.

3.3.1 Identify and describe the Construction Manager's past experience for providing Construction Manager at Risk Services that are MOST RELATED TO THIS PROJECT within the last five (5) years. List the projects in order of priority, with the most relevant project listed first. Any experience claimed by personnel on the proposed project team while employed by a different firm shall be clearly identified. Provide the following information for each project listed:

- Project name, location, contract delivery method, and description
- Physical Description (e.g., square footage, number of stories, site area)
- Indicate if Owner was a municipality, other public governmental entity, or private
- Indicate if Project was a part of an overall development or a participant in Mixed Use Developments and/or Public Private Partnership
- Color images
- Final construction cost
- Final project size in gross square feet
- Type of construction (new, renovation, or expansion)
- Actual Notice To Proceed for Pre-Construction Services date
- Actual Notice To Proceed, Substantial Completion, and Final Payment dates for Construction Services
- Name of Project Manager (individual responsible to the Owner for the overall success of the project)
- Name of Project Superintendent (individual responsible for coordinating the day to day work)
- Names of Mechanical, Plumbing and Electrical subcontractors

References (for each project listed above, identify the following):

- The Owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number
- Architect/Engineer's name and representative who served as the day-to-day liaison during the construction phase of the project, including telephone number

References shall be considered relevant based on specific project participation and experience with the Construction Manager. The Owner may contact references during any part of this process. The Owner reserves the right to contact any other references at any time during the RFQ/P process.

3.3.2 Identify a maximum of three (3) completed projects, of any type, for which Construction Manager has received an award for construction excellence from a recognized organization and provide descriptive information for each.

3.3.3 Describe your past experience in construction of projects involving coordination with adjacent projects as part of an overall development or participation in Mixed Use Developments and/or Public Private Partnerships.

3.4 **CRITERION 4: Ability to Establish Budgets, Control Costs, and Meet Schedules** **10 Points**

- 3.4.1 Describe your cost estimating methods. From any of three (3) projects listed in response to Section 3.3 of this RFQ, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved.
- 3.4.2 Describe your cost control methods during construction and how you procure subcontracts, confirm scope, amount, and ensure proper payment. From any three (3) projects listed in response to Section 3.3 of this RFQ, provide examples of how these techniques were used and the degree of accuracy achieved.
- 3.4.3 Describe your methodology for working with the Project Architect/Engineer and their consultants to deliver a Guaranteed Maximum Price and to maintain the GMP throughout the design and construction process.
- 3.4.4 Provide a sample of a cost estimate used to establish a contract amount from any project listed in Section 3.3 of this RFQ.
- 3.4.5 Describe how you will develop, maintain and update the project schedule during design and construction.
- 3.4.6 Describe your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary. From any of the projects listed in response to Section 3.3 of this RFQ, provide examples of how these techniques were used, including specific scheduling challenges/requirements and actual solutions.
- 3.4.7 Describe how you develop and maintain work schedules during design and construction to coordinate with the Owner's project schedule. From any of the projects listed in response to Section 3.3 of this RFQ, provide examples of how these techniques were used.
- 3.4.8 Describe your preferred type of software for scheduling and your experience using it. From any of the projects listed in response to Section 3.3 of this RFQ, provide a sample of the monthly schedule reports, including identified milestones and schedule recovery plans.

3.5 **CRITERION 5: Project Execution**

5 Points

- 3.5.1 Describe your quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used from any of the projects listed in response to Section 3.3 of this RFQ.
- 3.5.2 Describe your procedures for implementing industry's "best practices" as defined by the Construction Industry Institute and similar organizations for:
- Establishing and tracking project objectives
 - Using project scope definition resources (i.e. Project Definitions Rating Index (PDRI)) in order to obtain complete and accurate design and construction documents from the A/E
 - Cost tracking
 - Change (order) management systems
 - Total quality management for each phase, including close-out and commissioning
- 3.5.3 Provide an example of a successful constructability program used to maintain project budgets without sacrificing quality.
- 3.5.4 Describe your methodology for advertising, evaluating and selecting trade contractors for municipal projects as a Construction Manager-at-Risk.
- 3.5.5 As the Construction Manager-at-Risk, describe your relationship with the local subcontracting community.
- 3.5.6 Describe how you have maintained security during the construction of a facility listed in Section 3.3 of this RFQ.
- 3.5.7 Provide any other details regarding special services, products, advantages or other benefits offered to the Owner by the Construction Manager.
- 3.5.8 Describe your understanding of the administrative challenges and opportunities associated with providing Preconstruction and Construction services for the City on this project, and your strategy for resolving these issues.
- 3.5.9 Understanding the schedule limitations, provide an analysis of the Owner's project planning schedule in Section 2.2 of this RFQ and describe your plan for communicating constructability, phasing, value engineering and other budget options in a form that will quickly facilitate the Owner's decision making.

3.6 **CRITERION 6: Safety Management**

5 Points

- 3.6.1 Briefly describe the Construction Manager’s approach for anticipating, recognizing and controlling safety risks and note the safety resources that the Construction Manager provides for each project’s safety program.
- 3.6.2 Describe the level of importance for enforcement and support of project safety that the Construction Manager includes in performance evaluations for Superintendents and Project Managers.
- 3.6.3 Describe the safety and insurance/claims history information and weighting that the Construction Manager includes in the submission and award process for “best value” subcontracts.
- 3.6.4 For all projects that the Construction Manager has managed (or co-managed) in the past five (5) years, list and describe all events or incidents that have reached any of the following levels of severity:
 - 3.6.4.1 Any occupational illness or injury that resulted in death or total and permanent disability
 - 3.6.4.2 Three occupational illnesses or injuries that resulted in hospital admittances
 - 3.6.4.3 Explosion, fire or water damage that claimed 5% of the project’s construction value
 - 3.6.4.4 Failure, collapse, or overturning of a scaffold, excavation, crane or motorized mobile equipment when workers were present at the project
- 3.6.5 Does the Construction Manager or any other company within the same holding group of companies self-perform any work beyond General Conditions?
- 3.6.6 Provide a letter on letterhead from the Construction Manager’s insurance company, stating the Construction Manager’s Workers Compensation Experience Modification Rate (EMR) for three (3) most recent annual insurance-year ratings.
- 3.6.7 Identify the Construction Manager’s annual OSHA Recordable Incident Rates (RIR) for all work performed during the past three (3) calendar years.
- 3.6.8 Identify the Construction Manager’s annual OSHA Lost Workday Case Incident Rates (LWCIR) for all work performed during the past three (3) calendar years.
- 3.6.9 If the Construction Manager or its subsidiaries received a final order for willful or repeated OSHA violations or failure to abate safety deficiencies during the last 10 years, provide explanation.

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S QUALIFICATIONS. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE QUALIFICATIONS MAY RESULT IN REJECTION OF THE QUALIFICATIONS.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED QUALIFICATIONS OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S QUALIFICATIONS, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

- 3.7.1 By signature hereon, Respondent acknowledges and agrees that (1) this RFQ is a solicitation for Qualifications and is not a contract or an offer to contract; (2) the submission of Qualifications by Respondent in response to this RFQ will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFQ; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFQ.
- 3.7.2 By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Qualifications, and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.
- 3.7.3 By signature hereon, Respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, or service to a public servant in connection with the submitted Qualifications.
- 3.7.4 By signature hereon, the respondent certifies that it is not currently delinquent in the payment of any taxes or utilities owed the City of Cedar Park, Texas.
- 3.7.5 By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any franchise taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. Respondent shall submit a certification of franchise tax status with its SOQ.
- 3.7.6 By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or Owner represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the Qualifications made to any competitor or any other person engaged in such line of business.
- 3.7.7 By signature hereon, Respondent represents and warrants that:

- 3.7.7.1 Respondent is a reputable company regularly engaged in providing products or services necessary to meet the terms, conditions and requirements of the RFQ;
- 3.7.7.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFQ;
- 3.7.7.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
- 3.7.7.4 Respondent understands (i) the requirements and specifications set forth in this RFQ and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;
- 3.7.7.5 Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
- 3.7.7.6 All statements, information and representations prepared and submitted in response to this RFQ are current, complete, true and accurate. Respondent acknowledges that the Owner will rely on such statements, information and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- 3.7.8 By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications.
- 3.7.9 By signature hereon, Respondent certifies that under Section 2254.004, Texas Government Code, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only.
- 3.7.10 By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFQ.
- 3.7.11 Respondent represents and warrants that all articles and services quoted in response to this RFQ meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
- 3.7.12 Respondent acknowledges that Respondent shall answer each question in the Conflict of Interest Questionnaire (CIQ) – **Appendix D** in relation to the following individuals and submit a complete form with its Qualifications.

Local Government Officer	Title	Local Government Officer	Title
Corbin Van Arsdale	Mayor	James Honn	Information Services Director
Tim Kelly	Councilmember	Ben White	Economic Development Director
Anne Duffy	Councilmember	Randall Malik	Assistant Economic Development
Rodney Robinson	Councilmember	Christina Cummings	Human Resources Director
Mel Kirkland	Councilmember	Darwin Marchell	Engineering Director
Mike Guevara	Councilmember	Chris Copple	Development Services Director
Dorian Chavez	Councilmember	Amy Link	Assistant Development Services
Brenda Eivens	City Manager	James Mallinger	Fire Chief
Sam Roberts	Assistant City Manager	Kent Meredith	Finance Director
Katherine Caffrey	Assistant City Manager	Eric Rauschuber	Public Works Director
J.P. LeCompte	City Attorney	Julia Mitschke	Library Director
Michael Harmon	Interim Police Chief	April Christiansen	Court Administrator
Jill Hoffman	Assistant City Attorney	Curt Randa	Director of Parks & Recreation
Lauren Marfin	Assistant City Attorney	Fran Irwin	Community Affairs Director

POTENTIAL SELECTION COMMITTEE MEMBERS NOT LISTED ABOVE INCLUDE:

1. Catherine Ingram – Assistant Library Director – City of Cedar Park
2. Kimberly Reese – Project Manager - City of Cedar Park
3. Randall Lueders – Senior Project Manager - City of Cedar Park
4. Red Leaf Properties, LLC
5. McCann Adams Design Studio

No member of the potential selection committee shall be a part of a respondent’s team.

3.7.13 Respondent acknowledges that, in accordance with Texas Government Code 2252.908 a governmental entity may not enter into a contract with a business entity unless the business entity submits a Form 1295 – **Appendix E**, to the City at the time the business entity submits the signed contract to the City.

3.7.14 The City’s Revolving Door Policy, Article 7.02 of the Cedar Park Code of Ordinances, prohibits certain activities by former Mayors, Councilmembers, City Managers, Department Directors, and anyone acting on their behalf. By signature herein, Respondent affirms (a) that Respondent has been advised of the Revolving Door Policy, and (b) that Respondent has not engaged any former Mayors, Councilmembers, City Managers, or Department Directors, in violation of the Revolving Door Policy. In addition to other penalties stated in Article 7.02, any contract procured in violation of the Revolving Door Policy will render that contract voidable by a majority vote of the City Council.

3.7.15 By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

3.7.16 By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the City of Cedar Park, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or

resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent's Qualifications.

- 3.7.17 Execution of Offer – The Respondent must complete, sign and return the Execution of Offer Form included as **Appendix F** as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will subject the submittal to disqualification.

3.8 **CRITERION 8: Adherence To RFQ Requirements**

5 Points

- 3.8.1 Provide Statement of Qualifications meeting the page limit and formatting requirements of this RFQ.
- 3.8.2 Provide all requested forms requested within this RFQ:
 - 3.8.2.1 Letter of Intent from a surety company – Section 3.2.2
 - 3.8.2.2 Letter from the Construction Manager’s insurance company, stating the Construction Manager’s Workers Compensation Experience Modification Rate (EMR) – Section 3.6.6
 - 3.8.2.3 Conflict of Interest Questionnaire – Section 3.7.12/Appendix D
 - 3.8.2.4 Execution of Offer – Section 3.7.17/Appendix F

SECTION 4 – FORMAT FOR STATEMENT OF QUALIFICATIONS

4.1 GENERAL INSTRUCTIONS

- 4.1.2 Qualifications shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the respondent's ability to meet the requirements of this RFQ. Emphasis shall be on the **QUALITY**, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.
- 4.1.3 Qualifications shall be a **MAXIMUM OF FORTY (40) FRONT SIDE ONLY PAGES**. The cover, table of contents, divider sheets, and requested forms do not count toward the page limit. Each bound copy must be in the following order:
- **Cover**
 - **Cover Letter**
 - **Table of Contents**
 - **CRITERION 1:** Firm and Personnel Experience
 - **CRITERION 2:** Financial and Fiscal Responsibility
 - **CRITERION 3:** Experience on Representative CMAR Projects
 - **CRITERION 4:** Ability to Establish Budgets, Control Costs, and Meet Schedules
 - **CRITERION 5:** Project Execution
 - **CRITERION 6:** Safety Management
 - **CRITERION 7:** Execution of Offer
 - **CRITERION 8:** Adherence To RFQ Requirements
- 4.1.4 Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete Qualifications will be considered non-responsive and subject to rejection.
- 4.1.5 Qualifications and any other information submitted by respondents in response to this RFQ shall become the property of the Owner.
- 4.1.6 Qualifications that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.7 The Owner makes no representations of any kind that an award will be made as a result of this RFQ, or subsequent RFP. The Owner reserves the right to accept or reject any or all Qualifications, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ when deemed to be in Owner's best interest.
- 4.1.8 Qualifications shall consist of answers to questions identified in Section 3 of the RFQ. It is not necessary, but recommended to repeat the question in the SOQ; however, at a minimum it is essential to reference the question number with the corresponding answer.
- 4.1.9 Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the Qualifications.

4.2 **PAGE SIZE, BINDING, DIVIDERS, AND TABS:**

- 4.2.1 Qualifications shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. DO NOT USE METAL-RING HARD COVER BINDERS.
- 4.2.2 Additional attachments shall NOT be included with the Qualifications. Only the responses provided by the respondent to the questions identified in Section 3 of this RFQ will be used by the Owner for evaluation.
- 4.2.3 Separate and identify each criteria response to Section 3 of this RFQ by use of a divider sheet with an integral tab for ready reference.

4.3. **TABLE OF CONTENTS:**

- 4.3.1 Submittals shall include a "Table of Contents" and give page numbers for each part the Qualifications.

4.4 **PAGINATION:**

- 4.4.1 Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.).

SECTION 5 - ATTACHMENTS TO THE RFQ

- 5.1 Appendix A: Standard Form of Agreement Between Owner and Construction Manager as Constructor
 - AIA Document A133-2019 – Standard Form of Agreement Between Owner and Construction Manager as Constructor, as amended
 - AIA Document A133-2019 Exhibit A – Guaranteed Maximum Price Amendment, as amended
 - AIA Document A201-2017 – General Conditions of the Contract for Construction, as amended
 - Exhibit A – Owner’s Insurance Requirements of Contractor
- 5.2 Appendix B: Cedar Park Public Library Guiding Principles
- 5.3 Appendix C: Bell Boulevard Design Book
- 5.4 Appendix D: Form CIQ - Conflict of Interest Questionnaire
- 5.5 Appendix E: Form 1295 - Certificate of Interested Parties
- 5.6 Appendix F: Execution of Offer

**APPENDIX A – Standard Form of Agreement Between Owner and
Construction Manager as Constructor**

AIA[®] Document A133™ - 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

and the Construction Manager:
(Name, legal status, address, and other information)

«TBD»
« »
« »

for the following Project:
(Name, location, and detailed description)

New Cedar Park Public Library
«Address»
Cedar Park, TX 78613

The Architect:
(Name, legal status, address, and other information)

«TBD»
« »
« »

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
 - 2 GENERAL PROVISIONS
 - 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
 - 4 OWNER'S RESPONSIBILITIES
 - 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
 - 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
 - 7 COST OF THE WORK FOR CONSTRUCTION PHASE
 - 8 DISCOUNTS, REBATES, AND REFUNDS
 - 9 SUBCONTRACTS AND OTHER AGREEMENTS
 - 10 ACCOUNTING RECORDS
 - 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
 - 12 DISPUTE RESOLUTION
 - 13 TERMINATION OR SUSPENSION
 - 14 MISCELLANEOUS PROVISIONS
 - 15 SCOPE OF THE AGREEMENT
- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT



ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

(Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

«TBD»

§ 1.1.2 The Project’s physical characteristics:

(Identify or describe pertinent information about the Project’s physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« New Cedar Park Public Library »

§ 1.1.3 The Owner’s budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

«TBD»

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«TBD»

.2 Construction commencement date:

«TBD»

.3 Substantial Completion date or dates:

«TBD»

.4 Final Completion date: Timely final completion is an essential condition of this contract. Contractor agrees to achieve final completion of the Work within 30 days of the designated or extended substantial completion date. Final Completion means actual completion of the Work, including any punch list items, extras or Change Orders reasonably required or contemplated under the Contract Documents other than warranty work that may be required pursuant to Section 3.5 of AIA Document A201-2017, as amended.

.5 Other milestone dates:

«TBD»

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

«TBD»

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:

(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

«TBD»

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

«TBD»

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

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

«TBD »

« »

« »

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:

(List name, address and other contact information.)

«TBD »

§ 1.1.10 The Owner shall retain the following consultants and contractors, or Architect shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »

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.2 Civil Engineer:

« »

« »

« »

« »

« »

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect’s representative:

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

« »

« »

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« »

« »

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§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

<< >>
<< >>
<< >>
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<< >>

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

«TBD»

§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

See Article 9, herein

§ 1.1.15 Other Initial Information on which this Agreement is based:

«TBD»

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager’s services, and the Construction Manager’s compensation. The Owner may, at its sole discretion, adjust the Owner’s budget for the Guaranteed Maximum Price and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner’s nor the Construction Manager’s representative shall be changed without ten days’ prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, payment and performance bonds, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’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. The Owner agrees to furnish or approve, in a

timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as amended, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017, as amended, referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. Any failure by the Construction Manager to report known deviations or noncompliance will result in a waiver of any associated claims by the Construction Manager and SHALL REQUIRE THE CONSTRUCTION MANAGER TO INDEMNIFY AND HOLD THE OWNER HARMLESS FOR ANY COSTS ASSOCIATED WITH THE CONSTRUCTION MANAGER'S FAILURE IN THIS REGARD.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the

structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing. Failure to so notify will result in a waiver of any claims for additional time or compensation by the Construction Manager. Further, any claims by the Construction Manager associated with conflicts of the systems addressed in this section 2.1.3 during the construction phase are waived if such conflicts could have been discovered through careful examination of the Contract Documents.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall coordinate with the Architect to incorporate the Project Schedule previously developed by the Architect. The Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project Schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 At the completion of the Schematic Design, Design Development and Construction Documents, and upon written notice of such phase completion by the Architect to the Construction Manager and the Owner, the Construction Manager shall prepare and update estimates of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimates those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action to reduce costs and maintain the Project budget.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together and coordinate to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and may prequalify bidders. Any prequalification or award of subcontracts must conform with section 9.1 and Chapter 2269 of the Texas Government Code.

§ 3.1.11.3 The processes described in Article 9 shall apply for bid packages issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

«TBD»

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Construction Drawings and Specifications are ninety-five percent (95%) complete, upon receipt of notice from the Architect so indicating, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Guaranteed Maximum Price proposal shall be submitted to the Owner no later than fifteen (15) days after the ninety-five percent (95%) completion notice.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

- .5 The amount of time available to the Owner to accept the Guaranteed Maximum Price, which shall not be less than 60 days, before such time that the Construction Manager may revise proposed pricing;
- .6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager in a manner other than on a fixed fee basis; and
- .7 If Owner requests, Construction Manager shall make available for inspection the documents and information that form the basis of the Guaranteed Maximum Price proposal.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a contingency to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Construction Manager shall make available for inspection the documents and information that form the basis of the Construction Manager's contingency.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Owner enjoys tax exempt status as a municipality. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Construction Manager for use on the Project. The Construction Manager shall use that certificate to exempt any purchases made for the Work from otherwise applicable taxes. As such, the Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager which are exempted because of the Owner's tax-exempt status. Subject to the above terms, the Construction Manager shall pay sales, consumer, use and similar taxes that are legally enacted, whether yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 In all matters of this Agreement, time is of the essence with respect to the performance of the Work.

§ 3.3.1.2 The date of commencement, as that term is used in the Contract Documents, shall mean the commencement of the Construction Phase. The Construction Phase shall commence upon issuance of a Notice to Proceed and the Owner's execution of the Guaranteed Maximum Price Amendment, or prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 Claims for Additional Time See Article 8 of A201-2017, as amended.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, as amended.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions. The authority of the Owner's representative may be restricted or limited because of the Owner's status as a municipality that must act by and through its city council. Except as otherwise provided in Section 4.2.1 of A201-2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities and services that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon request by the Construction Manager, the Owner will provide the Construction Manager with a copy of the executed agreement between the Owner and the Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« Preconstruction phase services will be compensated by the Owner in accordance with section 6.1 herein. However, should this Agreement be terminated prior to the construction phase, Construction Manager shall be entitled to _____ dollars (\$ _____). »

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Subject to the timeliness and interest provisions of Texas Government Code Chapter 2251, payments are due and payable to the Construction Manager 30 days following the certification of an application for payment by the Architect.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« ___ % of the actual Cost of the Work less any applicable discounts, rebates, refunds, and other amounts received from the sale of surplus materials and equipment.»

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

by written change order subject to approval of the Owner

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« not to exceed ___% - separately, not to exceed ___% for overhead and ___% for profit »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed << >> percent (<< >> %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Section 1.1.4.3, plus any extensions thereof allowed in accordance with the Contract Documents. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner <<Written Amount Dollars (\$.00)>> per calendar day for each day that expires after the time specified in section 1.1.4.3 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner <<Written Amount Dollars (\$.00)>> per calendar day for each day that expires after the time specified in Section 1.1.4.4 for completion and readiness for final payment until the Work is completed and ready for final payment. »

§ 6.1.7 Special Damages

§ 6.1.7.1 In addition to the amount provided for in liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for additional architectural services, engineering, construction observation, inspection, and administrative services needed after the time specified in section 1.1.4.3 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

§ 6.1.7.2 After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for additional architectural services, engineering, construction observation, inspection, and administrative services needed after the time specified in Section 1.1.4.4 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment

§ 6.1.7.3 The remedies contained in this Article 6 are not exclusive and shall be cumulative to other remedies provided to the Owner in the event of default or breach by the Contractor.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3.1 In the event of any “buy out” transactions, agreements by the Construction Manager with a subcontractor for the subcontractor’s cost of its portion of the Work, or other savings due to early completion or value engineering after execution of the Guaranteed Maximum Price addendum, then such savings shall be shared with the Owner in the following percentages: 75% to Owner, 25% to Construction Manager. Said savings shall be memorialized by appropriate change order. Documentation regarding such “buy out” transactions/agreements shall be subject to the Owner’s audit and inspection rights set forth in §13.6 of AIA201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as amended, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement..

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Amounts due for self-performed work shall include in the Cost of the Work a lump-sum cost for work competitively bid and awarded in accordance with the terms of this Agreement. For such scopes, the Construction Manager may not exceed five percent (5%) overhead and five percent (5%) profit in the lump sum amount.

§ 7.1.3 For any self-performance of minor work that is not subject to competitive bidding, Section 7.2 will control.

§ 7.1.4 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.5 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

«TBD»

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and 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 Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and provided further that such costs do not exceed twenty-five percent (25%) of such wages and salaries.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager's property at the completion of the Work and the actual cost of such excess materials as was originally billed to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager 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 Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.2 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.3 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.4 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, as amended.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017, as amended, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent (10%) in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager 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 in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase; and
- .10 Construction Manager's fee on all self-performing scopes of work competitively bid and awarded to the Construction Manager.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 8.3 Costs from the inspection service or testing lab that are incurred as a result of the failure of the Construction Manager to make the Work ready for an inspection or test scheduled by the Construction Manager if notice of cancellation is not provided shall be credited to the Owner as a deduction from the Cost of the Work.

§ 8.4 Costs from the inspection service or testing lab that are incurred as a result of the failure of the Work to pass an inspection or test shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 All portions of the Work, other than minor work, shall be performed by trade contractors, subcontractors under subcontracts or other appropriate agreements with the Construction Manager, or self-performed by the Construction Manager. For each major scope of work, the performing contractor shall be selected using competitive bids or competitive sealed proposals. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,
- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

§ 9.1.1 The information required with publication in paragraph 9.1 is not exclusive. The Construction Manager may include other information in such notices at its discretion or as may be required by law.

§ 9.1.2 On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all bids or proposals in a manner compliant with chapter

2269 of the Texas Government Code. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the bids or proposals, in accordance with chapter 2269 of the Texas Government Code. After opening the bids or proposals, the Owner may meet with the Construction Manager to evaluate and rank the bidders or offerors. All bids or proposals shall be made public within seven (7) days after the date of final selection.

§ 9.1.3 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager 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 Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 9.3 The Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager 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 this 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 Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law and in accordance with the Owner's record retention requirements.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

« »

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing, the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Timeliness and interest of payments shall be governed by Texas Government Code Chapter 2251.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. Construction Manager shall use AIA Document G702 for Application

and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment 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 Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make 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.

§ 11.1.7 In accordance with AIA Document A201–2017, as amended, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 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 most recent schedule of values;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as amended;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, as amended;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

<< >>

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

<< >>

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

<< >>

§ 11.1.9 Reserved.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. 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.

§11.1.13 In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, AIA Document A201-2017, as amended, §9.4 and §9.11.2.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017, as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017, as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and in accordance with Texas Government Code Chapter 2251.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.2.5 The Contract shall not have been fully performed until all Work required by the Construction Documents has been performed and the Construction Manager provides the following to the Owner:

- .1 record or as-built drawings executed or complete in both ".dwg" and ".tiff" formats;
- .2 executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract; and
- .5 one copy of each item in this section in electronic format.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017, as amended. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as amended, for Claims arising from or relating to the Construction Manager's Construction Phase services.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[»] Arbitration pursuant to Article 15 of AIA Document A201–2017

[»] Litigation in a state district court of competent jurisdiction in Williamson County, Texas.

[»] Other: *(Specify)*

« »

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement, with or without cause, at any time. The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as amended.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, as amended, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages (including any offsets, liquidated damages, attorneys' fees, and expert fees) incurred, or to be incurred, by the Owner.

§ 13.2.3 Termination for Convenience

§ 13.2.3.1 In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

§ 13.2.3.2 Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional days' written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this Agreement.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as amended, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as amended. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.3 Insurance and Bonds

§ 14.3.1 For all phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in the Owner’s Insurance Requirements of Contractor attached as Exhibit A to the General Conditions, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007, as amended.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, and as amended
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended,
- .4 Exhibit A to the General Conditions, Owner’s Insurance Requirements of Contractor
- .5 Other Exhibits:
(Check all boxes that apply.)

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or

proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

THE CITY OF CEDAR PARK, TEXAS

[CONSTRUCTION MANAGER]

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

« »« »

(Printed name and title)

(Printed name and title)



DRAFT AIA[®] Document A133™ - 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month, and year.)

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

New Cedar Park Public Library
«Address TBD»
Cedar Park, TX 78613

THE OWNER:
(Name, legal status, and address)

City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

«TBD »
« »
« »

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.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

(Provide itemized statement below or reference an attachment.)

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
<input type="text"/>	<input type="text"/>

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of execution of this Amendment.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

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

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ 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 Construction Manager'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

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption and clarification.)

<< >>

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:

(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

<< >>

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

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

<< >>

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

OWNER (Signature)

<< >><< >>

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

<< >><< >>

(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Cedar Park Public Library
«Address TBD»
Cedar Park, TX 78613

THE OWNER:

(Name, legal status and address)

City of Cedar Park
450 Cypress Creek Road, Building 1
Cedar Park, Texas 78613

THE ARCHITECT:

(Name, legal status and address)

«TBD»

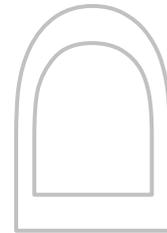
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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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DRAFT

AIA® Document A201® - 2017

General Conditions of the Contract for Construction

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Standard Form of Agreement between the Owner and Construction Manager as Constructor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, payment performance, and maintenance bonds, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 Construction Manager

The Construction Manager is identified in the AIA A133-2019 and shall serve as the Constructor of the Work. Any reference to "Contractor" in this AIA A201-2017 shall mean Construction Manager.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

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.

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§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 In the event of a conflict between the provisions of any of the Contract Documents, the terms shall be interpreted in the following order of controlling authority:

- 1) the Agreement,
- 2) General Conditions,
- 3) Specifications & Drawings.

Should the Specifications and Drawings conflict, proposals shall be based on the most expensive combination of quality and quantity of Work indicated. Any Conflicts not resolved by a quality and quantity determination, or conflicts involving priority of controlling authority of the Contract Documents shall be determined by the Initial Decision Maker.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice. Written notice sent or transmitted by electronic transmission or facsimile must be actually received to be considered delivered and to comply with the notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

ARTICLE 2 OWNER

§ 2.1 General

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner has retained an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Construction Manager as constructor or the Construction Manager's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Instruments of Service.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor shall take field measurements and verify field conditions, and must carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents, before ordering any material or performing any Work.

§ 3.2.4 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.5 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.7 and request direction before proceeding with the affected Work.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Sections 3.2.1 through 3.2.5, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense, and all of Contractor's claims relating thereafter are specifically waived.

§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 through 3.2.6, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 through 3.2.6, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.8 Contractor, for itself and its subcontractors, acknowledges that the construction premises are restricted and that access is affected by the security at the project, location of the Project, by the Facilities surrounding the Project and by other construction either presently being performed or proposed to be performed during the performance of this Contract. Contractor, for itself and its subcontractors, further acknowledges that such limitations in space and accessibility have been taken into account in the Contractor's proposal, and Contractor waives any claims for additional time or money associated with any such limitations.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner

and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 For any such substitutions, the Contractor warrants that modifications suggested by the Contractor will give satisfactory results and in conformance with the Contract Documents.

§ 3.4.4 For any such substitutions, the Contractor warrants that substitutions will be equal or superior to the specified item or method unless the Contractor specifically lists shortcomings in its request for making substitution.

§ 3.4.5 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor warrants and guarantees for two (2) years from Substantial Completion as defined by Section 9.11.1 as the date of issuance of the Architect's final Certificate for Payment, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within two (2) year of Substantial Completion even if discovered more than two (2) year after Substantial Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

§ 3.5.4 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to

property or persons (including death) included direct and consequential damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.5 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Final Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work which is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

§ 3.6 Taxes

§ 3.6.1 The Owner enjoys tax-exempt status as a municipality. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable timeframe after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier to maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

§ 3.6.4 Subject to the terms above, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required

for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's approval and information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Thereafter, the Contractor shall prepare and update the construction schedule on

a monthly basis, if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available to the Owner and the Architect, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, and the current Construction Schedule, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall display a current Construction Schedule at the site for reference and reliance by the Owner and the Architect.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor perform portions of the Work in contravention of this section, any costs and time associated with the correction, removal, or repair of said Work shall be borne solely by the Contractor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste

materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents and within five (5) days' written notice from the Owner, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, CONSULTANTS, AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK. FOR ANY SUCH CLAIM, DAMAGE, LOSS, COST OR EXPENSE THAT IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, CONTRACTOR'S INDEMNITY OBLIGATION APPLIES ONLY IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over,

charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Architect's or Architect's representative's presence at the Project site shall not imply concurrent or approval of the Work. The Contractor shall call specific items to the Architect's attention in writing if it wishes to obtain the Architect's opinion.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner, at its sole discretion, may notify the Architect of the substance of any direct communications between the Owner and the Contractor. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Subject to the provisions governing competitive bidding scopes of work in Chapter 2269 of the Texas Government Code for Construction Manager at Risk procurement and the applicable terms contained in the AIA A133-2019, as amended and executed by the Parties, and unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.1.5 BELL BOULEVARD REDEVELOPMENT PROJECT The Contractor acknowledges that the developer of Bell Boulevard Redevelopment Project may have other general contractors and subcontractors performing separate work on the Bell Boulevard Redevelopment Project likely at the same time and at or near the Project site.

§ 6.1.5.1 The Contractor shall fully cooperate with and provide for coordination of the activities of other general contractors or subcontractors on the Bell Boulevard Redevelopment Project with regards to construction at or near the Library Project site. The Contractor shall participate with any Bell Boulevard Redevelopment Project general contractors and subcontractors in reviewing their construction schedules to coordinate with the Contractor's schedule as to avoid any delay and work expeditiously. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

§ 6.1.5.2 The Contractor shall be responsible for protection of the Work at or near the Project site and safety of all individuals on the Project site as set forth in Section 10.2. Further, the Contractor shall ensure that the work of any Bell Boulevard Redevelopment Project developer, general contractors and subcontractors is not damaged, impacted, or delayed by the Work of the Contractor or its Subcontractors.

§ 6.1.5.3 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to any Bell Boulevard Redevelopment Project developer, general contractors and subcontractors as provided in Section 10.2.5

§ 6.1.5.4 THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS', EXPERT, OR CONSULTANT FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS SECTION 6.1.5, ET SEQ.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 No Work, or portion of the Work, performed by the Contractor in excess or deviation from the Contract Documents will be subject to adjustments in the Contract Sum or Contract Time without prior written authorization as provided in this Article.

§ 7.1.5 The total Contract Sum may not be increased by a Change Order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum in accordance with the Contract Documents; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner or the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and overhead and profit on such deleted work. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.9.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 In all aspects of the Work, time is of the essence of the Contract. Additionally, time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work and such delay, disruption or interference is indisputably proven by Contractor to adversely affect the critical path of the Progress Schedule, then Contractor shall be entitled to an equitable adjustment of the Contract Time. Contractor’s entitlement to an adjustment of the Contract Time is also conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Time.

§ 8.3.2 Contractor shall not be entitled to an adjustment in Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.3 If Contractor’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes listed below not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible and such delay, disruption or interference is indisputably proven by Contractor to adversely affect the critical path of the Progress Schedule, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor’s entitlement to an adjustment of the Contract Time is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Time. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this paragraph include the following:

- .1 severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
- .2 Unusual inclement weather;
- .3 acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8);
- .4 acts of war or terrorism; or
- .5 acts of any governmental entity or courts having jurisdiction over the Project.

§ 8.3.4 Unusual Inclement Weather is defined as a rain event or other related event which occurs at the site in excess of Normal Rainfall during a particular calendar month and is of sufficient magnitude to prevent Contractor from performing units of Work critical to maintaining the Progress Schedule. “Normal Rainfall” compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the calendar day contract, and is not a justification for an extension of time. Listed below are the number of days in each calendar month which constitute Normal Rainfall for such month and for which no compensatory days for rainfall events (“Rain Days”) in such months may be claimed:

January	8 days		July	5 days
February	8 days		August	5 days
March	7 days		September	7 days
April	7 days		October	7 days

May	9 days		November	7 days
June	6 days		December	7 days

Rain Days in addition to the baseline rain day determination described above will be measured with the Owner's or Owner's Representative's approval at the nearest operational public weather data collection facility to the site

§ 8.3.5 Contractor shall mitigate any potential schedule impact due to adjacent construction projects by coordinating schedules and maintaining communication with adjacent contractors throughout the duration of the project.

§ 8.3.6 If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor may be entitled to an equitable adjustment in the Contract Price and/or Contract Time. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Time under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. Contractor's entitlement to an adjustment of the Contract Time is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and such delays, disruptions or interferences adversely affect the critical path of the Work as set forth in the most recent Progress Schedule.

§ 8.3.7 Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

§ 8.3.8 Contractor must submit any Change Proposal seeking an adjustment in Contract Time under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

§ 8.3.9 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.10 The Contractor shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Owner be liable to the Contractor for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance. The Contractor's sole remedy for delay or hindrance shall be an extension of time.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 PREVAILING WAGE REQUIREMENTS

§9.2.1 The Work subject to Government Code Chapter 2258, as amended, concerning payment of Prevailing Wage Rates.

§9.2.2 Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage. Prevailing wage schedule as provided by the most current decision of the U.S. Department of Labor for Williamson County, Texas.

§9.2.3 Contractor shall pay to Owner sixty dollars (\$60) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this section.

§9.2.4 Certified payrolls demonstrating compliance with the prevailing wage requirements shall be maintained by the Contractor and all Subcontractors performing the Work. The Contractor is required to submit to the Owner a copy of all certified payrolls for any pay period with each Pay Application. Failure to provide certified payrolls may be grounds for withholding of funds and default as provided in Article 13.

§ 9.3 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner and the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or the Architect. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and the Architect and supported by such data to substantiate its accuracy as the Owner and the Architect may require, and unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.4 Applications for Payment

§ 9.4.1 The Contractor must submit to the Architect itemized Application for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.3, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, partial lien releases, waivers, or other documents, and shall reflect retainage.

§ 9.4.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.4.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.4.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Cost of materials stored off the construction site may be included in Contractor's request at the sole discretion of the Owner for progress payment, if the following submittals are made and conditions are met:

1. Contractor shall submit a written narrative giving location of stored materials, provisions for protection of same, and arrangements for transportation of materials to the job site.
2. Contractor shall submit separate Bills of Sale or Invoices on all materials stored off site.
3. Contractor shall submit suitable written evidence that materials stored off the construction site are covered by insurance protection adequate to cover Owner's interests.
4. Contractor shall store materials in facilities which are suitable to protect same from loss and deterioration. Materials shall be separated from other stored materials and shall be clearly labeled as to description, ownership and project destination. Access to stored materials shall be made convenient for inspection which will be made by Architect's representative prior to the issue of each certificate of payment which includes payment for materials stored off the construction site.
5. Payment for materials stored off the construction site shall not affect warranty period for such materials, which period shall commence upon date of final completion of the Work.

§ 9.4.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.5 Certificates for Payment

§ 9.5.1 The Architect will, within fifteen (15) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.6.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.6.1.

§ 9.5.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.6 Decisions to Withhold Certification

§ 9.6.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.5.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.5.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.6.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.6.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.6.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6.4 If the Architect withholds certification for payment under Section 9.6.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.7 Progress Payments

§ 9.7.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.7.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.7.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.7.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.7.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.7.3 and 9.7.4.

§ 9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.7.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. However, Contractor shall comply with the provisions of the Texas Trust Fund Act, Chapter 162 of the Texas Property Code.

§ 9.7.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.8 Failure of Payment

Failure of payment by Owner within the time limits proscribed by Chapter 2251 of the Texas Government Code shall entitle the Contractor to the remedies contained in that chapter. Further, should the Owner fail to pay the Contractor any sums for which a Certificate for Payment has been issued within sixty (60) days, the Contractor may suspend performance of the Work until such payment of the amount owing has been received. A suspension under this section shall entitle the Contractor to an increase in the Contract Sum for all costs associated with the suspension provided the Contractor files a claim in accordance with Article 15 herein.

§ 9.9 Substantial Completion

§ 9.9.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.9.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.9.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Inspections required and defined in Paragraphs 9.9.3, and 9.11.1 of the General Conditions are a component of the Architect's Basic Services. Additional inspections which result from the Contractor's failure to complete the Work of the Contract within the specified time are in addition to the Architect's Basic Services and will therefore be the responsibility of the Contractor and said costs shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for these additional services. Costs related to additional inspections which results from the Contractor's repeated failure to correct defective or incomplete Work are the responsibility of the Contractor, costs for the additional inspections of the Architect shall be deducted by the Owner from the Contractor's Application for Payment. Costs deducted will be based on the Architect's invoices for cost of additional services and inspections.

§ 9.9.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.9.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.10 Partial Occupancy or Use

§ 9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work provided such occupancy or use is authorized by public authorities having jurisdiction over the Project.

§ 9.10.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.10.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.11 Final Completion and Final Payment

§ 9.11.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. The Contractor's written notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.11.2 The Final Application for Payment shall be accompanied (except as previously delivered) by:

- .1 all documentation called for in the Contract Documents
- .2 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied;
- .3 satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
- .4 a certificate evidencing that the Contractor's liability insurance will remain in effect after final payment and will not be cancelled or allowed to expire prior to the period required by these contract documents;
- .5 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .6 consent of surety, if any, to final payment;
- .7 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .8 a certified building location survey and as-built site plan in the form and number required by the Contract Documents;
- .9 all warranties and bonds required by the Contract Documents.

§ 9.11.3 If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER FOR ANY AND ALL COSTS INCURRED BY THE OWNER IN ADDRESSING, REMOVING, DISCHARGING OR OTHERWISE SETTLING A SUBCONTRACTOR OR SUPPLIER PAYMENT CLAIM, INCLUDING ALL ATTORNEYS' FEES.

§ 9.11.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.11.5 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner after final payment.

§ 9.11.6 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 all persons at the site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction;
- 4 appropriate best management practices including appropriate distancing and wearing of facial coverings for preventing spread of infectious sicknesses including COVID-19; and
- 5 development projects occurring adjacent to or near the Work including projects related to the Bell Boulevard Redevelopment Project.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and interference with adjacent ongoing projects and property. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Agreement), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.

§ 10.3.2 Upon receipt of notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

§ 10.3.3 If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

§ 10.3.4 The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Agreement. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless, pursuant to Articles 7 and 15 herein.

§ 10.3.5 THE CONTRACTOR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE AND NEGLIGENTLY HANDLES, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, EXCEPT TO THE EXTENT THAT THE COST AND EXPENSE ARE DUE TO THE OWNER'S FAULT OR NEGLIGENCE.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury or loss. The Contractor must promptly but in all events within twenty-four (24) hours of the occurrence report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such action, the Contractor may request a change in the Contract Sum or Contract Time to account for such action. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of the occurrence, pursuant to Articles 7 and 15 herein. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance Requirements

§ 11.1.1 The Contractor's insurance requirements are contained in Exhibit A to these General Conditions and are incorporated verbatim as if printed herein.

§ 11.1.2 Workers' Compensation Insurance Coverage

- .1 The Contractor shall certify in writing that they provide workers' compensation insurance coverage for each employee of the Contractor employed on the Project.
- .2 Each Subcontractor on the Project shall provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.
- .3 A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
- .4 The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

In this Subsection:

1. "Building or construction" includes:
 - a. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - b. remodeling, extending, repairing, or demolishing a structure; or
 - c. otherwise improving real property or an appurtenance to real property through similar activities.
2. "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner is self-insured through Texas Municipal League Intergovernmental Risk Pool and is not required to purchase or maintain liability insurance.

§ 11.3 Property Insurance

§ 11.3.1 The Owner is self-insured through Texas Municipal League Intergovernmental Risk Pool and is not required to purchase or maintain property insurance.

§ 11.4 Performance, Payment, and Other Bonds

§ 11.4.1 Contractor shall furnish a performance bond and a payment bond in accordance with chapter 2253 of the Texas Government Code. The performance bond shall extend for one (1) year from the date of final completion. In addition to and not in lieu of the performance bond, Contractor shall furnish a Maintenance bond in the amount of ten percent of the final construction cost throughout the Correction period (2 years from the date of final completion) to maintain, correct any deficiencies, and keep in good repair the Work. Contractor shall also furnish such other bonds, if any, as are required by other specific provisions of the Contract Documents.

§ 11.4.2 A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

§ 11.4.3 Contractor shall obtain the required bonds in a form acceptable to Owner. The surety on the bonds must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

§ 11.4.4 If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in Texas, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide bonds from another surety, all of which shall comply with the requirements above.

§ 11.4.5 If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's suspension and/or termination rights under Article 16.

§ 11.4.6 The performance bond shall include without limitation guarantees that work done under the Contract Documents will be completed and performed according to the Contract Documents and in accordance with sound construction principles and practices;

§ 11.4.7 The performance and payment bonds shall be in a penal sum of not less than 100 percent of the Contract Price, or if no Contract Price is determined at the time the Contract is awarded, then 100 percent of the construction budget, and remain in effect as required by applicable laws.

§ 11.4.8 The Contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect and upon written approval by the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request, subject to written approval by the Owner, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work pursuant to the warranties provided, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the state of Texas without regard to its conflict of law principles.

§ 13.2 VENUE

This Agreement is entered into and performed in Williamson County, Texas, and the Contractor and the Owner agree that mandatory venue for all legal actions involving this Agreement shall be Williamson County, with respect to state court, and the United States District Court for the Western District of Texas, with respect to federal court.

§ 13.3 Successors and Assigns

§ 13.3.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as in whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract and the attempted assignment shall be of no legal force or effect as to the other party.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory, or with the appropriate public authority. The Owner shall bear all related costs of tests, inspections, and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and the Architect of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Owner or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Owner or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 In addition to the tests required by this Section 13.6, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 13.6 Document Retention and Audit Provisions

The Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of four years after final payment. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Agreement and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for four years after final payment.

§ 13.7 Texas Public Information Act Requests

§ 13.7.1 The Contractor recognizes that this Project is publicly owned and the Owner is subject to the disclosure requirements of the Texas Public Information Act ("TPIA"). As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 13.6.

§ 13.7.2 This Subsection applies if the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. The Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to Owner for the duration of the Contract; (2) promptly provide to Owner any contracting information related to the contract that is in the custody or possession of the entity on request of Owner; and (3) on completion of the contract, either:

- .1 provide at no cost to Owner all contracting information related to the Contract that is in the custody or possession of the entity; or
- .2 preserve the contracting information related to the Contract as provided by the records retention requirements applicable to Owner.

§ 13.7.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that Subchapter.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 45 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on such work, profit on unperformed work, and direct job costs incurred by reason of such termination.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate the Contractor's right to perform under the Contract and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, attorneys' fees and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.2.5 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement, emergency, and other applicable exemptions pursuant to sections 252.022 of the Local Government Code. In the event of a claim by Owner for completion costs following termination by the Owner or abandonment by the Contractor, the exercise of Owner's rights under this section shall not be grounds for challenging the reasonableness of the costs incurred or the Owner's damages.

§ 14.2.6 In the event of a termination for cause pursuant to this section and a demand by Owner on the Contractor's performance bond surety and guarantor to take-over and complete the Work, said surety must commence performance within thirty (30) days of the termination.

§ 14.2.7 In the event of a determination by a court or other authority to whom a dispute between the Parties has been submitted that a termination for cause under this Section 14.2.2 was either wrongful, improper, or unjustified for any reason, the termination shall automatically be deemed a termination for convenience pursuant to Section 14.4 below and the Contractor's remedy for such termination shall be limited to the recoveries allowed pursuant to Section 14.4.3.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall not include additional profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; direct job costs incurred by reason of the termination, including costs attributable to termination

of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a written demand by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker. Notice of claims should be provided contemporaneously with the events giving rise to the claim or concurrent to the time the claimant recognizes the condition giving rise to the claim. Failure to provide timely notice and preserve conditions and records to substantiate a claim may result in the diminishment or denial of a claim. Failure to provide notice required by the Contract Documents and this Section 15.1.3 within ninety (90) days of the occurrence or event giving rise to the claim shall constitute an express waiver and complete bar to recovery for any adjustment to the Contract Time, Contract Sum, or other damages and accommodations.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.8 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide written notice of a Claim in accordance with section 15.1.3 and other applicable provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Failure to provide written notice of a Claim in accordance with section 15.1.3 and other applicable provisions of the Contract Documents constitutes an express waiver by the Contractor of any right of recovery on such Claim.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 LIMITATION OF DAMAGES

The Contractor expressly acknowledges, to the exclusion of all other damages, the total amount of money awarded in an adjudication brought against the Owner for breach of this Contract shall be limited to the following:

- .1 The balance due and owed by the Owner under this Contract as it may have been amended;
- .2 The amount owed for approved change orders or additional work the Contractor was directed to perform by the Owner in connection with this Contract;
- .3 Reasonable and necessary attorney's fees that are equitable and just; and
- .4 Interest as allowed by law, including interest as calculated under the Texas Government Code Chapter 2251.

§ 15.1.9 Notwithstanding any other limitation of damages set forth in this Contract, the total amount of damages awarded in an adjudication brought against the Owner arising under this Contract shall not include:

- .1 Consequential damages, including those waived under Section 15.1.7;
- .2 Exemplary damages;
- .3 Damages for unabsorbed home office overhead; or
- .4 Damages not expressly permitted under Paragraph 15.1.8.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision. Unless expressly waived by the Parties, in writing, the provisions of this Section 15.2 shall be a condition precedent to any further dispute resolution or adjudication of claims. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to filing suit.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing.

§ 15.3.3 The parties shall select a mediator, as well as the time and location for the mediation, by agreement. Should the parties be unable to agree upon a mediator, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Non-Waiver of Sovereign Immunity

§ 15.3.3 Nothing in the Contract Documents shall constitute and shall not be interpreted or construed to constitute a waiver of sovereign immunity applicable to the Owner.

§ 15.3.3 Any limitation of the sovereign immunity of the Owner shall be controlled by applicable Laws and Regulations.

Exhibit A.
Owner's Insurance Requirements of Contractor

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Per Occurrence ▪ \$2,000,000 General Aggregate ▪ \$2,000,000 Products/Completed Operations Aggregate ▪ \$1,000,000 Personal And Advertising Injury ▪ Designated Construction Project(s) General Aggregate Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CG 00 01 ▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 04 13 and CG 20 37 04 13. ▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. ▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Amendment of Insured Contract Definition CG 24 26 ○ Limitation of Coverage to Designated Premises or Project, CG 21 44 ○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95 ○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43 ○ Any Classification limitation ○ Any Construction Defect Completed Operations exclusion ○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it ○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage ○ Any Habitational or Residential exclusion applicable to the Work ○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Subsidence exclusion

Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$1,000,000 Per Accident 	<ul style="list-style-type: none"> ▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement ▪ USL&H must be provided where such exposure exists. 	<ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. ▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> ▪ \$5,000,000 Each Occurrence ▪ \$5,000,000 Annual Aggregate 	<ul style="list-style-type: none"> ▪ Such insurance shall be excess over and be no less broad than all coverages described above. ▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.
Builders Risk	<ul style="list-style-type: none"> ▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence. ▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing. ▪ The policy must provide coverage for: <ul style="list-style-type: none"> ○ Agreed Value Included ○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included ○ Debris removal additional limit \$1,000,000 ○ Earthquake and Earthquake Sprinkler Leakage \$5,000,000 ○ Flood \$5,000,000 	<ul style="list-style-type: none"> ▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds. ▪ Such insurance shall cover: <ul style="list-style-type: none"> ○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling; ○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site; ○ all property including materials and supplies on site for installation; ○ all property including materials and supplies at other locations but intended for use at the site; ○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and ○ other Work at the site identified in the Agreement to which this Exhibit is attached. • No protective safeguard warranty shall be permitted.

<ul style="list-style-type: none"> o Freezing o Mechanical breakdown including hot & cold testing o Ordinance or law o Pollutant clean-up and removal o Preservation of property o Theft • Deductible shall not exceed <ul style="list-style-type: none"> o All Risks of Direct Damage, Per Occurrence, except o Named Storm o Earthquake and Earthquake Sprinkler Leakage, Per Occurrence o Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V 	<ul style="list-style-type: none"> Included Included \$1,000,000 \$ 25,000 Included Included \$10,000 2% subject to \$50,000 minimum \$100,000 \$100,000 	<ul style="list-style-type: none"> • The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> o the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; o occupancy, in whole or in part; o the date on which release of substantial completion is executed; or o the date on which the insurable interests of Contractor in the Covered Property has ceased. • A waiver of subrogation provision shall be provided in favor of all insureds.
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2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include subcontractors of any tier.
- iii. "Owner Parties" means (a) City of Cedar Park ("Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

B. Policies.

- i. Contractor shall maintain such General Liability, Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
 - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
 - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
 - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
 - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.

- v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same

D. Forms

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

E. Evidence of Insurance. Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
 - a. Owner as certificate holder at Owner's mailing address;
 - b. Insured's name, which must match that on this Agreement;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Owner Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Designated Construction Project(s) General Aggregate Limit;
 - h. Primary and non-contributory status;
 - i. Waivers of subrogation; and
 - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
 - a. General Liability Additional insured endorsement(s);
 - b. General Liability Schedule of Forms and Endorsements page(s); and
 - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

F. Contractor Insurance Representations to Owner Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner,

the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Construction Agreement.

G. Insurance Requirements of Contractor's Subcontractors

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

H. Use of the Owners Equipment

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

I. Release and Waiver

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

APPENDIX B – Cedar Park Public Library Guiding Principles

Cedar Park Public Library Guiding Principles

Below is a list of guiding principles that help to express the City's vision for the development of the new Cedar Park Public Library. The selected firm for this project will be expected to utilize these guiding principles to inform their development of the library design.

- **Gathering Place** – the library will be an open and welcoming space that serves as the community's hub of learning and connection for all ages.
- **Flexibility** – the library will be a multi-functional facility, with flexible furniture and shelving to house a wide variety of formats and collections, and where many public spaces are able to serve multiple purposes.
- **Resilience** – the built environment will accommodate adaptability to changing conditions and evolving community needs.
- **Technology** - the library will be a primary community resource for technology, from basic need levels to innovative technology, with built in flexibility for changing technology.
- **Destination** – the library will be the civic anchor for the Bell District, a vibrant, amenity-rich, pedestrian oriented mixed-use community that will be the heart of Cedar Park.
- **Identity** – the library should be a physically beautiful building that contributes to the sense of identity for Cedar Park and the Bell District.
- **Integration with Surroundings** – the library should harmoniously integrate with the diversity of its surroundings: a 15-acre park, restored Cluck Creek, an active and vibrant greenspace that is the activity hub for the development surrounded by restaurants, brewpubs and interactive open space. The Library's design should reflect its close relationship to nature and the park, and utilize outdoor space as an extension of indoor Library activities and programs.

APPENDIX C – Bell Boulevard Design Book

BELL BOULEVARD DESIGN BOOK

FEBRUARY 2020



BELL BOULEVARD DESIGN BOOK



FEBRUARY 2020

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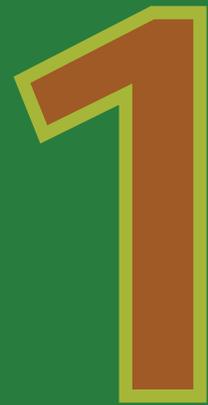
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INTRODUCTION



Bell Boulevard, also known as U.S. Highway 183, has long been the “backbone” of Cedar Park. As the community has grown and evolved through the decades, Bell Boulevard has remained the primary north-south corridor for the city. This corridor was once a vital community hub, but the commercial area has experienced steady decline over the last several decades. During the 2014 “Imagine Cedar Park” comprehensive planning process, community members expressed a desire to see Bell Boulevard revitalized as a thriving commercial corridor with its own unique identity and special charm.

In 2014, the City began a process to create the Bell Boulevard Redevelopment Master Plan - a plan for the successful revitalization of the area. The process provided significant opportunities for public input and collaboration with experts in various fields. The plan, which was adopted in 2015 and updated in 2016, made specific recommendations related to beautification, traffic improvements, pedestrian mobility and economic development. It took into consideration economic conditions to analyze the financial impact of proposed corridor improvements with the goal of generating a positive return on investment for the Cedar Park community.

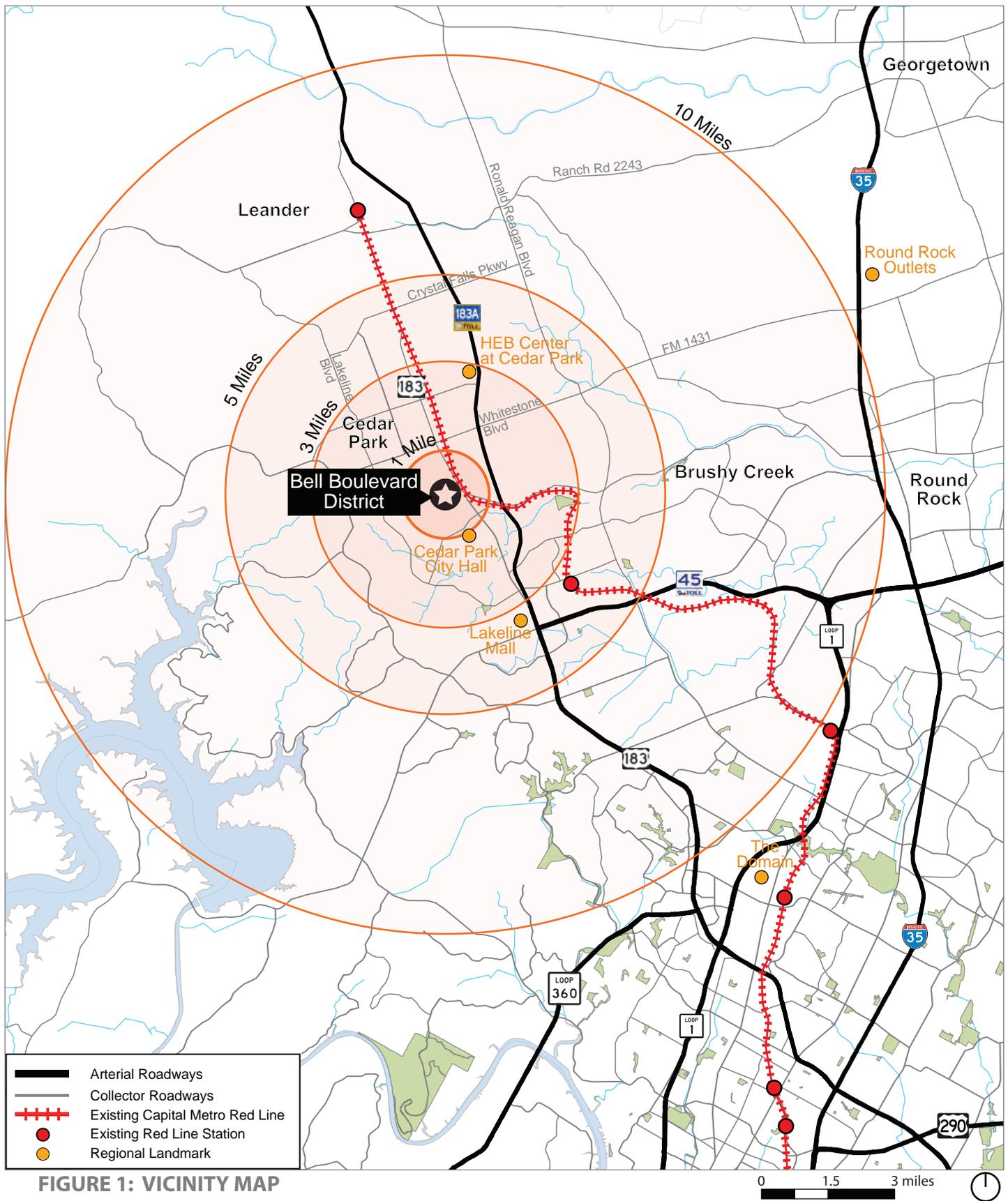


FIGURE 1: VICINITY MAP

1.1 BACKGROUND

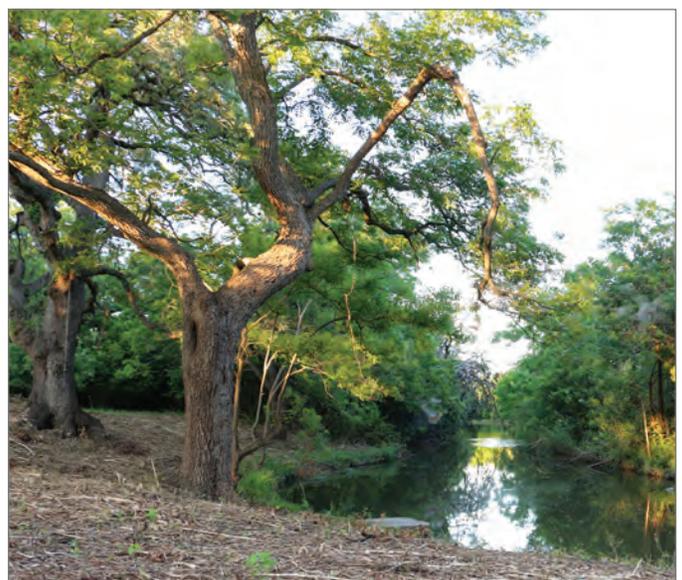
Following its adoption in 2015, the City of Cedar Park has taken a series of steps to implement the Bell Boulevard Redevelopment Master Plan. These include:

- **Realignment of Bell Boulevard:** The City has worked with the Texas Department of Transportation (TxDOT) to design and construct the realigned Bell Boulevard, which is due to be complete by the end of 2021.
- **Assembly of Key Properties:** Negotiations with key property owners have resulted in the acquisition of several sites that have led to the creation of a cohesive publicly-owned district of approximately 40-acres, generally bounded by the realigned Bell Boulevard on the east, Park Street on the north, and the Buttercup Creek Natural Area on the south and east.
- **Selection of a Master Developer:** A year-long solicitation process culminated with the selection of RedLeaf Properties as the City's master developer partner in 2019. RedLeaf will be responsible for the implementation of infrastructure improvements and vertical development in partnership with the City of Cedar Park.
- **Execution of a Master Development Agreement:** In 2020, the City and RedLeaf completed negotiations and entered into a Master Development Agreement (MDA), which outlines the roles and responsibilities of the two parties.
- **Rezoning of the Site:** As part of these negotiations, RedLeaf will coordinate the rezoning of the site as a mixed use Planned Development (PD) in keeping with the community's vision of the 2015 Bell Boulevard Redevelopment Master Plan.
- **Buttercup Creek Natural Area:** The Buttercup Creek Natural Area along Cluck Creek forms the southern part of the Bell Boulevard District. Currently inaccessible by the public, a key element of the community's vision for the District has been to improve enjoyment and access to this 12-acre preserve, while protecting much of its generous tree canopy and its natural riparian qualities. The City

intends to improve the area with trails and meadows that will provide a buffer between the urban district and the creek.

- **Cedar Park's New Library:** During the developer procurement process, City Council asked all developers to consider inclusion of a new Public Library as part of their development proposals. RedLeaf's proposal to make the Library a cohesive part of the development has been incorporated into the adopted Master Development Agreement, beginning with the City's solicitation of an architect to design the facility in close conjunction with the developer team.

The intent of this Design Book is to provide clear direction for the redevelopment of the project area, with development standards and design guidelines that can help the City, RedLeaf and supporting developers and their architects realize the community's vision for the Bell Boulevard District. The design standards and guidelines are intended to provide specific direction to the more generalized provisions of the zoning, with the goal of encouraging creativity and flexibility while assuring that a vibrant, diverse and sustainable urban district emerges in the heart of Cedar Park.



Cluck Creek in the Buttercup Creek Natural Area

1.2 THE VISION AND GOALS FOR THE BELL BOULEVARD DISTRICT

The vision for the Bell Boulevard District is a result of an extensive public engagement process, involving community-wide open houses, as well as conversations with adjacent neighbors and property owners. The 2015 Master Plan envisions a vibrant and walkable mixed-use center in the historic heart of Cedar Park – a district that will become the community’s principal gathering place – a place to live, work, shop and recreate. The Master Plan calls for the portion of Bell Boulevard between Park Street and Buttercup Creek Boulevard to be realigned further east to utilize the existing right of way of Old Highway 183, thereby opening up 40-acres of land for the creation of a connected development oriented to 12-acres of trails and parkland along Cluck Creek within the Buttercup Creek Natural Area (Figure 2). Some of the key features of the vision include:

- o **Realigning Bell Boulevard**... “to ensure a connected neighborhood fabric that encourages walkability, activates the community’s civic and

commercial spaces and promotes an interactive urban experience.”

- o **Extending Parkwest Drive**... “to provide an additional north-south connection west of Bell Boulevard”
- o **Ensuring a Mix of Land Uses**... “to serve the needs of a range of users and ensure that the private and public realms are active at all times of the day.”
- o **Creating a Gateway Intersection**... on the “revamped Bell Boulevard” ...to “welcome visitors and residents to the ...Bell Boulevard District, orient visitors and foster a sense of civic place and identity”
- o **Promoting Walkable Blocks** to provide “safe vehicular traffic conditions and foster pedestrian activity”.
- o **Enhancing a Natural Amenity** by juxtaposing natural space with a compact mix of retail, residential, office and civic uses.

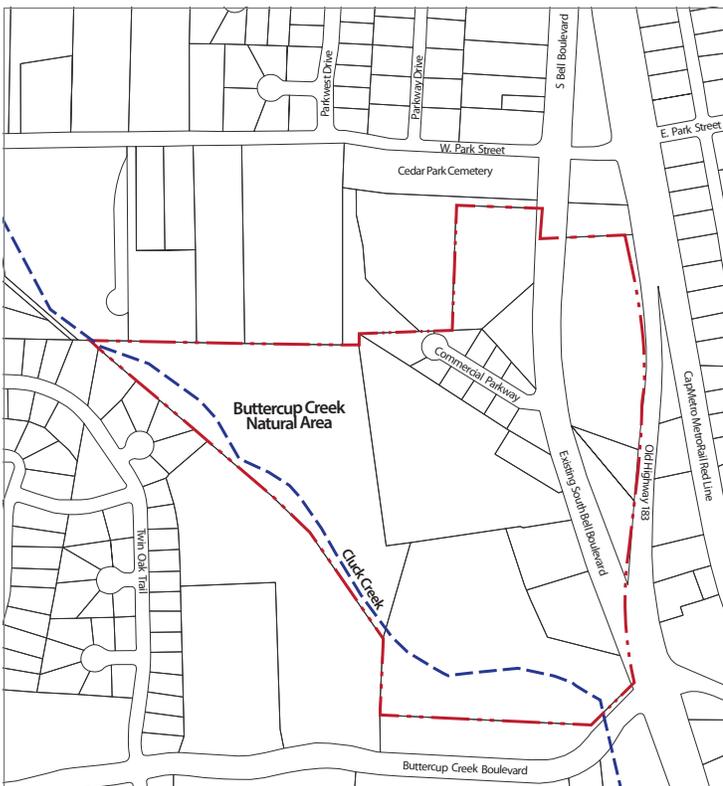
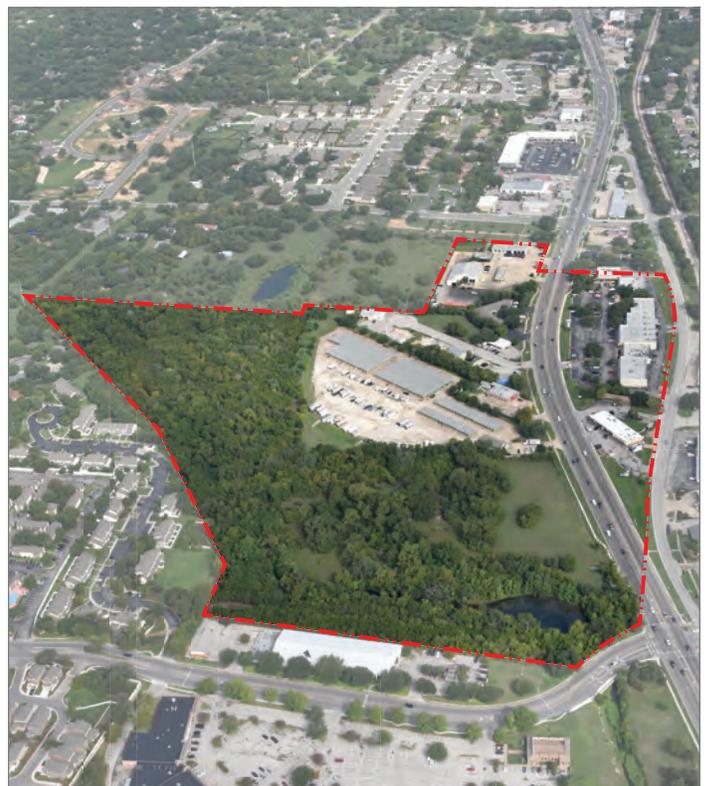


FIGURE 2: PROJECT AREA MAP



Not to Scale 

The Master Plan outlined six key goals to realize this vision for the Bell Boulevard District:

Economic

- o **Goal 1:** Create an economically vibrant corridor and energize the greater Cedar Park region.
- o **Goal 2:** Generate return on investment for the City of Cedar Park and private business.

Natural Assets

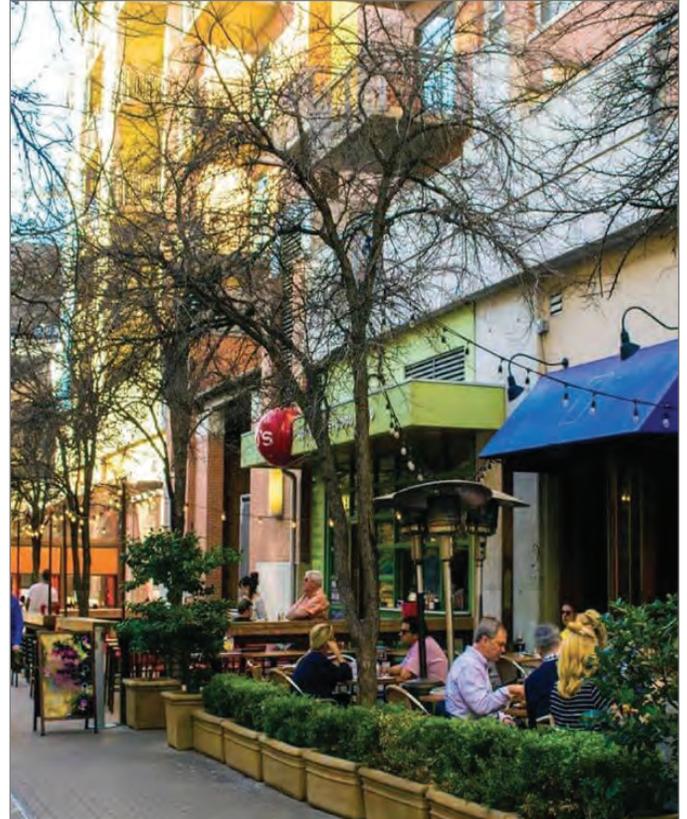
- o **Goal 3:** Work with natural and historical assets to define a more pleasant human experience.

Community

- o **Goal 4:** Maintain mobility and accommodate traffic levels while increasing access.
- o **Goal 5:** Gain support from affected stakeholders including land owners, developers and business owners.

Identity

- o **Goal 6:** Solidify what the identity of Cedar Park is through the master planning process.



A walkable pattern of blocks and streets with lively pedestrian activity



An enhanced pattern of open spaces that blends nature into a compact, mixed use development

1.3 PLANNING CONTEXT

In addition to advancing the community's vision for the 2015 Bell Boulevard Redevelopment Master Plan, the Master Development Agreement and this Design Book help to achieve existing public policy and community goals for the area. More specifically:

- 1. The 2014 Comprehensive Plan** reiterated the need for a comprehensive redevelopment strategy along Bell Boulevard, calling for "concentrated nodes of development" to achieve a "walkable and connected environment." The Plan stressed the need for city services, infrastructure and roadways to continue to meet demand as population increases along Bell Boulevard.
- 2. City of Cedar Park Zoning:** The Mixed Use (MU) zoning district within Cedar Park's Code of Ordinances was created to achieve the policies of the Comprehensive Plan, with the implementation of the 2015 Bell Boulevard Redevelopment Master Plan a particular priority. As stated: "the purpose of the Mixed Use (MU) district is to create a vibrant pedestrian-oriented environment by providing for vertically and horizontally mixed-use buildings. This district is specifically intended to establish an urban form along internal streets through specific design and building form standards, as well as to integrate enhanced connections to the adjacent streets, neighborhoods, and districts."

The intent of these MU zoning standards is to:

- Implement the 2015 Bell Boulevard Redevelopment Master Plan;
- Facilitate compact, mixed use development elsewhere within the City on vacant tracts or for infill and redevelopment purposes; and to
- Create a development form that combines modern urban design with the essence of a traditional, walkable downtown.

- 3. US 183 Redevelopment Strategies:** The City conducted a study of the Bell Boulevard Corridor and produced a report entitled "US 183 Redevelopment Strategies" in January of 2014. This report envisioned the character of the corridor "to be a family-friendly destination that creates a vibrant mix of existing establishments, eclectic, local, and new businesses." The report also recommended using a node concept along Bell Boulevard in order to create high quality, walkable, mixed-use destination.
- 4. Bell Boulevard District Design Principles:** This document, approved by City Council in 2018, outlines and illustrates the vision for the Bell Boulevard District, providing the City's desired expectations of quality and treatment. The Design Principles related to walkability, connectivity, flexibility, variety, identity and compact development were intended as a precursor to the more detailed development standards and design guidelines set forth in this Design Book.



Attendees and activities at one of several Bell Boulevard Open Houses

1.4

ORGANIZATION OF THE DESIGN BOOK

This Design Book is intended as a guide for all those who are involved in the design of new improvements within the Bell Boulevard District including RedLeaf, the City of Cedar Park and supporting developers, builders, architects, landscape architects and others. The standards and guidelines are intended to supplement existing zoning provisions. A Design Review Committee (DRC), comprised of design and real estate development professionals, will administer the standards and guidelines. The process for development and design approval is set forth in Chapter Six of this Design Book.

The development standards and design guidelines have been developed to promote a cohesive and high-quality development that achieves the community's vision for this strategic part of Cedar Park. They are intended to guide new development in ways that promote connectivity, activity, livability and sustainability. They are not intended to be highly prescriptive solutions that dictate a particular style, but rather as form-based performance criteria that can encourage diversity, creativity and innovation to create a cohesive development.

This Design Book is organized into five subsequent chapters:

- o **Chapter Two: The Plan for Bell Boulevard** outlines the key structuring elements of the Master Plan designating certain street and frontage types that provide the basis for the development standards and guidelines, and an Illustrative Plan that shows how the District could develop under the provisions of this Design Book.
- o **Chapter Three: Building Form and Development Standards** describes the general location and distribution of uses, the height and form of buildings, the relationship of ground level uses to street frontages and the location and treatment of parking and service facilities.
- o **Chapter Four: Building Design Guidelines** deals with the character and treatment of buildings and parking facilities, including requirements for green building, the design of building façades, ground level commercial and residential frontages, and the treatment of parking garages and lots. It describes acceptable building materials and signage.
- o **Chapter Five: Open Space and Streetscape Design Guidelines** describes the desired treatment of publicly accessible streetscapes and landscaped areas, including sidewalks, plazas and the central gather space or social hub of the District.
- o **Chapter Six: Administration of the Design Book** describes the process and submission requirements for the review and approval of individual development and rehabilitation projects by the DRC, and the relationships with the City's review and approval process.





THE PLAN FOR BELL BOULEVARD



Since its adoption in 2015, several refinements have been made to the Bell Boulevard Redevelopment Master Plan in consideration of changing conditions, master developer input, emerging opportunities and subsequent land acquisitions. These changes have been carefully considered to ensure their adherence with the Master Plan's underlying vision and the goals articulated in Chapter One.

2.1 INTRODUCTION

More specifically these refinement include:



A Social Hub:

A key element of the Bell Boulevard District is the creation of a central gathering place enlivened by family-friendly civic and commercial activities oriented to the Buttercup Creek Natural Area. The concept calls for the creation of a community green in the southern portion of the project area, where a majestic grove of heritage trees and the nearby Cluck Creek will create a distinctive sense of place. Restaurants, shops and other pedestrian-friendly uses will line the open space, ensuring its destination appeal and its activation throughout the day and evening. This concept has received enthusiastic support from the community and is in keeping with the 2015 Master Plan vision of juxtaposing urban activity with the natural features of the site.



A Connected Street Network:

The updated Plan adheres to the general pattern of streets and blocks proposed in the 2015 Master Plan. The grid of streets provides a level of redundancy that provides multiple ways of circulating though the planned development. The design of the tree-lined streets with their generous sidewalks coupled with the standards governing the treatment of adjacent buildings will promote an engaging and highly walkable pedestrian environment. The implementation of the full street pattern with linkages to West Park Street will rely on the future participation of adjacent properties. Traffic analysis indicates that this proposed network will be adequate to handle expected vehicular volumes generated by the development.



The Reorientation of the Shopping Street:

The 2015 Master Plan envisioned a commercial spine of approximately 1,000 feet in length, connecting Bell Boulevard on the east with the Buttercup Natural Area on the west. With the notion of a Social Hub on the southern portion of the property overlooking Cluck Creek, the most intensive concentration of shops and restaurants has been reoriented to this open space and to the adjacent and nearby streets connecting it to Bell Boulevard. The 2015 Master Plan's vision of a walkable and dynamic mixed-use destination is achieved through this concentration.



A New Public Library:

In 2015, Cedar Park residents voted in support of a bond to create a new, larger Public Library to replace the existing facility. To further reinforce the notion of a family-friendly destination, the City Council approved the location of the new Library within the Bell Boulevard District and more specifically as a key element of the Social Hub. As such the Plan has identified a parcel for the Library along the west edge of this gathering space, with the intent of it becoming a major attractor and synergistic activity generator in the District.

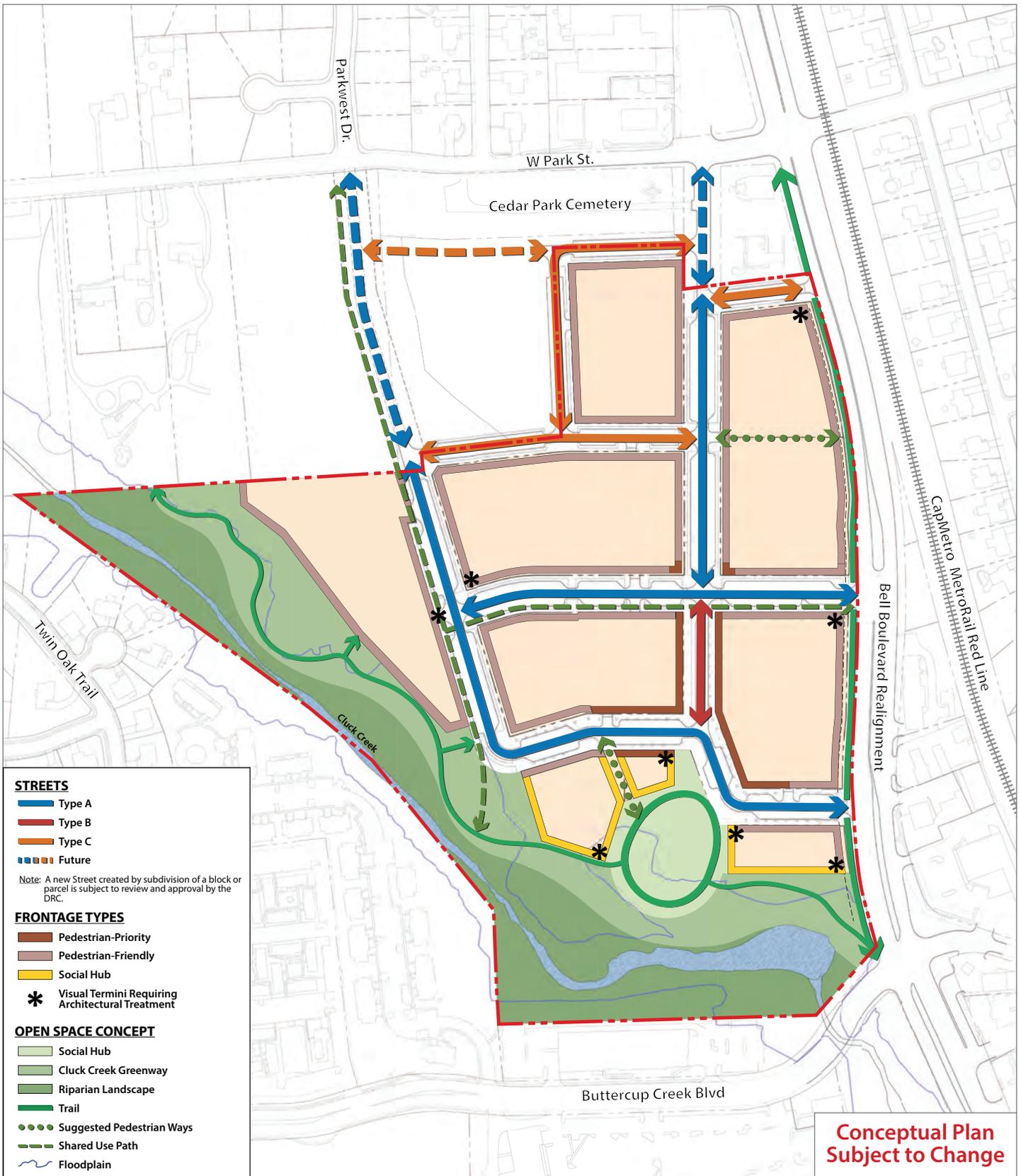


FIGURE 3: BELL BOULEVARD REGULATING PLAN

Not to Scale

2.2

THE REGULATING PLAN

Development within the Bell Boulevard District will be governed by the PD zoning regulations, which describe the allowable and conditional land uses on the site, and the general site development standards (e.g., setbacks, building height, etc.). The Bell Boulevard Regulating Plan, described in this Design Book and shown on the opposite page describes in further detail the form, design and treatment of buildings and their relationship to the streets and public spaces of the District (Figure 3). Bell Boulevard development is guided by the following elements of the Regulating Plan:

Street Designation Types: Three public street types are established for the Bell Boulevard District’s internal roadways, each with their own cross sections, operational configuration and streetscape design. The street types address vehicular lane widths, number of lanes, pedestrian accommodation, street tree and landscape locations and on-street parking. The treatment of these are described and illustrated in Chapter Five of the Design Book. Private street dimensions may vary from these street types, but will require approval from the City and DRC.

Open Space and Pedestrian Ways: The Regulating Plan describes a proposed pattern of publicly-accessible parkland, open spaces and a system of pedestrian ways and trails. From most intensive to least, the hierarchy of open space includes a Social Hub, the Cluck Creek Greenway and the riparian landscape of the creek.

Frontage Types: Three distinct conditions determine the design and treatment of buildings along designated frontages.

- “Pedestrian-Priority” street frontages require the greatest concentration of active ground level uses with building design treatments that promote transparency and interaction with the pedestrian. These frontages are generally concentrated in the vicinity of the Social Hub and along the streets connecting it with Bell Boulevard.
- “Pedestrian-Friendly” street frontages allow for a range of uses including ground level residential uses that create a safe and interesting pedestrian experience.
- “Social Hub” open space frontages will require a high degree of design attention to ensure that buildings contribute to the active and engaging public space that is envisioned. Many of the characteristics of a Pedestrian-Priority Street frontage will be required along these building edges (e.g., active commercial and civic uses, transparency, etc.), recognizing that a greater level of flexibility will be needed to ensure that building designs are creatively integrated with that of the public space.

Visual Termini: The Regulating Plan also identifies specific locations and visual termini that require special architectural treatments in order to create a legible “townscape” with natural wayfinding elements and a strong sense of place and identity. These occur at key gateway intersections along Bell Boulevard, and at highly visible locations throughout the District, with the intent of reinforcing the placemaking attributes of the development.



FIGURE 4: BELL BOULEVARD ILLUSTRATIVE PLAN

Not to Scale

2.3 THE ILLUSTRATIVE AND PARCEL PLANS

The Illustrative Plan indicate how the Bell Boulevard District could potentially build out in conformance with the Regulating Plan and this Design Book over the next 10 to 15 years (Figure 4). It is anticipated that the site could include mixed use development with multi-family apartments and fee-simple brownstone units along with 200,000 to 300,000 square feet of non-residential commercial, office and civic space including retail, restaurant and office uses as well as the planned Public Library.

This Illustrative Plan is based upon a current understanding of market conditions and will change as

opportunities and new conditions present themselves. For instance, some of the sites currently anticipated for residential mixed use development could be developed for office uses, should such an opportunity arise. Alternatively, the site designated for office use may be used for residential use.

The Illustrative Parcel Plan (Figure 5) depicts a pattern of streets and blocks that may be revised over time to meet changing requirements, provided compliance with the standards limiting the size and perimeter of blocks described in Section 3.1.



FIGURE 5: ILLUSTRATIVE PARCEL PLAN

Not to Scale



BUILDING FORM AND DEVELOPMENT STANDARDS

3

Development standards in this chapter deal with the basic form and placement of buildings including: the location of certain uses, block standards, building height, setbacks and build-to lines, the relationship of ground level uses to street frontages and the location and treatment of parking and service facilities.

3.1 BLOCK STANDARDS

In order to promote a fine-grained pattern of blocks that optimize connectivity and walkability within the District, the following standards are established:

1. **Block Definition:** With the exception of Parcels 1, 2, and 3 fronting the social hub, a block must be defined by a public or private street on at least three sides; the fourth side may be a pedestrian way that is publicly accessible at all times.
2. **Maximum Block Length:** No block face (measured as the total length of private parcels along a street front) shall have a length in excess of 660 feet.

3.2 LOCATION OF USES

Land uses should generally be distributed as shown in Figure 4: Bell Boulevard Illustrative Plan. Although a diverse mix of uses (within the list of uses prescribed by zoning) is encouraged throughout the Bell Boulevard District, there are some limitations on the location of certain uses, including:

1. **Ground Level High Density Residential Units** shall only be permitted along frontages designated as “Pedestrian-Friendly”, subject to the development standards in this section, and in no case along a “Pedestrian-Priority” street or “Social Hub” open space frontage. The DRC may permit interim residential within space that is constructed as “Retail Ready” as defined in Chapter Four.
2. **Urban Brownstone Units** shall only be permitted along frontages designated as “Pedestrian-Friendly”, subject to the development standards in this section. These shall be confined to Parcel 6 and shall not exceed 80 units.



A mixed use building with ground-level commercial uses.

3.3 BUILDING HEIGHT

The following standards are related to the minimum and maximum height of buildings within the Bell Boulevard District:

1. **Maximum Height:** Figure 6 describes the maximum height of buildings, such that:
 - a. Blocks within 300 to 400 feet of the realigned Bell Boulevard shall contain buildings that do not exceed a height of 90 feet;
 - b. blocks to the west and south of the extension of Parkwest Drive shall contain buildings that do not exceed a height of 50 feet; and
 - c. all other blocks shall contain buildings that do not exceed a height of 75 feet.
 - d. Additional height may be permitted with a Special Use Permit and City Council approval.
2. **Minimum Height of Non-Residential Buildings:** All non-residential buildings must be a minimum of two (2) floors or 35 feet in height, with the exception of buildings on Parcels 1, 2, or 3 which may be one floor with a parapet or roof ridge height no less than 25 feet in height.
3. **Minimum Height of High Density Residential Buildings:** All high density residential buildings must be a minimum of four (4) floors in height.
4. **Minimum Height of Urban Brownstones:** A varied streetscape of two to four-story brownstone units shall be provided within Parcel 6, such that the two-story units comprise no more than 50% of the total number of brownstone units.
5. **Stepbacks:** Buildings may step back above the second floor. Above a height of 65 feet, 50% of any facade of the building along a street should be stepped back from the lower portion of the building by at least five (5) feet (Figure 7).

6. **Ground Floor Height of Non-Residential Space** along a “Pedestrian-Priority” or “Pedestrian-Friendly” street or “Social Hub” open space frontage shall have a minimum floor-to-floor height of 15 feet. The finished elevation of useable ground floor space shall be generally flush with the sidewalk and no more than 12 inches above it. The DRC may provide an exception to these requirements if they find that site conditions preclude compliance and that every effort has been made to maximize the relationship and flow between indoor and outdoor activities (Figure 7).
7. **Residential ground floor units** shall be elevated at least 18 inches above the level of the sidewalk, but by no more than 60 inches (Figure 7).



Minimum Heights: Two (2) floors for all buildings except non-residential buildings on Parcels 1, 2, and 3.

Figure 6: Height Diagram

3.4

BUILDING PLACEMENT

This standard describes the relationship of new buildings to the public realm of the Bell Boulevard District, with the goal of ensuring that buildings help to activate and define the space of the street, making them comfortable, safe and interesting places for pedestrians to move through and enjoy. More specifically:

- 1. Build-to Zone:** The build-to zone is located between zero (0) and ten (10) feet from the street front property line of the parcel, or from back of sidewalk on A-type streets (described in Section 5.3 and Figure 13). Along A-type streets, the build-to zone will be increased to 20 feet from the back of sidewalk to accommodate outdoor seating associated with ground level restaurants and cafes.
- 2. Buildings with ground level residential uses** must be set back from the streetfront property line or from the back of the sidewalk or shared-use-path on A-type streets by a minimum of five (5) feet to provide for entry stoops and landscaping. Up to 50% of this setback area may include stoops with the remainder in landscaping.
- 3. Additional depth of the Build-to Zone from the streetfront property line** may be permitted if the DRC finds that the additional depth is necessary to accommodate curvilinear street geometry, outdoor cafes or patios, or if it results in a more active and successful public gathering space or provides more appropriate separation for privacy and compatibility.
- 4. Buildings with a “Social Hub” open space frontage** shall not be governed by specific build-to standards, recognizing that the precise placement of these frontages will be determined in conjunction with the design and treatment of the adjacent open spaces. It is anticipated that these edges will be characterized by terraces and decks, promenades, and the numerous heritage trees that surround the open space.
- 5. Side and Rear Setbacks** shall be zero (0).

3.5

DWELLING UNIT SIZES

- 1.** High density residential units shall have a minimum floor area of 450 square feet.

3.6

PEDESTRIAN-PRIORITY FRONTAGE REQUIREMENTS

Along “Pedestrian-Priority” street frontages, the following requirements pertain to the placement of new construction (Figure 8):

- 1.** At least 80% of the building frontage shall be constructed within the build-to zone along the street.
- 2.** Ground floors shall be built to Commercial / “Retail Ready” standards as described in Chapter Four.
- 3.** Shading with protected awnings or canopies shall be provided along at least 70% of the frontage of new construction.

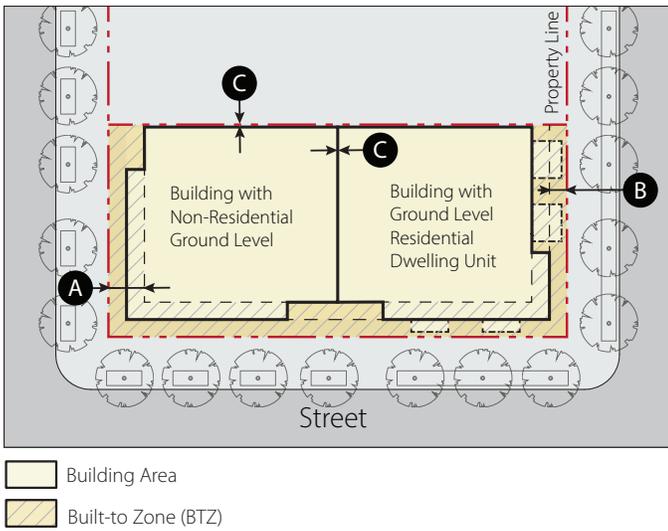


Figure 7A: Building Placement
(for all streets except Street Type A)

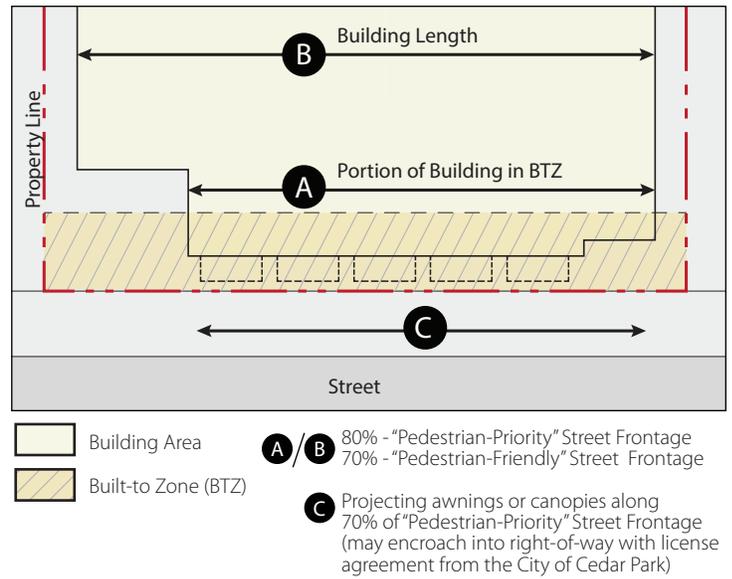


Figure 8: Street Frontage Requirements

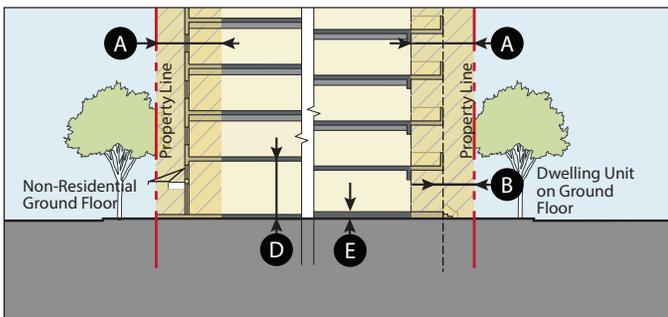


Figure 7B: Ground Level Conditions

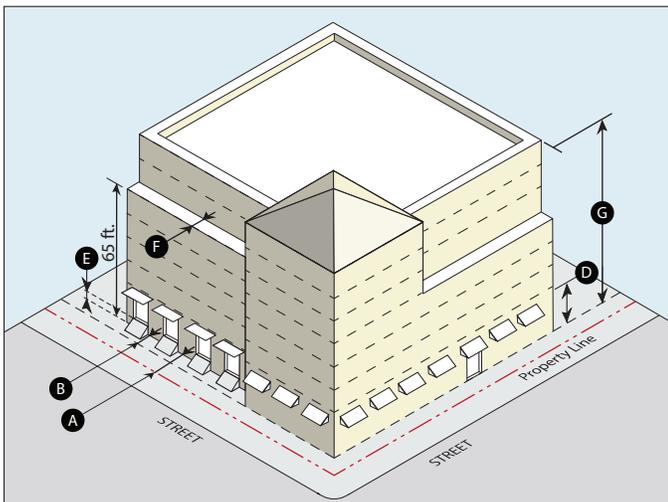


Figure 7C: Building Placement & Height

- A** Built-to Zone (BTZ) = 0 feet to 10 feet maximum from the streetfront property line of all streets, except Street Type A which shall be measured from back of sidewalk (see Figure 13).
- B** Ground Level Residential Setback Area = 5 feet from streetfront property line, or from back of sidewalk or shared-use path on Street Type A. Maximum 50% in stoops or porches. Covered stoops may project up to 3 feet into the setback area
- C** Rear / Side yards are 0 feet
- D** Non-Residential Ground Floor-to-Floor Height = Minimum 15 feet
- E** Residential Unit Finished Floor Elevation = Minimum 18 inches/Maximum 60 inches above the sidewalk
- F** Minimum Setback = 5 feet above 65 feet for 50% of Building Frontage
- G** Maximum Height = 75 to 90 feet (East and North of Parkwest Extension)

3.7 PEDESTRIAN-FRIENDLY FRONTAGE REQUIREMENTS

Along street frontages designated as “Pedestrian-Friendly” the following requirements shall be followed (Figure 8):

1. At least 70% of the building frontage shall be constructed within the build-to zone along the street.
2. Ground floors shall be built to “Retail Ready” standards as described in Chapter Four, or with ground level residential or hotel units.
3. Ground floor residential units shall have their primary entries from stoops or porches with access from the sidewalk and comply with the standard for ground level residential space in Chapter Four.

3.8 SOCIAL HUB FRONTAGE REQUIREMENTS

For buildings with a designated Social Hub open space frontage, the DRC shall make a finding that:

1. Every reasonable effort has been made to maximize the relationship and flow between indoor and outdoor activities;
2. The exterior walls have a high degree of transparency;
3. The design and treatment of the building edges and frontages have been carefully integrated with the design of the open spaces; and
4. Provision is made for generous shading with protected awnings or canopies.

3.9 PARKING GARAGES FOR MIXED USE, HIGH DENSITY RESIDENTIAL AND COMMERCIAL BUILDINGS

Garages for mixed use, high density residential and commercial buildings shall be located and treated as follows:

1. Parking shall be encapsulated within or below buildings in a manner that conceals it from predominant public view and that does not interrupt the continuity of the pedestrian environment. All above-grade parking structures must be designed to be consistent with and complementary to the architectural style of the main building(s).
2. Along all street frontages, parking garages in mixed use, high density residential or commercial buildings shall be set back at least 30 feet from the property line and encapsulated within the primary building, so that the parking facility is not visible from the street frontage (Figure 9).
3. While exposed parking garages are discouraged, the DRC may consider allowing them if they find that:
 - a. Exposed portions of the garage to a public street are limited to no more than 130 feet of street frontage and no more than 33 percent of a block face (Figure 10A);
 - b. That the exposed portion of the garage does not occur along a “Pedestrian-Priority” street frontage;
 - c. That any exposed portion of the garage, visible from a public street, is architecturally treated with high quality materials and elements; and that
 - d. A landscaped buffer of at least three feet in width is provided along any portion of a garage that is adjacent to a public sidewalk (Figure 10B).

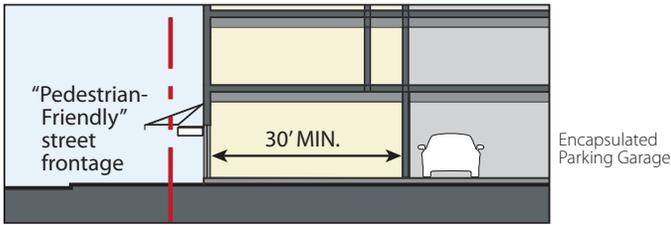
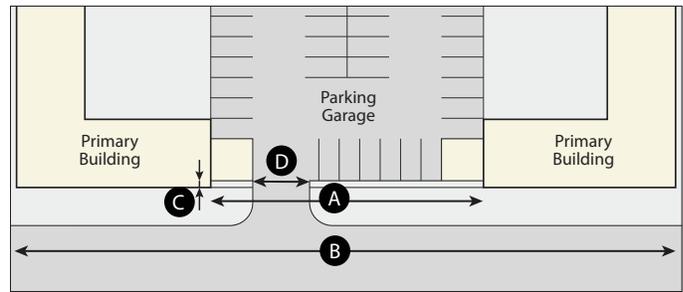


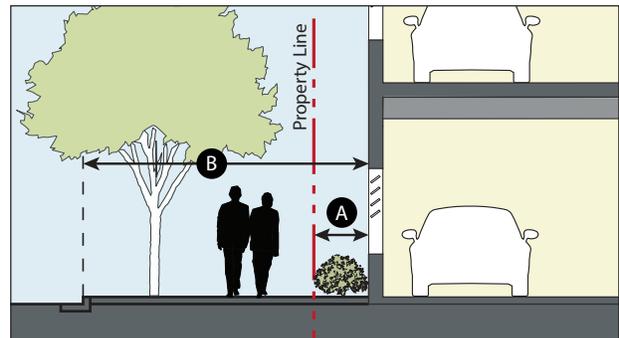
Figure 9: Encapsulated Parking Garages

4. Parking garage entries are not permitted from frontages designated as “Pedestrian-Priority” unless the DRC determines that the entry is critical to the garage’s visibility and to the success of the District and the Social Hub as a viable retail/entertainment destination.
5. Parking garages for mixed use, high density residential or commercial buildings may be accessed from frontages designated as “Pedestrian-Friendly”, provided that the driveway width does not exceed 30 feet in width, and that no more than one entry or exit is located along one block face.
6. The DRC may allow a stand-alone parking structure if it serves an office building and if it complies with the standards set forth in 3.9.3b through d above.



- A Exposed Parking Garage
- B Length of Building along Street
- A B Proportion of Garage to Primary Building may be a maximum of 130 feet, and no more than 33 percent of the block face
- C Minimum 36 inch setback from primary building face with landscape screen
- D One driveway maximum up to 30 feet wide

Figure 10A: Exposed Parking Garage



- A Minimum setback of 36 inches with landscape from property line or from back of sidewalk on Street Type A
- B Minimum 15 feet from face-of-curb

Figure 10B: Exposed Parking Garage on Public Sidewalk



The driveway entry to an encapsulated parking garage.

3.10

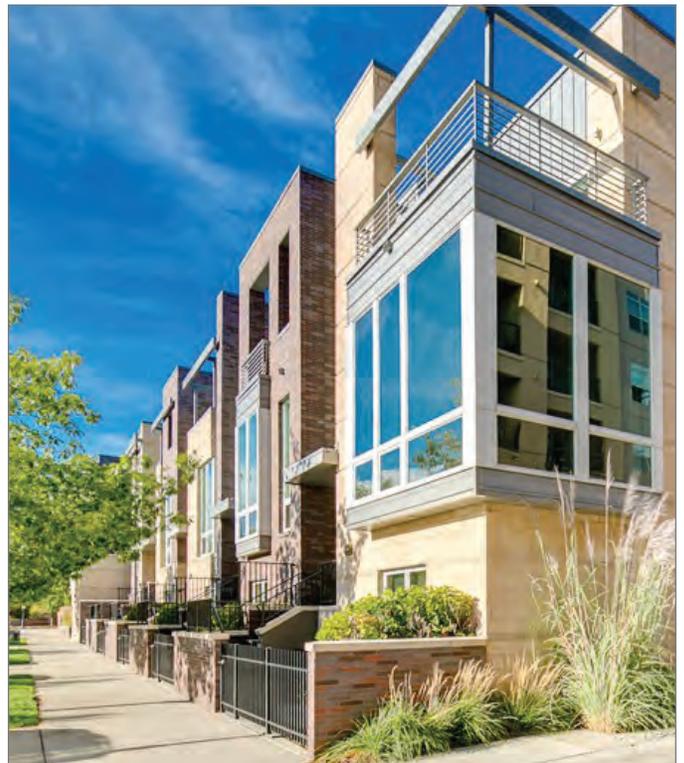
URBAN BROWNSTONE BUILDINGS

In addition to offering ownership opportunities within the Bell Boulevard District, Urban Brownstones are intended to provide a transition in scale between the Buttercup Creek Natural Area on the west and higher density residential and mixed use buildings to the east. Brownstones shall be located on Parcel 6 west of the Parkwest extension, subject to the following standards:

1. **Streets and Streetscape:** Streets shall be private, their design and treatment subject to City and DRC approval.
2. **Neighborhood Layout:** All brownstones shall have garages along alleys with the unit front facing a street or pedestrian mews. To the maximum extent practicable, garages shall not be visible from fronting streets, pedestrian mews or from the greenway along the Buttercup Creek Natural Area.
3. **Building Orientation:** Brownstones shall have their primary entries from streets, mews or garden courts.
4. **Minimum Height of Urban Brownstones:** A varied streetscape of two to four-story brownstone units shall be provided within Parcel 6, such that the two-story units comprise no more than 50% of the total number of brownstone units.
5. **Building Setbacks:** A minimum setback of five (5) feet shall be provided from the back of fronting sidewalks and from rear alleys.
6. **Front Stoop and Finished Floor Elevations** shall be elevated at least 18 inches above the level of the fronting sidewalk, but by no more than 60 inches (Figure 7).
7. **Minimum Average Unit Size:** A minimum average floor area of 1,500 square feet with no unit less than 1,100 square feet.
8. **All Urban Brownstone parking** shall be provided in enclosed garages, with each garage accommodating two cars, either in a side-by-side or tandem arrangement. The maximum width of all garage driveways shall be 20 feet.



In the spirit of traditional Brownstones (above), these two to four-story buildings provide ownership opportunities and a transition in scale between the Buttercup Creek Natural Area on the west and higher density residential on the east.



3.11

OPEN SPACE REQUIREMENTS

Consistent with the standards for Mixed Use development in Cedar Park’s Code of Ordinances (Section 11.03.155(E)), the Bell Boulevard District shall provide the following:

1. A minimum of ten percent (10%) of the gross site area shall be publicly accessible open space located no greater than one-quarter mile (1,320 feet) from all development parcels within the District.
2. Common open space (e.g., courtyards, terraces, patios, etc.) within high density residential developments shall have a total area at least 40 square feet for each residential unit.

3.12

SURFACE PARKING LOTS

Parking lots within the Bell Boulevard District will only be permitted, subject to DRC approval, under the following conditions:

1. The parking lot does not exceed 50 spaces, it is not located along or accessible from a “Pedestrian-Priority” street frontage; and
2. The DRC finds that the parking lot is essential for the success of a commercial venture.

3.13

SERVICE AND LOADING

All service areas (e.g., loading docks, garbage and recycling rooms, mechanical areas, storage, utility, meter rooms, etc.) must be architecturally integrated within the body of the building or architecturally screened from all public areas and located to the maximum extent practicable on frontages other than those designated as “Pedestrian-Priority”. Curbside on-street loading areas up to 40 feet in length will be permitted along all street frontages except those designated as “Pedestrian-Priority”.

Trash pick-up shall be from internal rooms or enclosures; dumpsters or bins will not be permitted to be stored or staged in public right-of-ways.



BUILDING DESIGN GUIDELINES

4

Design guidelines in this chapter describe the character and treatment of buildings and parking facilities within the Bell Boulevard District, including requirements for façade design, corner and terminus elements, primary and accent building materials, roof treatments, parking garages and lots, ground level commercial and residential frontages and signage.

4.1 BUILDING DESIGN PRINCIPLES

Over several years, the City of Cedar Park has conducted more than five community workshops, each soliciting public input on the kind of qualities that the buildings of the Bell Boulevard District should possess. Through visual preference studies and other outreach exercises, people overwhelmingly expressed the desire for buildings:



- To be at a “town scale” rather than a big city one;



- For buildings to have a traditional character, rather than an overly contemporary one; and



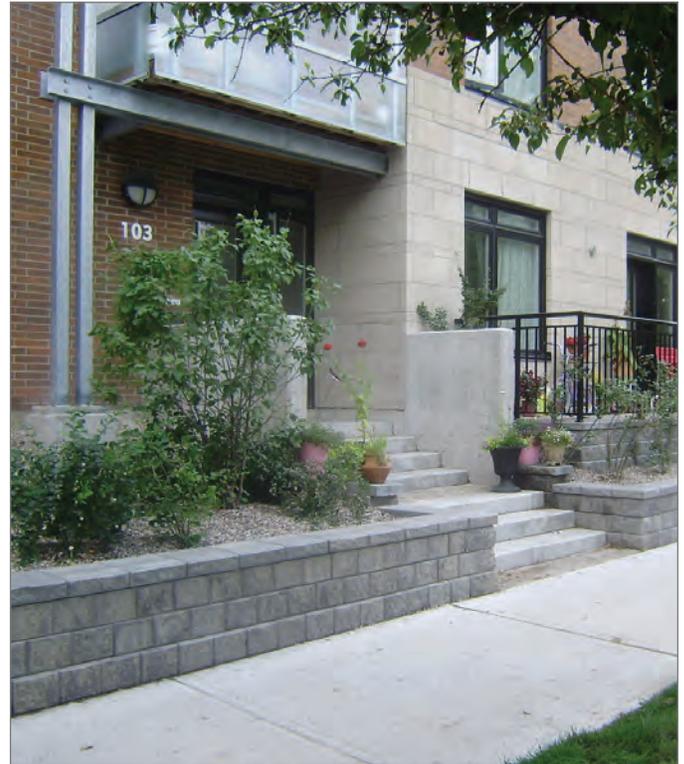
- To include facades with variation and interest;



- To engage the pedestrian at the ground level with interesting storefronts or residential stoops.

In keeping with this direction, the following design principles shall be incorporated into all buildings within the Bell Boulevard District:

- Buildings shall be located and designed to define and enliven the District's network of streets and open spaces;
- Buildings shall introduce special elements at key corners and at visual termini to promote an interesting and legible townscape;
- The ground level of buildings shall promote an attractive, safe and interesting pedestrian environment; all building entries shall be oriented to the public sidewalk.
- Building massing shall be shaped and varied with multiple volumes that promote an urban town scale;
- Buildings shall be designed with a high degree of care and craftsmanship, utilizing materials and treatments that achieve high levels of durability, energy and resource efficiency;
- Buildings elements that modulate harsh climatic conditions are particularly encouraged (e.g., canopies, awnings, shading and screening devices that create comfortable outdoor environments and that reduce heat gain).
- Buildings shall employ traditional forms, materials and treatments that are indigenous to Central Texas communities (e.g., generous roof overhangs or canopies, punched window openings, stone and masonry, etc.).
- Parking facilities shall be designed to avoid obstruction of the pedestrian environment, and to be largely hidden from view to the maximum extent practicable.



All building entries shall be oriented to the street.



Building elements that activate the pedestrian environment and provide shade are encouraged.

4.2 BUILDING FORM AND FACADE VARIATION

The goal of the following guidelines is to promote well-scaled and articulated buildings that contribute to the urban “town scale”, interest and vitality of the District. Buildings with large expanses of undifferentiated treatment, or those lacking in volumetric variation are not permitted.

1. At intervals no greater than 200 feet in length along a street, buildings should introduce a significant change in plane of at least five (5) feet in depth and ten (10) feet in width; this change should be used to create clear indentations in the building mass, resulting in distinctly different building volumes.
2. Variation in the parapet height, roof treatment, building material, window arrangement and/or other architectural elements should also be introduced to accentuate these distinct volumes of the building.
3. Architectural elements including projecting bay windows, balconies (in a non-repetitive pattern), loggia, canopies, pediments, moldings, etc. should be used to further break up the mass of the building.
4. Walls more than 30 feet in length and with more than 1,000 square feet of surface area without fenestration, building wall articulation, or material changes are not permitted on any street or private drive frontage, except alleys.
5. Buildings should employ four-sided and volumetric architecture, with materials that wrap around to reinforce the three-dimensionality of the structure; material changes should always occur with a change in plane, and never on outside corners.
6. The architecture should delineate between the building’s base, its upper levels and the roof silhouette.
7. The façade should introduce a varied and non-repetitive composition of window openings. Curtain walls are discouraged, unless the DRC finds that their inclusion contributes positively to the architectural integrity of the building.



Large projects should be designed to create multiple building volumes with no building volume greater than 200 feet in length.

4.3

PARKING GARAGE TREATMENT

Along streets where they are exposed or visible, parking garage facades should be designed with high quality materials and treatments that complement the primary building. The treatment shall provide similar levels of articulation, avoid views to parked vehicles and shield interior lighting from predominant view. Rooftop lighting should also be designed so as not to be visible from any public street within the District. To the maximum extent practicable, sloped floors and ramps should not be visible from public streets.



An exposed garage treated with high quality materials and treatments

4.4

CORNER AND TERMINUS ELEMENTS

Buildings that occupy corner lots or that terminate key views along streets should introduce special architectural elements (e.g., towers, cupolas, gables, dormers, balconies, etc.) to reinforce the legibility of the District and to promote a varied and interesting streetscape.



A distinct corner element

4.5

GROUND LEVEL RESIDENTIAL

Ground level residential dwelling units should be elevated at least 18 inches but no more than 60 inches from the elevation of the sidewalk to provide privacy and separation. Residential unit entries, porches and stoops should be located along street fronts to the maximum extent practicable. Stoeps and porches should be designed to complement the streetscape with integrated planters, high quality railings and generous overhangs.

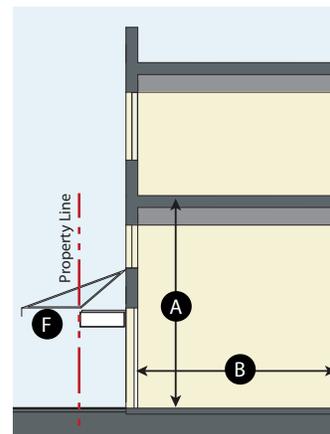
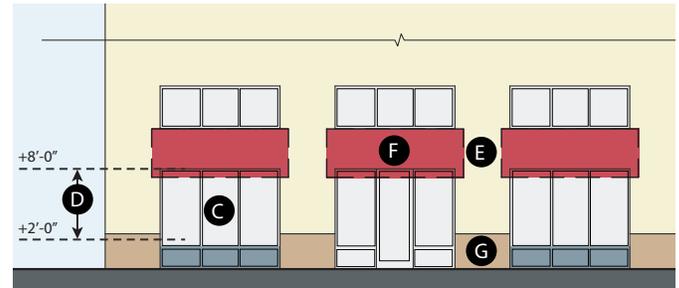


Elevated ground level residential dwelling units with street-oriented stoops

4.6 GROUND LEVEL COMMERCIAL / “RETAIL READY” TREATMENT

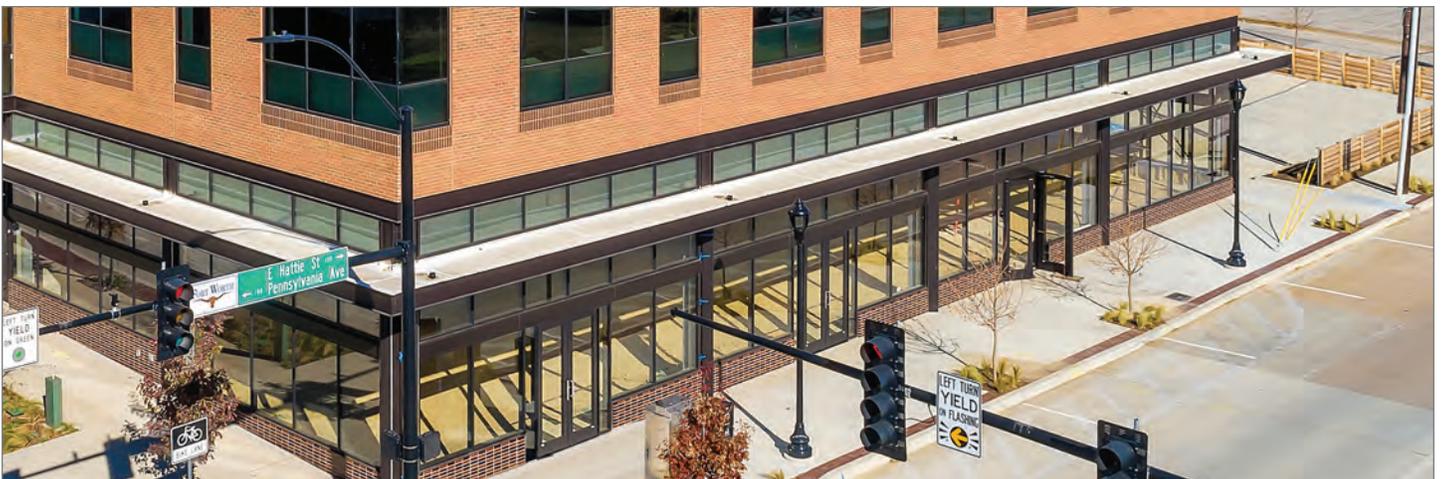
Where required as per the standards of Chapter Three, ground level commercial space should be designed in a manner suitable for retail uses with the following characteristics (Figure 11):

1. A floor-to-floor height no less than 15 feet;
2. A usable floor area with a depth no less than 30 feet;
3. Primary entries oriented to the street at frequent intervals;
4. High quality storefront glazing systems (e.g., painted, front-loaded aluminum or steel, flush glazed or butt-glazed systems) with a Visual Transmittance Rating of 0.6 or higher, and a minimum storefront to building wall ratio of 75% (along the street front measured on the ground level façade between two and eight feet above the sidewalk);
5. High quality ground level accent materials such as stone, pre-cast concrete, decorative terra cotta, brick masonry, painted ornamental steel, stainless steel, chrome or bronze; and
6. Projecting awnings and/or canopies that provide color and weather protection.



- A 15 feet minimum floor-to-floor
- B 30 feet minimum depth of usable space
- C Storefront Glazing
- D Building Wall (2' to 8' above sidewalk)
- C / D Minimum 75%
- E Approved High Quality Building Material (e.g., masonry, stucco, fiber-cement panels, etc.)
- F Projecting Awning or Canopy
- G High Quality Accent Material

Figure 11: Ground Level Commercial / “Retail Ready” Treatment



A “retail ready” ground level space

4.7 BUILDING MATERIALS

The purpose of this section is to ensure a high degree of quality, durability and aesthetic appeal to promote compatible and cohesive design in the spirit of building materials and styles commonly found in Central Texas.

A range of approved building materials may be used within the District including Texas limestone, granite, or sandstone in light or warm tones, smooth finished brick, painted brick, smooth-finished stucco, light colored pre-cast concrete, fiber-cement panels and/or other similar high-quality materials deemed by the DRC to be compatible and complementary.

The following materials are not permitted:

- Exterior Insulation and Finish System (EIFS)
- Plastic or vinyl siding
- Plywood
- Wood fiber (oriented strand board)
- Under fired brick of unfired clay, sand, or shale rock
- Mirrored glass; and
- Cement board stucco

Building materials should be deployed to accentuate the three-dimensionality of the building façade. Changes of material should always occur at a distinct change in planes (e.g., on inside corners), and never along the same plane or on outside corners.

4.8 ROOF TREATMENT

Buildings may employ flat or sloping roofs, however, sloping roofs are particularly encouraged on buildings of three floors or less. Sloping roofs should be designed with generous overhangs, projecting eaves, exposed beams and decorative brackets. Standing seam metal roofs or concrete or clay tile in warm colors are encouraged. Wood shingles are not permitted.

Decorative building parapets or projections that provide distinctive silhouettes should be considered for flat-roofed buildings, with projecting parapets returning at least six feet to create a three-dimensional appearance from street view. Flat roofs should incorporate high-albedo reflective coatings. Rooftop mechanical equipment shall not be visible from public streets. Mechanical penthouses shall be architecturally integrated within the overall composition and vocabulary of the building.

4.9 SIGNAGE

A coordinated signage program shall be prepared and submitted to the DRC for their review and approval. All signage shall comply with City of Cedar Park standards.



Buildings should include materials and treatments commonly found in Central Texas.



OPEN SPACE AND STREETSCAPE DESIGN GUIDELINES



Streets provide a significant portion of the Bell Boulevard District’s public space. As such, they will be critical in defining the character of the new district. Streetscapes will create a comfortable environment for pedestrians with durable materials that convey local and historic meaning to elevate the sense of place. The streetscapes will be implemented to allow for intuitive maintenance and care in the future. The guidelines in this chapter are intended to give developers, architects, and landscape architects specific standards and material specifications that will help create a consistent and maintainable series of streets. In addition, the standards describe the treatment of Bell Boulevard District’s “Social Hub”, the principal gathering space of the new community.

5.1 STREETScape DESIGN PRINCIPLES

The following principles outline the overall approach to streetscape design in the Bell Boulevard District:

- Streets within the District will provide an appropriate balance between the movement of automobiles and pedestrians.
- Vehicular traffic will move through the district in a calm fashion, connecting the perimeter arterial and collector roads with on and off-street parking.
- Streets will reinforce a “park-once” behavior, by providing a safe, comfortable and interesting pedestrian environment that connects multiple destinations.
- All streets will be lined with trees to provide a shady and green canopy above the sidewalk.
- Planting of trees shall follow high quality standards for both nursery stock and available soil to ensure their on going health and longevity.
- Sidewalks will be organized to include a curbside furnishing and street tree zone with a clear promenading zone adjacent to buildings.
- Opportunities for sidewalk cafés and retail extension areas are encouraged along commercial building frontages.
- Residential stoops and porches will be provided along ground level residential frontages.
- Site developers will be able to choose from a palette of sidewalk materials and treatments, and street furnishings (e.g., benches, waste receptacles, etc.) in response to specific building frontage conditions and circumstances.
- The streetscape will be constructed to allow for predictable and cost-effective maintenance.



Rendering of a Bell Boulevard District commercial street



5.2 SOCIAL HUB

The Social Hub is a space, approximately 1.5-acre in area, that will bring residents and visitors to Cedar Park and the Bell Boulevard District together. The space recalls the history of a “strolling park” that was built on this site in 1892 attracting day-trippers on the train from Austin. Here in the Social Hub, shoppers, families and nature lovers can relax under the existing heritage live oaks, meet friends at one of the restaurants or cafes that overlook the space, or attend a community festival or musical event. They can stroll the adjacent trail along Cluck Creek or read a book at the City’s new library while kids climb on one of the nature play structures.

The relationship of the Social Hub to the existing landscape will make this place a unique and important spot in the community. A majestic grove of mature existing live oaks surrounds the open space on three sides, with the fourth southern edge overlooking Cluck Creek and the Buttercup Creek Natural Area. The activities of the surrounding land uses, including the Library and the neighborhood-oriented restaurants and commercial buildings, will spill out under the trees into this landscape.



View looking toward the Social Hub at the Bell Boulevard District.

Landscape material and paving choices for the Social Hub should reflect the civic importance and pride of the space. The palette should be consistent with that described for the streetscape. This includes a reliance on natural materials and simple finishes. Because of the anticipated high pedestrian traffic in this area, all materials should be durable and easily maintained.

A majority of the Social Hub should feature an open lawn to allow for flexible programming as well as informal and passive activity. Suitable infrastructure should be provided to accommodate movies in the park, event tents, small market events, and concerts. Lighting should

include additional pedestrian poles and provision for holiday lighting to enhance the aesthetics and civic feel of the space.

The hardscape surfaces of the perimeter gathering spaces of the Social Hub should be of high quality materials including pavers, acid-etched concrete or decking material intended to avoid disturbance of the roots of the heritage trees. Walls and other seating should be situated at the edges of the central lawn, especially under the grove of existing live oaks to allow for gathering.



5.3 STREET NETWORK AND CROSS SECTIONS

The Bell Boulevard District is organized with a grid network of two lane roadways and pedestrian ways that provide a compact pattern of urban blocks. The Plan provides for the extension of the grid to serve adjacent properties and to connect to Parkwest Drive.

Street Type A (80-ft. ROW): As the primary street type of the Bell Boulevard District, this street type provides the principal north-south and east-west circulation, connecting to the realigned Bell Boulevard on the east and West Park Street to the north. This street will include a significant amount of on-street curbside parking to support ground level commercial activity and to offer a level of convenience. The street could include diagonal parking on both sides of the street (Street Type A-1) or diagonal on one side and parallel parking on the other (Street Type A-2). Back-of-curb conditions will vary depending on the location and adjacent ground level use, as described in Figure 13.

Street Type B (80-ft. ROW): Planned as a promenading commercial street leading to the Social Hub, this street type provides a wide pedestrian paseo lined with active ground level uses (e.g., cafes, restaurants and retail shops).

Street Type C (68-ft. ROW): As the secondary street type of the district, this roadway is located along the edges of the Planned Development boundary with parallel parking on both sides of the street and wide, tree-lined sidewalks.

Utility Easement(s): Along one side of all streets, a ten (10) foot wide utility easement shall be provided beneath the sidewalk and a portion of the landscape or furnishing zone to provide for electrical, telecommunication, or gas service. Manhole, meter boxes, or other hatches shall, to the maximum extent possible, be located outside of the walkable surface of the sidewalk in separate easements. Transformers and other utility equipment must also be located outside of the walkable surface of the sidewalk, and screened from predominant view.

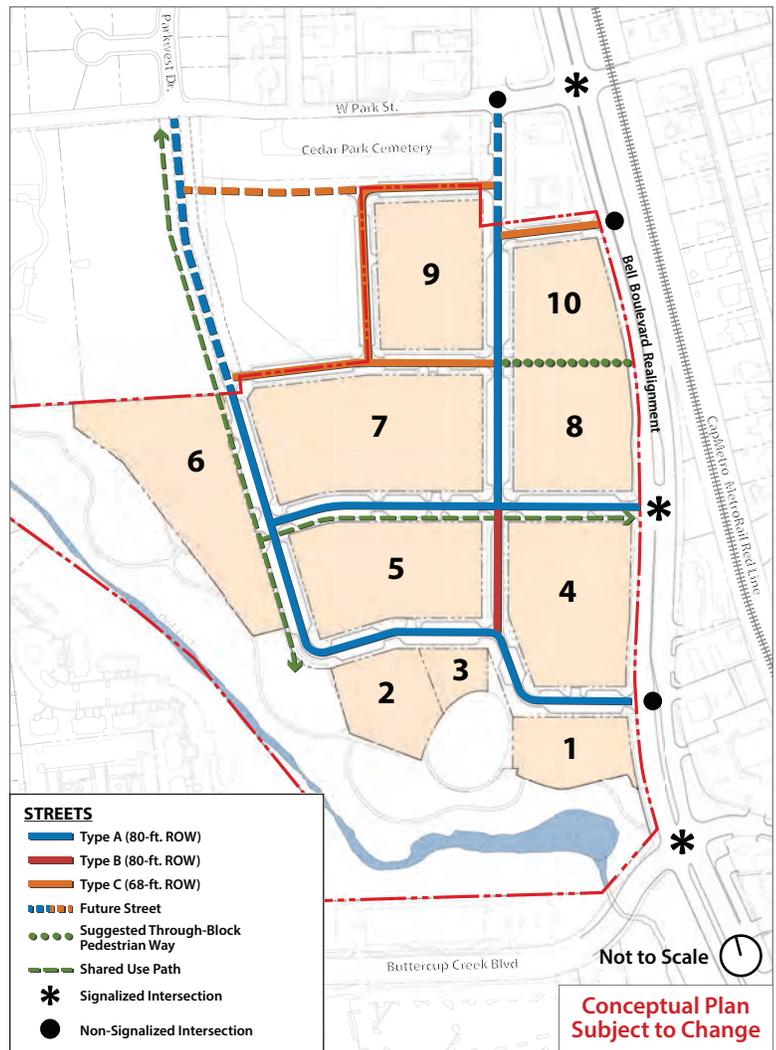
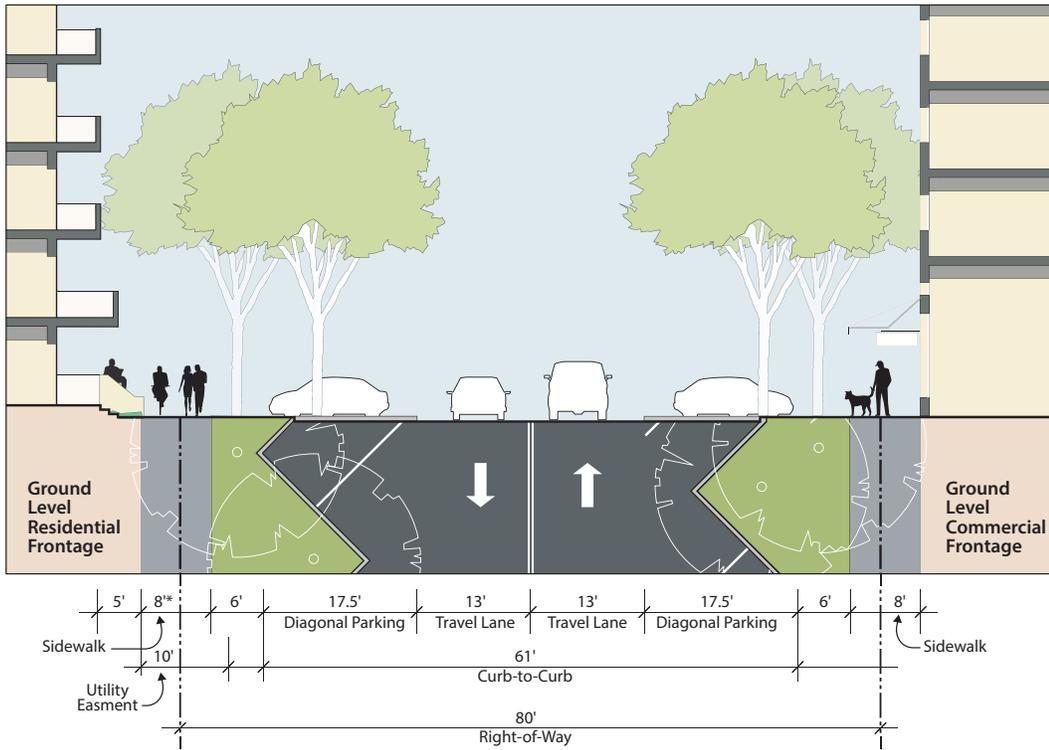


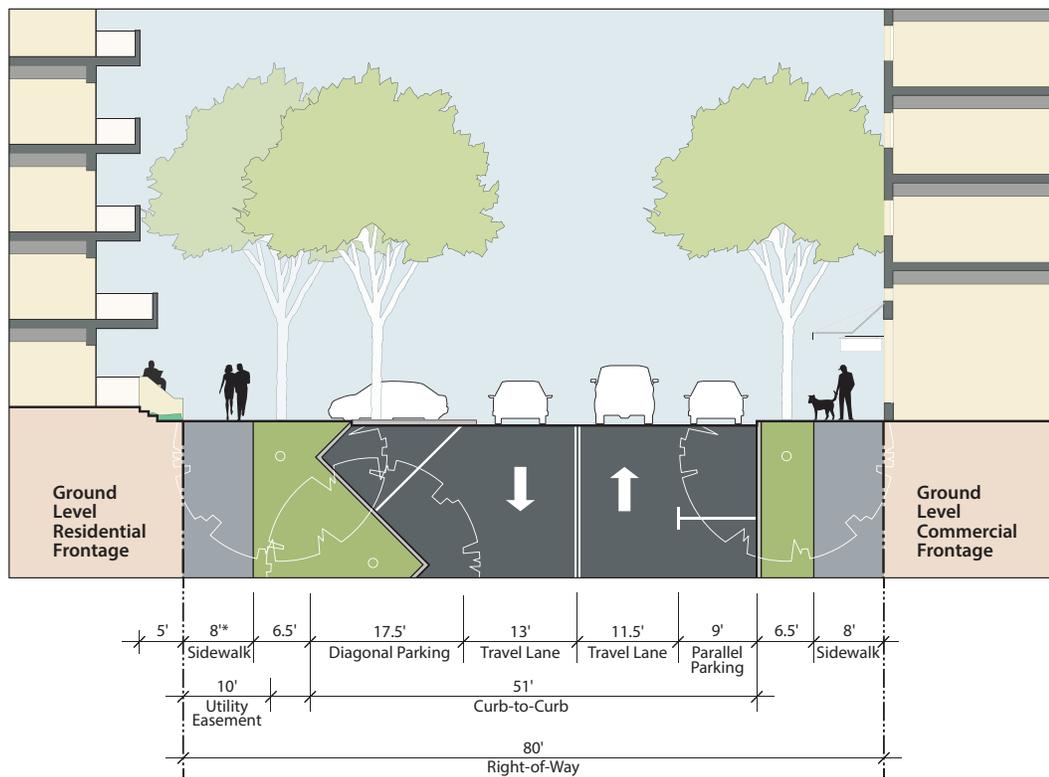
FIGURE 12: BELL BOULEVARD STREET SECTION KEY MAP

STREET TYPE A-1



Note: Along the west side of the Parkwest Extension and the south side of the principal east-west street, a nine (9) foot wide shared-use path is required.

STREET TYPE A-2



Note: Along the west side of the Parkwest Extension and the south side of the principal east-west street, a nine (9) foot wide shared-use path is required.

FIGURE 13: STREET SECTIONS

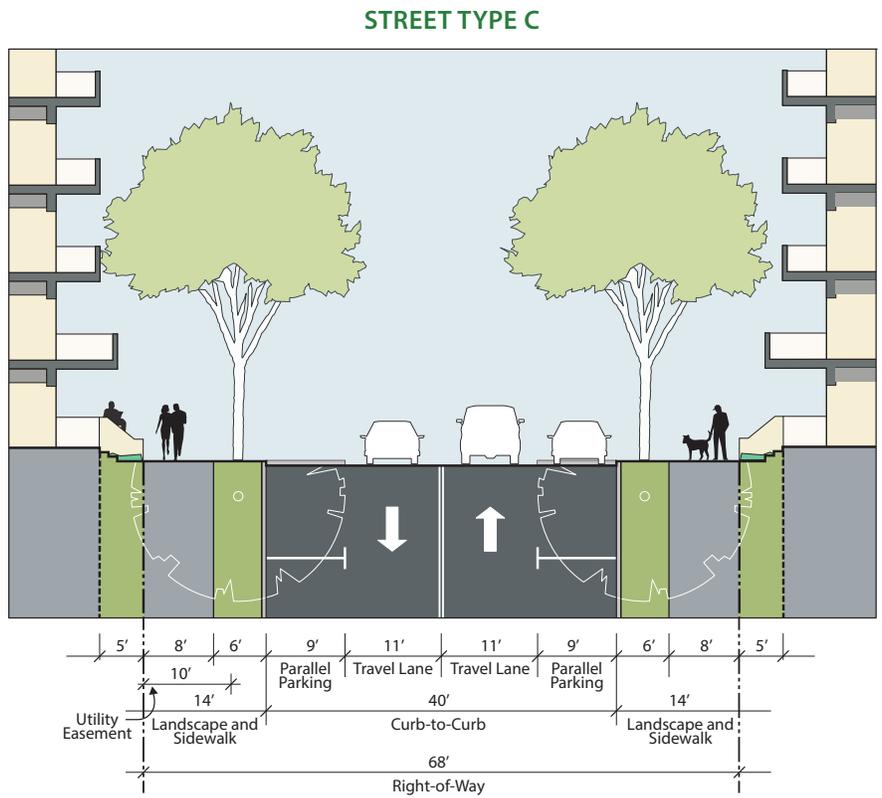
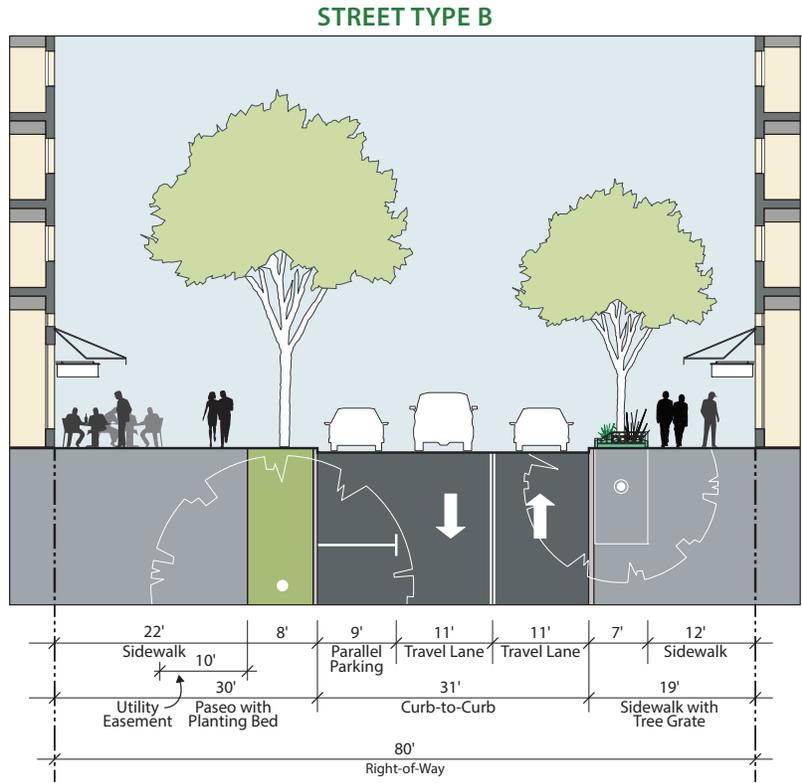


FIGURE 13: STREET SECTIONS (Continued)

5.4 STREET TREES

Tree lined streets are a crucial component to achieving a successful streetscape, representing a long-term relationship with the built environment. They provide many benefits, including shade for human comfort, scale in relation to buildings, separation from automobile movement, and seasonal interest in their canopy. In order to maximize these benefits, it is important that the designs of individual segments of the street follow consistent spatial guidelines as well as create proper growing environments for the trees to thrive over time. This latter part is especially important and often overlooked. Planting large caliper trees day one in constricted soil areas without enough water may provide a good initial impact, but the long-term performance is likely to be poor as the tree struggles for resources and doesn't continue to grow. By comparison, a smaller caliper tree planted in better conditions with good maintenance has a better opportunity to thrive and provide the desired long-term benefits to the street.

With regards to spatial requirements, the tree spacing and placement in relation to the curb are important factors for consistency and the spatial feel of the street. Street trees will be placed approximately 25 to 30 feet

on center and set back from the curb edge by about three (3) feet. This spacing provides the shade tree with enough access to light, adequate room for canopy growth, and a relatively continuous canopy to provide full shade coverage. The tree location back from the curb is important to prevent the trunk being struck by swinging car doors at parallel parking spaces and other vehicle conflicts. It also takes into consideration the size of root balls for the caliper size trees that are being proposed for installation.

The keys to a good tree growing environment, aside from sunlight, are soil and water. Soil volume for trees is arguably the most important factor for their success in an urban setting. Street trees should have a continuous planting zone to improve access to soil. If a soil zone of this size cannot be fully open at the surface, then soil cells or structural soil may be used under paved areas in order to reach this guideline. With regards to water, each tree should be provided with two sub-surface watering bubbler tubes, and the street trees must be zoned separately from other plant material. The sub-surface bubblers are less likely to be damaged by typical maintenance practices, and the below ground placement



Existing trees along the north edge of Cluck Creek

helps deep water the roots more effectively. Separate zoning of the trees allows for more targeted watering, especially during drought conditions.

The quality and the size of the plant material at time of installation are also important to the long-term health of the trees and to the spatial feel of the street. All trees should be sourced from nurseries with good cultural practices in terms of branch pruning and root health. No trees should have circling roots, and all root balls of trees should be shaved prior to installation. Trees with circling roots will have reduced stability because of limited lateral buttress roots on some sides. The circling roots can also choke the trunk of the tree over time and stunt its growth. To meet the spatial and clearance needs of the streetscape, trees must be straight and single-trunk. Tree height should be approximately 16 feet with clearance for accessibility on the sidewalk side that meets code requirements (approximately seven (7) feet where branches overlap the walk). Six species of trees, all native and adapted to Central Texas, will be distributed as shown on Figure 14: Street Tree Planting Detail. Individual site developers will be required to incorporate these street trees along their frontages.

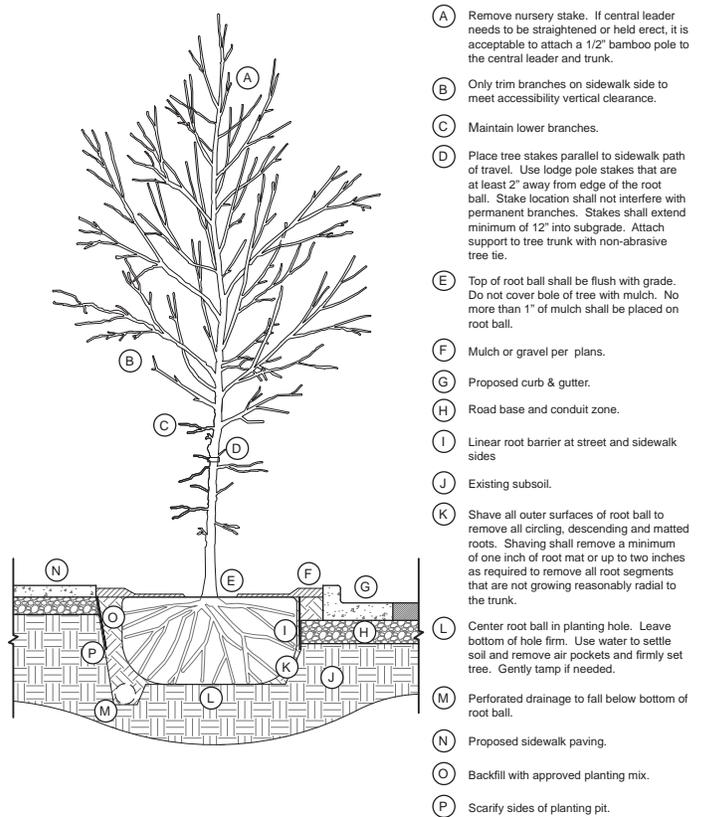


FIGURE 14: STREET TREE PLANTING DETAIL



Cedar Elm

Ulmus crassifolia
Caliper: 4 inch, container grown
Height: 16 ft. average
Seasonal Interest: Yellow foliage



Chinquapin Oak

Quercus muehlenbergii
Caliper: 4 inch, container grown
Height: 16 ft. average
Seasonal Interest: Yellow to bronze foliage



Live Oak

Quercus virginiana
Caliper: 4 inch, container grown
Height: 16 ft. average
Seasonal Interest: n/a



Monterey Oak

Quercus polymorpha
Caliper: 4 inch, container grown
Height: 16 ft. average
Seasonal Interest: n/a

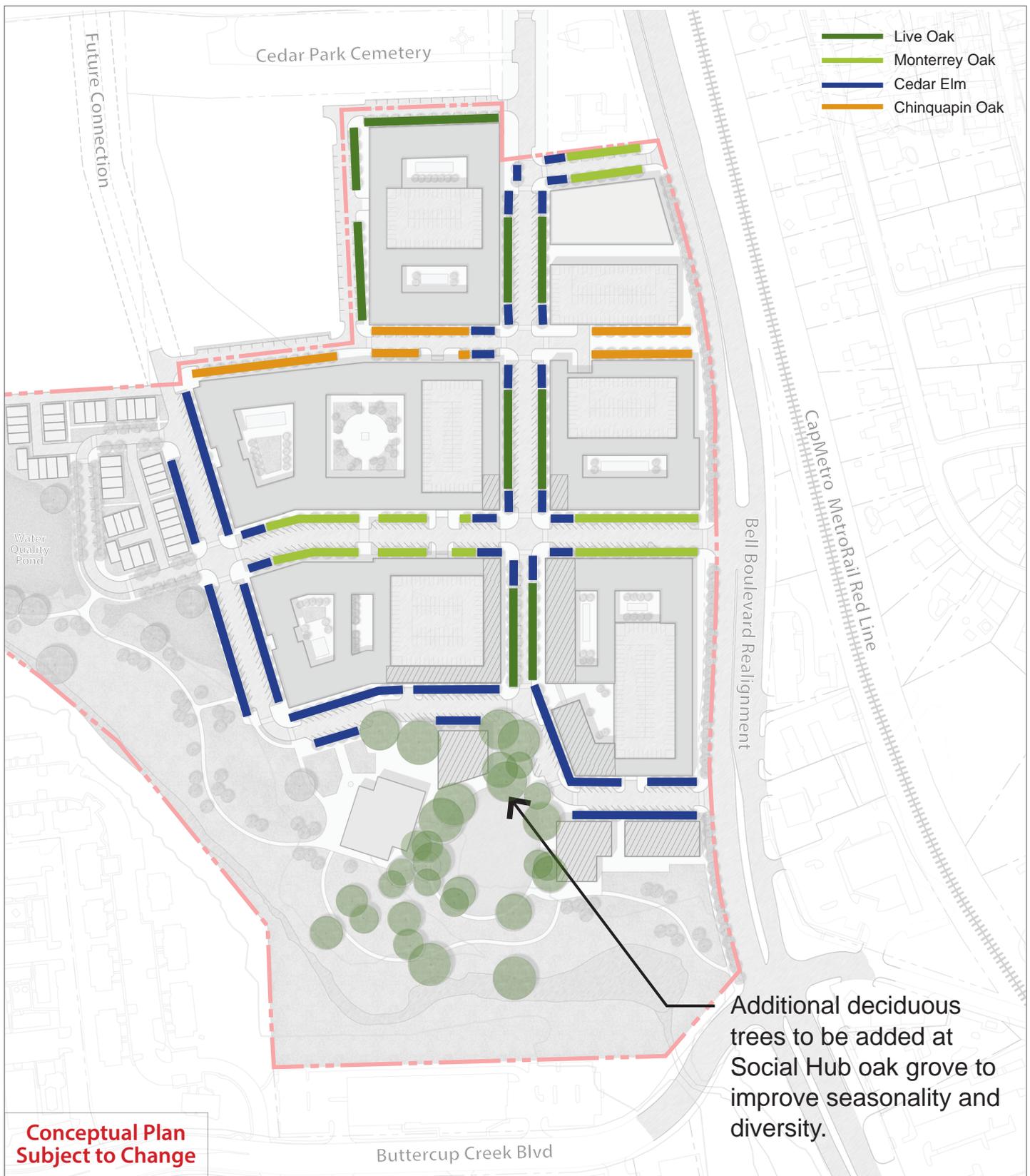


FIGURE 15: STREET TREE MAP

Not to Scale 

5.5 SIDEWALK AND PAVING TREATMENT

The sidewalk and paving treatments in different street segments of the Bell Boulevard District are linked to the two “Frontage Types” identified in the Regulating Plan (i.e., Figure 16: “Pedestrian-Priority” Streetscape and Figure 17: “Pedestrian-Friendly” Streetscape). They both have a common baseline of design, including continuous sidewalks along both sides of the roadway and curbside planting and furniture zones. What follows are more detailed descriptions and illustrative diagrams of the two types of street frontages.

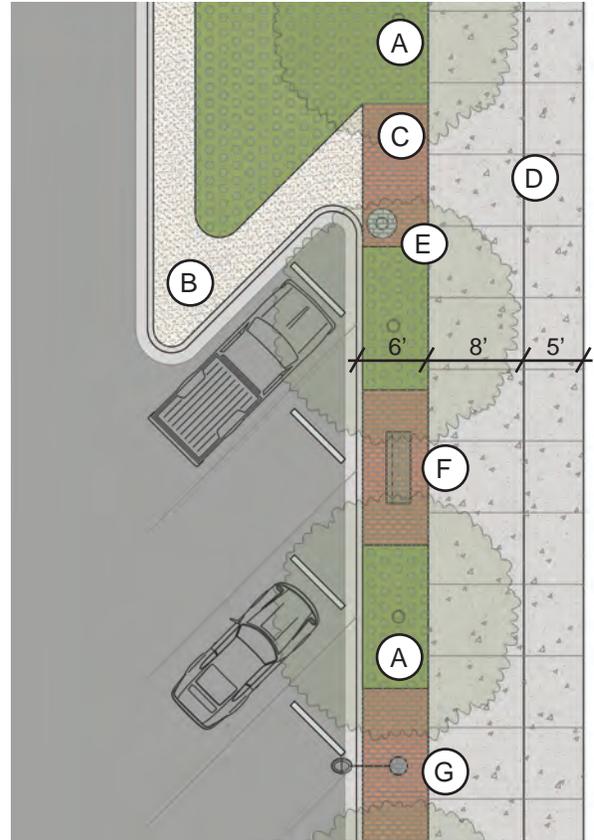


Figure 16: “Pedestrian-Priority” Streetscape

- (A) Continuous Planting Bed
- (B) Gravel Walking Strip with Steel Edging
- (C) Cut Through with Pavers
- (D) Concrete Sidewalk
- (E) Waste Receptacle
- (F) Seating
- (G) Light Pole
- (H) Planting Area or Expanded Retail/ Patio
- (I) Turf or Plants

“Pedestrian-Priority” Streetscape

This streetscape is expected to have the highest volumes of pedestrian activity, and provides more space for the pedestrian than any other option. From the face of curb, a six (6) to eight (8) foot planting and furnishing zone buffers pedestrians from the street and provides space for benches, light poles, and other street furniture. An 8 foot sidewalk zone allows a level and unobstructed path of travel. Along the building frontages, an additional setback of five (5) to ten (10) feet could be provided for outdoor retail extensions or café seating.

5.5 SIDEWALK AND PAVING TREATMENT (continued)

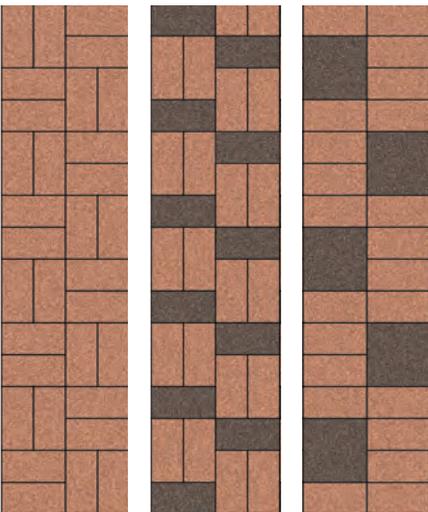
Pavers: In the most intensive retail areas and gathering spaces, pavers are the upgrade option. These should provide a combination of warm colors, with potential patterns and sizes, as shown in the examples below.



Light Colored Paver



Dark Colored Paver



Paving Pattern Variations Diagram

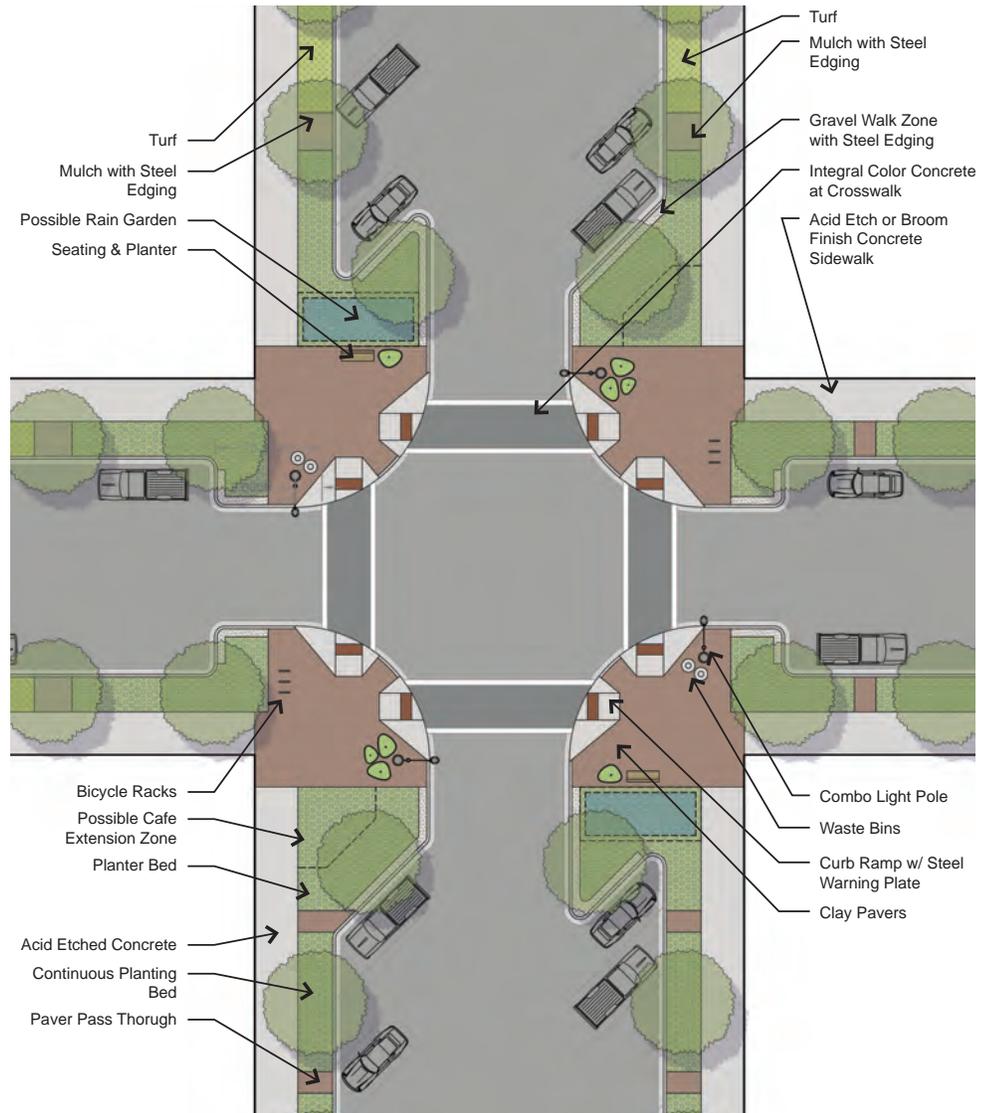


FIGURE 18: ILLUSTRATIVE ENHANCED INTERSECTION TREATMENT

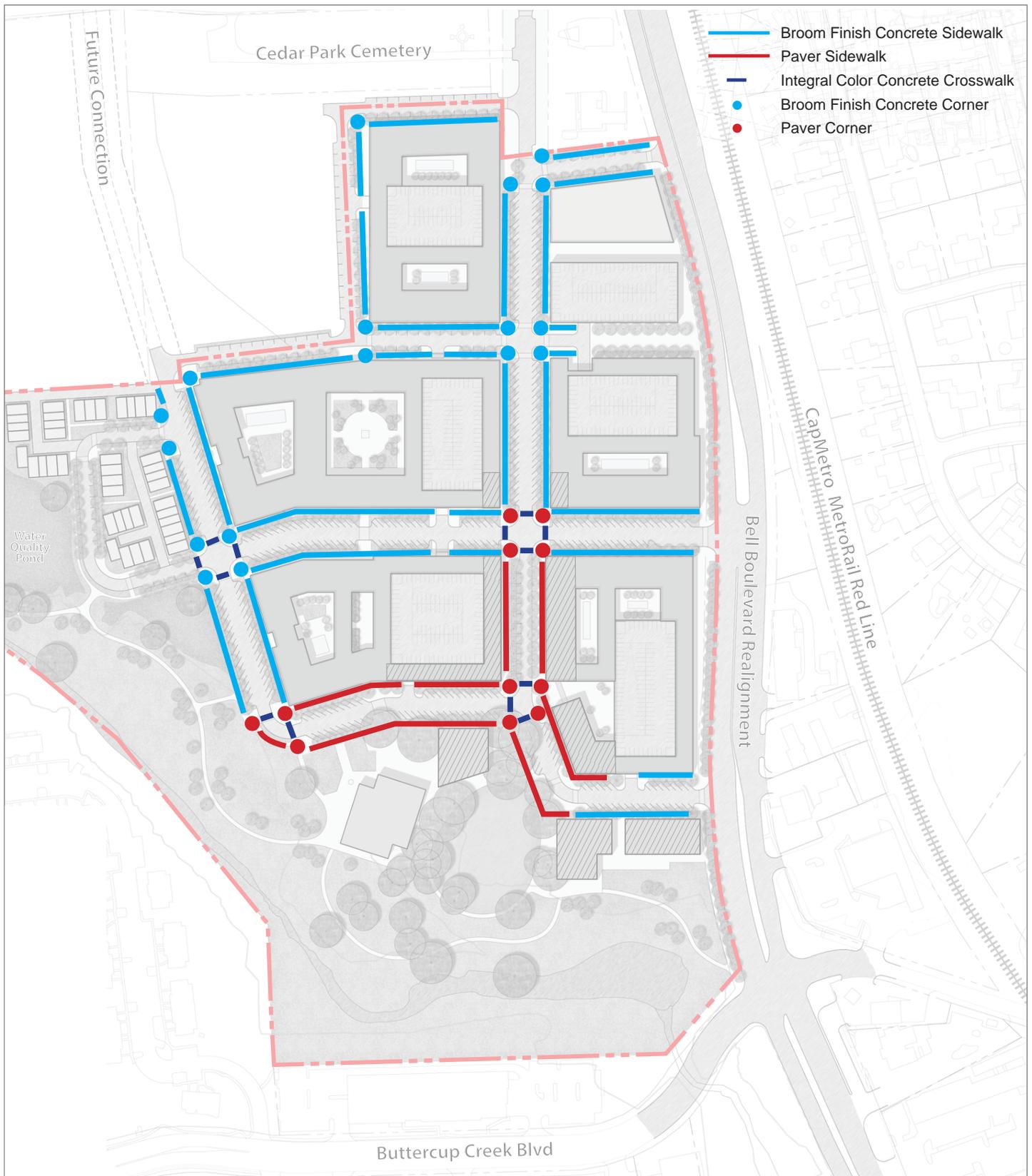


FIGURE 19: RECOMMENDED SIDEWALK AND PAVING TREATMENT PLAN

5.6 STREET LIGHTING

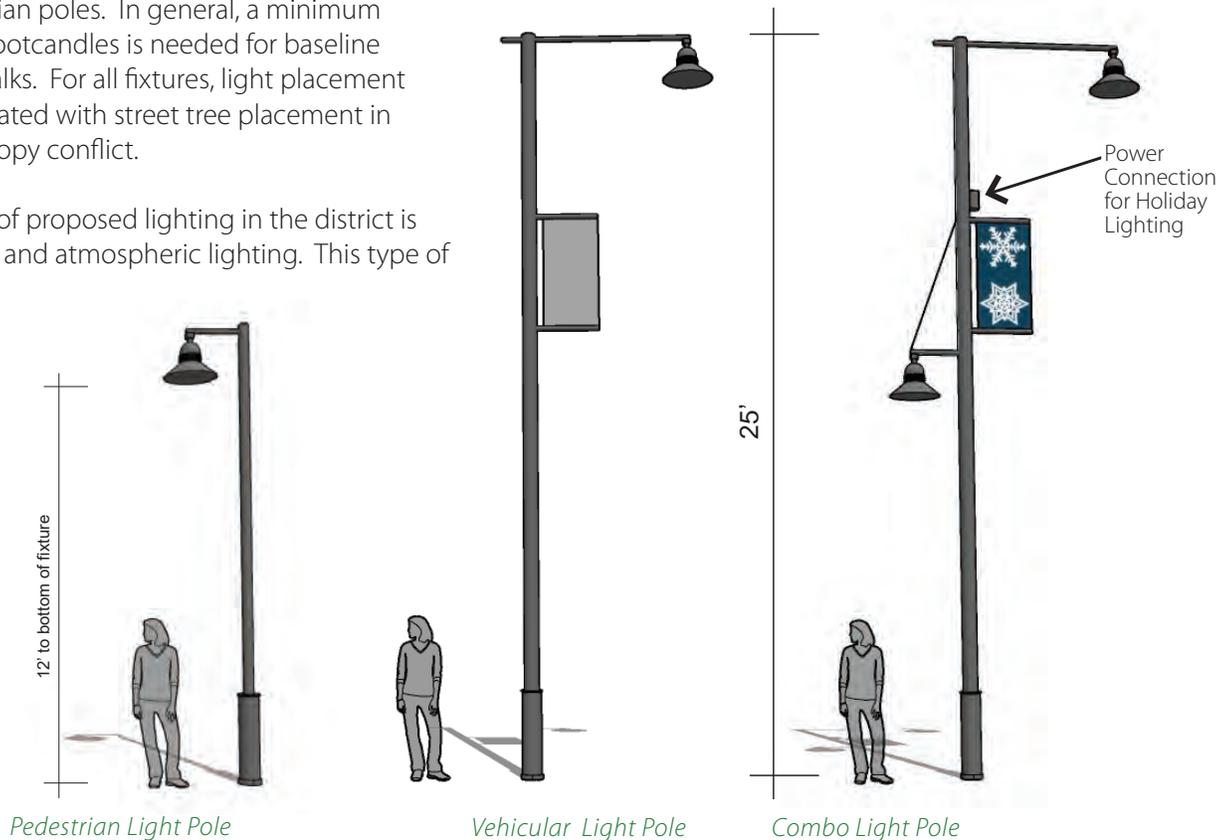
Lighting is an important part of the night time experience of a streetscape, and successful lighting can enhance the beauty, seasonality, and feeling of security of a place. The lighting at the Bell Boulevard District should take a layered approach to achieve these functional and aesthetic goals.

The character of the light from fixtures is an element where consistency throughout the District is desired. All lights should be LED and have a color temperature of 3,000K. Full cut-off, low glare fixtures are required.

The main poles and fixtures for the District have been chosen to be consistent with those on the Bell Boulevard Streetscape Improvement Project. There are three main classes of pole fixtures. These are pedestrian, vehicular, and combination (vehicular and pedestrian). The majority of streets will have combination fixtures spaced to achieve the desired footcandle levels. High traffic pedestrian areas such as the Social Hub may include additional pedestrian poles. In general, a minimum luminance of 0.5 footcandles is needed for baseline visibility on sidewalks. For all fixtures, light placement should be coordinated with street tree placement in order to avoid canopy conflict.

A secondary layer of proposed lighting in the district is tree/plant lighting and atmospheric lighting. This type of

lighting helps enhance the aesthetics and sense of place while still providing some functional benefit of improved visibility. The main areas for layering this additional lighting should be zones of anticipated high pedestrian and civic activity. Tree lighting can either be in the form of pavement embedded up-lights or in down lights affixed to the tree itself. Downlights require a larger size tree that can accommodate the size of the fixture, so this limits where this might occur. All of these fixtures should be low voltage LED lights in order to reduce light pollution. Festoon lights can be strung over sidewalks to provide an illuminated canopy that is festive while helping to develop a sense of spatial enclosure. Seasonal lighting would be temporary atmospheric lighting, such as holiday string lights in trees. It is proposed that power for these types of temporary canopy lights be integrated into the combination light poles so the power point is elevated. Where power access is desired at the sidewalk ground level, hinge top outlet boxes are recommended in the black color option.





Tree Down Lights



Tree Up Lights



Festoon Lights



Seasonal Tree Lights

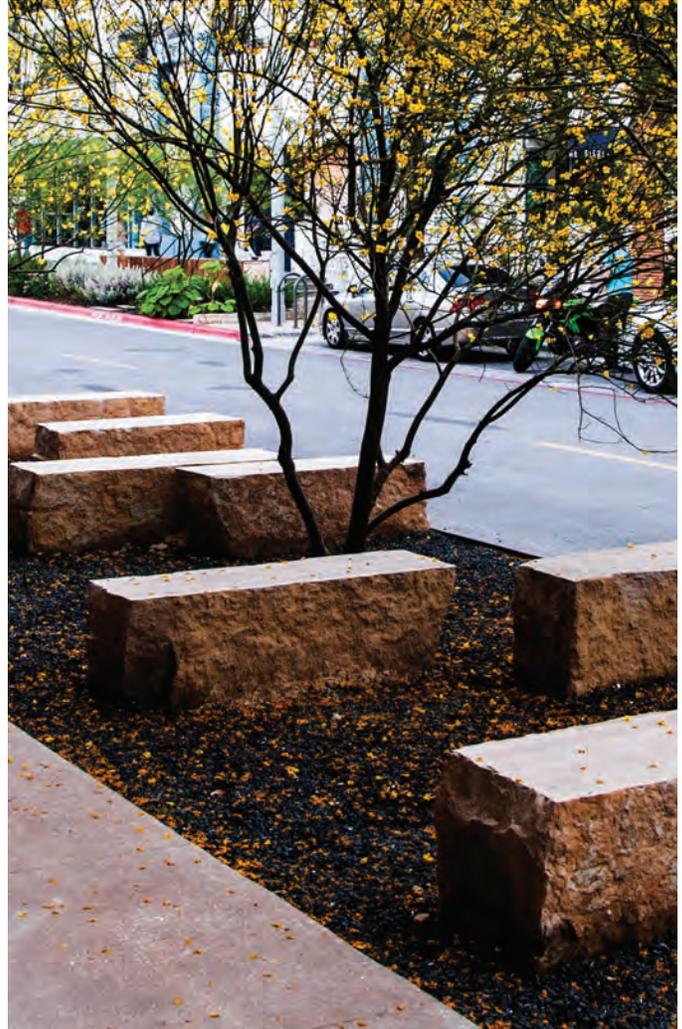


Hinge Top Outlet

5.7 STREET FURNISHINGS

The Bell Boulevard District street furnishings have been selected with both the history of Cedar Park in mind as well as the functional needs of maintenance. The style is understated traditional, with honest materials of metal, steel, and wood. It is recommended that furniture placement be judicious so that this District not feel cluttered with too many furnishings.

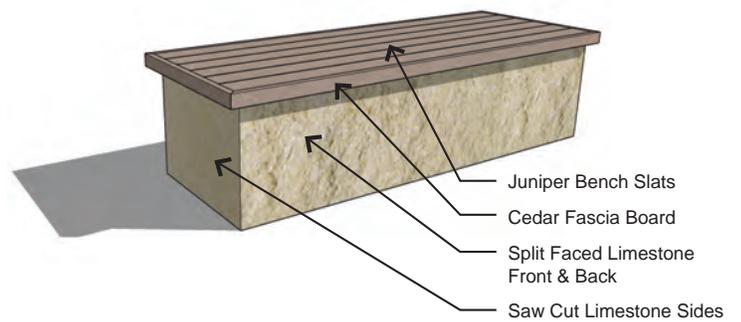
Benches and Seating: Designs should consider incorporating informal seating opportunities in wall edges, light pole bases, etc. This will reduce the clutter of too many standard benches. Where manufactured benches are preferred, one with a wood slat surface is recommended. A simple limestone block bench with a cedar plank top is also proposed as an alternative that recalls the historic quarrying activity of Cedar Park. Benches are typically placed in the planting/furnishing zone perpendicular to the curb and on center with the street trees.



Limestone Seat Blocks



Street bench with wood slat surface



Limestone Block Bench with Cedar Plank Top

Landscape Walls: Landscape walls and similar vertical surfaces are seen as an opportunity to use local stone to connect to Cedar Park’s history. This includes the limestone that has been quarried immediately in the area, and then the pink granite that traveled through Cedar Park on its way from Marble Falls to Austin where it was used to build the State Capitol. Where projects are able to make use of stone in key areas, it is recommended that the finish of these faces evoke the civic stonework of early Texas courthouses and other such buildings. This includes hand tooling in forms such as pitched faced and line chiseled surfaces.



Tool Chiseled Texas Pink Granite Block



Historic Pitched Face Limestone



Line Chiseled Limestone

Bicycle Racks: A simple metal hoop bicycle rack in black is the preferred option. Placement should allow for sufficient bike clearance from walls and other obstructions.

Pots: All pots should be precast concrete without extraneous ornamentation. All containers must be piped for irrigation and drainage. Pots should not free drain onto sidewalk paving as this can cause slick surfaces and discoloration of pavement overtime.



Precast Concrete Pots



Hoop Bicycle Rack - Black Powder Coated

5.7 STREET FURNISHINGS (continued)

Waste and Recycling Bins: The preferred option is the Poe model by Landscape Forms. This should be of 35 gallon capacity and powder-coated black. Separate bins will be needed for waste and recycling, and these should be paired together. Locations of these bins should be at higher traffic nodes like parking garage pedestrian exits, by major intersection crosswalks, etc.

Dog Waste Station: The dog waste station should be black and white option by Mutt Mitt that includes both bag distributor and dog waste bin. These should be located at all trailheads.

Drinking Fountain: If drinking fountains are provided, they should be in black and by Most Dependable Fountains. Water fountains should include both a dog station and bottle filler. Fountains should be placed near the Social Hub or in special plaza zones.

Bollard: These will be selected on an as-needed basis. Metal bollards should be simple and match other site furnishings. Designers should consider using stone blocks as bollards as they could provide a double function of informal seating.



Waste & Recycling Bin



Dog Waste Station



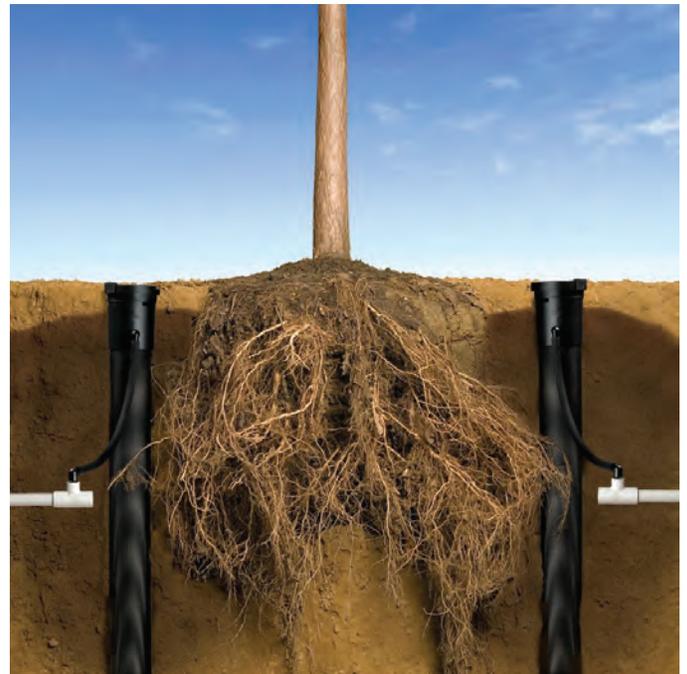
A Drinking Fountain with Dog Station and Bottle Filler

Drains Covers: Trench drains, deck drains, and planter drains should all have consistent styles of covers throughout the district. For trench drains, cast iron covers with simple geometries by companies such as the Market Street product by Ironsmith are preferred. Deck drains should have a similar aesthetic and be supplied by reputable brands such as Zurn. For planter beds, domed drain covers are preferred to limit blockage by solid material that could result in flooding.

Irrigation: Irrigation materials should be consistent throughout the district. All street trees should have two root watering system bubblers per tree. In addition, all irrigation valve boxes should be black, unless reclaimed water use requires purple color coding.



Cast Iron Trench Drains



Root Watering Bubblers



Zurn Deck Drain

Planter Bed Drain



Black Valve Box Cover

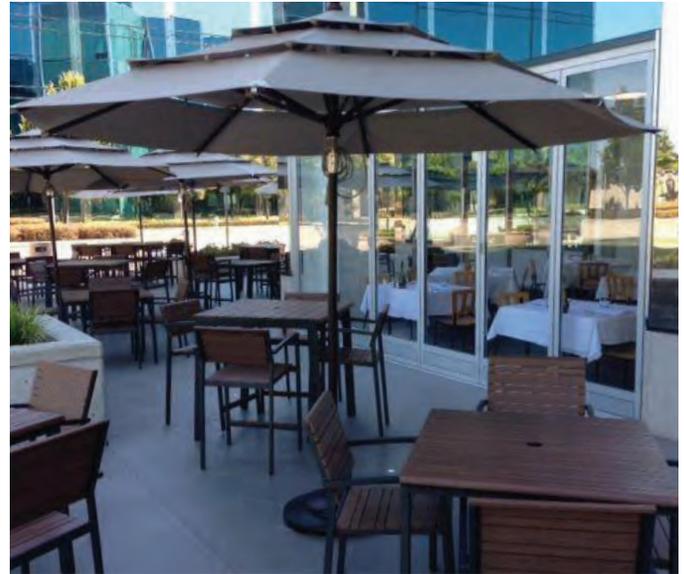
5.8 OUTDOOR CAFE ZONES

Outdoor dining is encouraged in select areas of the Bell Boulevard District. The “Pedestrian-Priority” streets have the greatest combination of sidewalk widths and setbacks to accommodate café zones. The following provides standards for the treatment of all café extension areas:

Promenading Zone: Cafés shall maintain an unobstructed walking zone (outside of the 8 foot planting/furnishing zone along the curbside).

Café Zone: The depth of the café zone will depend on the available area between the promenading zone and the building front, but should be no less than eight feet.

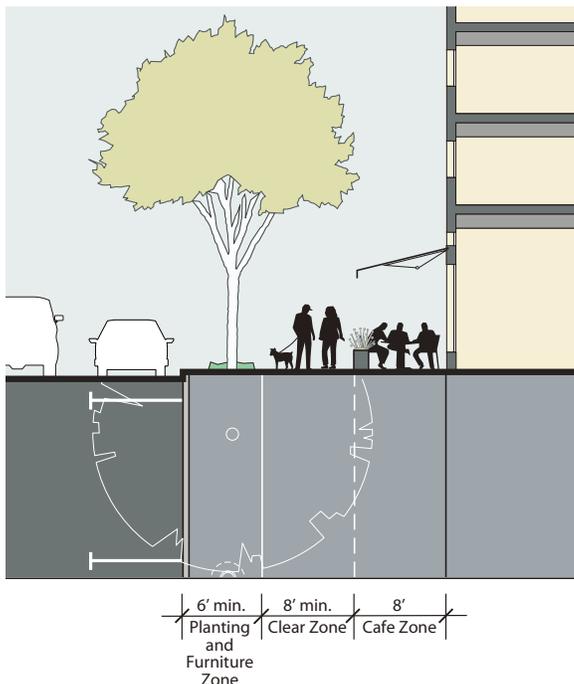
Permanent Improvements: Unless the site developer or future building tenant obtains approval from the DRC, no permanent improvements (e.g. barriers, trellises, structures, etc.) or sidewalk modifications will be permitted. Proposed improvements on sidewalk modifications will be reviewed on a case-by-case basis.



Cafe tables and individual canvas umbrellas

Umbrellas: Individual canvas or other non-vinyl umbrellas of a compatible design may be permitted in café extension areas, but shall not extend into the promenading zone. Umbrellas shall be made for outdoor commercial use.

Furniture Materials: Tables and chairs will be of a high quality, suitable for exterior use with metal, plastic, and/or durable and weathering woods. All tables and chairs shall be movable; none will be permitted to be bolted or affixed to the sidewalk. All furniture shall be commercial grade and manufactured and constructed for outdoor use.



Outdoor Café zone along a public street



Moveable planters provide the cafe with an attractive separation from the promenading zone.

Planters: Box or other shape planters may be used to define the boundaries of the café seating area. To avoid blocking the patron’s vision while seated, the combined height of the planters and live plants shall not exceed 40 inches from sidewalk grade. The planters shall be no greater in height than 30 inches and no wider than 24 inches at the base. Taller plants may be permitted depending on the location of the sidewalk café, as approved by the DRC.

All planters should be made of safe, durable and attractive materials such as wood and steel. All planters must be planted year-round. The café owner shall be responsible for the prompt removal of all empty or poorly maintained planters or plantings. Drainage of planters shall be controlled so that drainage doesn’t occur on sidewalks.



Retractable fabric awnings that provide shade and color are particularly encouraged.

Canopies and Project Awnings: Permanent fixed canopies shall be subject to DRC approval. Projections within the public right-of-way will require license agreements with the City of Cedar Park. Fabric awnings that provide shade and color are encouraged, particularly high-quality retractable ones that can be adjusted seasonally and throughout the day.

Trash, Recycling and Compostables Receptacles: All trash, recyclables and compostables generated by the café shall be disposed of by the business in receptacles provided internal to the building or within the café zone. Any exterior receptacles shall be of durable commercial grade materials and located against the building facade; no such receptacles will be permitted in the curbside zone.

Storage: Furniture may not be stacked or stored outside in setback areas or in the public right-of-way at any time. Café furniture shall not be secured to street lighting poles, trees or any other public street furniture.

5.9 SERVICES AND UTILITIES

Switch Gears and Electric Transformers: Switch gears and transformers should generally be located along service alleys/streets within or adjacent to parking garages or set back from the street substantially and screened, either with an enclosure or vegetation as allowed by the local energy provider. To the maximum extent possible, switch gears, transformer pads, and other equipment may not be located facing (or visible from) a “Pedestrian-Priority” street or its building setback areas. Site developers will be required to obtain approval from the local energy provider and the master developer for the appropriate number, sizes, and final locations of transformers serving their sites. The DRC must also approve transformer screening.

Reduced Pressure Zone (RPZ) Devices: RPZ’s shall be located on the property owner side of the water meter, on private property and shall be encased in a fiberglass enclosure.

Grease Traps: Grease traps shall be carefully sited, preferably away from “Pedestrian-Priority” street frontages or sidewalks, and located in service zones or in setback areas along less intensive streets.

Utility Easement(s): A ten (10) foot wide utility easement will be required beneath the sidewalk and a portion of the landscape zone along one side of all public streets.

5.10 PUBLIC ART

Developers in the Bell Boulevard District are encouraged to integrate public art into their projects. This art can have many benefits, including: strengthening the project’s unique identity, improving wayfinding, connecting to history of a place, and adding beauty that will encourage positive memories and a desire to return to the site. This public art can take many forms, such as murals, lighting, furniture, etc. The strongest public art is thoughtfully intertwined with the site design as opposed to a freestanding object that has little relationship to its surroundings.





ADMINISTRATION
OF THE DESIGN BOOK



6.1 DESIGN BOOK

Philosophy: This Design Book has been developed to promote a cohesive and high quality development that achieves the vision for the Bell Boulevard District as a compact and pedestrian-friendly mixed-use community. It is intended to guide new development, and any modification of such new development, in ways that promote connectivity, activity, authenticity, sustainability and livability. Except where specifically noted, this Design Book is not intended to prescribe highly specific solutions dictating a particular style, but rather to provide performance criteria that can encourage diversity, creativity and innovation in the spirit of the community's vision for the Bell Boulevard District.

Authority: The Bell Boulevard District is subject to the terms and provisions of the Bell Boulevard Redevelopment Master Covenant and the Bell Boulevard Master Development Agreement.

6.2 SUBMITTAL REQUIREMENTS

Submittal Requirements: As defined in the Bell Boulevard Master Development Agreement, all planned building improvements within the project area will be required to adhere to the following three-stage submission process with the Bell Boulevard District Redevelopment Design Review Committee (DRC):

Preliminary Design Approval: Preliminary layout and base information shall be approved by the DRC prior to completing Schematic Design documents and prior to submitting a Site Development permit application to the City, and must include:

- **Application Form** provided by the DRC.
- **Conceptual Site Plan at 1"=20'**, indicating building footprints, rights-of-way, lot lines, setbacks, streets, driveways, alleys, parking layouts, service areas, proposed utility connections and publicly accessible open spaces.
- **Building Elevations and Sections at 1/16"=1'-0" or larger of each elevation**, describing key architectural elements, proposed building materials, colors and finishes.
- **Illustrative Renderings** describing the overall character and specific features of the public environment and the proposed buildings.
- **Development Program and Key Information** including, but not limited to, building floor area, the anticipated mix and number of dwelling units, covered and uncovered parking spaces, bicycle parking, open space area, impervious cover for each lot, building heights, residential and commercial density, and other key information that is warranted by the particular project.
- **Conceptual Grading Plan** indicating existing contours from the mass grading plan, proposed changes to lot grades, overall site drainage and proposed ground level finished floor elevations.

The above drawings should be at Schematic Plan level of detail. They should be provided as: One (1) full size set of hardcopy plans and an electronic set of 11"x17" reductions of plans and drawings in PDF format.

Final Design Approval: During preparation of Design Development drawings, following the approval of the Preliminary Design plans, the final architectural design must be completed and submitted to the DRC for approval. Any changes to the approved Preliminary Design shall also be presented to the DRC for their approval as a proposed amendment to the approved preliminary design. The architectural design submittal must include:

- **Application Form** including list of changes from Preliminary Design Plans.
- **Site Plan at 1"=20'**, indicating building footprints, rights-of-way, lot lines, setbacks, streets, driveways, alleys, parking layouts, service areas, furnishings, proposed utility connections and publicly accessible open spaces.
- **Development Program and Key Information** including, but not limited to, building floor area, the anticipated mix and number of dwelling units, covered and uncovered parking spaces, bicycle parking, open space area, impervious cover for each lot, building heights, residential and commercial density, and other key information that is warranted by the particular project.
- **Floor Plans at 1/16"=1'-0" or greater**, describing the configuration of ground floor and upper floors for each building, with clear indication of parking, service areas and mechanical rooms, dwelling units, common open space, porches, etc.
- **Building Elevations and Sections at 1/8"=1'-0" or larger of each elevation**, describing key architectural elements, proposed building materials, colors and finishes.
- **Illustrative Renderings** describing the overall character and specific features of the public environment and the proposed buildings.
- **Landscape Plan at 1"=20' or larger**, showing the location and type of plant materials, hardscape, fences, walls, furnishings, etc.
- **Material Sample Board** indicating exterior colors and materials to be used for each building and a roofing material sample.
- **Grading Plan** indicating existing contours from the mass grading plan, proposed changes to lot grades, overall site drainage and finished floor elevations.
- **Phasing and Construction Plan** indicating the proposed sequence of site preparation, open space and building construction.
- **Storefront Design Plans (as applicable) at 1/8"=1'-0" or larger** to describe design treatments, materials and signage, including fabrication details.

The above should be provided as: One (1) full size set of hardcopy plans and an electronic 11"x17" set of reductions of plans and drawings in PDF format

Final Approval: An applicant may not commence construction of any improvement until it obtains written approval from the DRC. The final approval submission must include:

- **Application Form** including list of changes from Final Design plans.
- **Approved Construction Documents** including a complete set of construction drawings approved by the City of Cedar Park and final specifications.
- **Approved Site Development Permit and Building Permit**

The above should be provided as: One (1) set of full size hard copy plans, electronic plans and specifications in PDF format

6.3 SUBMITTAL PROCEDURES

Submittal Procedures

The DRC will meet and act within thirty (30) calendar days after it receives a complete submittal at each stage of the submission process. The DRC may “Approve as Submitted,” “Approve with Conditions” or “Disapprove” the submission; it may also deem the application as incomplete or requiring additional information, in which case it will return the submittal. In the event the DRC approves the submittal with conditions or requests additional information, the DRC shall notify the applicant in writing of the final determination no later than thirty (30) days after the applicant’s satisfaction of the conditions, correction of the deficiency or submission of additional information requested by the DRC.

The Applicant may appeal the DRC’s decision and has fifteen (15) calendar days to submit an appeal to the DRC. The appeal must be in writing and should include specific objections or circumstances justifying the appeal. The DRC has thirty (30) calendar days from the receipt of the appeal to render a final and conclusive decision.

If the DRC fails to respond in a timely manner, the applicant must give the DRC written notice of such failure to respond, stating that unless the DRC responds within thirty (30) days, approval shall be deemed granted. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the design guidelines contained in this Design Book unless a written exception has been granted by the DRC.

Changes during the construction process of previously approved improvements must be approved in a similar manner, as applicable, to each individual change.

As part of any approval, the DRC may require that construction commence within a two-year period from the date of approval. If construction does not commence within this required period, approval shall expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All improvements shall be completed within two (2) years of the commencement unless otherwise specified in the notice of approval or unless the DRC, in its discretion, grants an extension in writing.

Fees

During the development period, an application fee of \$5,000 will be payable with the application for preliminary design approval. Such a fee will be for reasonable compensation for services rendered by members of the DRC and for expenses incurred by them in performance of their duties. Such costs may include reasonable costs incurred in having professionals review any application. Any costs incurred by the DRC in excess of the application fee will be the sole responsibility of the applicant. If the costs incurred by the DRC are less than the application fees paid by the applicant, the balance shall be refunded to the applicant once the submission process is completed.

6.3 SUBMITTAL PROCEDURES (continued)

Amendments to the Design Book

This Design Book is envisioned as a dynamic document that will continue to evolve in response to changing conditions and to the Bell Boulevard District vision. As such, it is anticipated that over the life of the community, this Design Book will need to be refined or amended to incorporate new conditions, and waivers of certain requirements may need to be made from time to time to take advantage of special opportunities and/or circumstances. During the development period, amendments to the Design Book may be made by a majority vote of the DRC.

The DRC may grant reasonable exceptions or adjustments from any conditions and restrictions imposed by the Bell Boulevard District Covenants and/or this Design Book in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in such instruments; provided however, no exception may be materially detrimental or injurious to other property within the Bell Boulevard District or deviate substantially from the general intent and purpose of the Bell Boulevard District Covenants or the Design Book.

Limitation of Liability

Approval of plans and specifications is not a representation, warranty or guarantee that the structure is in compliance with governmental requirements or restrictions or requirements other than the terms of the Design Book. Please be advised that, upon approval by the DRC, this Design Book may change from time to time. A copy of the current Design Book may be obtained from the DRC. A fee may be charged to cover reproduction costs.



APPENDIX D – Form CIQ – Conflict of Interest Questionnaire

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

APPENDIX E – Form 1295 – Certificate of Interested Parties

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

APPENDIX F – Execution of Offer Form

**Execution of Offer: Construction Manager at Risk Services for the New Cedar Park Public Library
RFQ No. 09-032-220-RL-013**

The Respondent must complete, sign and return this Execution of Offer as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will subject the submittal to disqualification.

By submitting a response to this RFQ, the Construction Manager acknowledges acceptance of the terms and conditions presented in the template agreement included as Appendix A.

Respondent's Name: _____

Respondent's State of Texas Tax Account No.: _____
(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: _____

Respondent's Charter No: _____

Identify each person who owns at least 25% of the Respondent's business entity by name:

(Name)

(Name)

(Name)

(Name)

Submitted and Certified By:

(Respondent's Name)

(Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Fax Number)

(Authorized Signature)

(Date)