

June 12, 2023

Item No. 9.9.

2022 Bond Project: Tennis Courts **Design**

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a professional services contract with Mitchell & Morgan, LLP, not to exceed \$200,004.50 for design services for the Bee Creek and Central Park Tennis Courts, and a Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends approval and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The Bee Creek and Central Park Tennis Courts Project was one of the projects that passed on the November 8, 2022 bond election. A Request for Qualifications (RFQ) was composed shortly afterwards and sent out in January 2023. Nine (9) submissions of qualifications were received. A panel of City employees were assembled to review all nine submissions. Evaluations were completed and Mitchell & Morgan, LLP was selected. A scoping meeting was held with a final proposal for design received in May.

This contract will provide design services for the tennis courts at both Bee Creek Park and Central Park, respectively, located at 1900 Anderson Street and at 1000 Krenek Tap Road.

The design of this project will redevelop both tennis courts. At both sites, a new slab, LED lighting, court surfacing, chain-link fencing, tennis court netting and posts, and windscreens will be replacing existing features. Additionally, the water fountain and water line located at Bee Creek will be upgraded and repositioned.

Budget & Financial Summary:

Budget in the amount of \$1,700,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$315 has been expended or committed to date, leaving a balance of \$1,699,685 for this design contract and future costs. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

Attachments:

1. 2022 Bond: Tennis Courts: Design Contract - PK2306
2. 2022 Bond: Tennis Courts: Revised PK2306 DRR 6.12.23
3. 2022 Bond: Tennis Courts: Bee Creek Location
4. 2022 Bond: Tennis Courts: Central Park Location



CONTRACT & AGREEMENT ROUTING FORM

CITY OF COLLEGE STATION
Home of Texas A&M University®

CONTRACT#: 23300524 PROJECT#: PK2306 BID/RFP/RFQ#: RFQ 23-011

Project Name / Contract Description: Bee Creek and Central Park Tennis Courts
Design services for the redevelopment of both park tennis courts.

Name of Contractor: Mitchell and Morgan, LLP

CONTRACT TOTAL VALUE: \$ 200,004.50 **Grant Funded** Yes No
If yes, what is the grant number:

Debarment Check Yes No N/A **Davis Bacon Wages Used** Yes No N/A
Section 3 Plan Incl. Yes No N/A **Buy America Required** Yes No N/A
Transparency Report Yes No N/A

NEW CONTRACT **RENEWAL #** N/A **CHANGE ORDER #** N/A **OTHER** N/A

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

One RFQ (with one addendum) was solicited. Nine SOQs were received. Mitchell and Morgan, LLP, was selected as the most qualified firm after staff evaluation.
Funding Source: Parks Capital Improvement Projects Fund
Budget in the amount of \$1,700,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of \$315 has been expended or committed to date, leaving a balance of \$1,699,685 for this design contract and future costs. Funding for this project was approved via the City of College Station's November 2022 General Obligation Bond Election.

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 5/25/2023 **Agenda Item No*:** _____

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: RY **Performance Bond:** N/A **Payment Bond:** N/A **Info Tech:** N/A

SIGNATURES RECOMMENDING APPROVAL

DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

ASST CITY MGR – CFO DATE

LEGAL DEPARTMENT DATE

APPROVED & EXECUTED

CITY MANAGER DATE

N/A

MAYOR (if applicable) DATE

N/A

CITY SECRETARY (if applicable) DATE

Original(s) sent to CSO on _____ Scanned into Laserfiche on _____ Original(s) sent to Fiscal on _____

**CITY OF COLLEGE STATION
ARCHITECTS & ENGINEERING PROFESSIONAL SERVICES CONTRACT
WITH CONSTRUCTION**

This Contract is between the **City of College Station**, a Texas home-rule municipal corporation, (the “City”) and **Mitchell and Morgan, LLP**, a Texas corporation (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
SCOPE OF SERVICES**

1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows (the “Project”):

RFQ-23-011, Design Services for Tennis Courts at Bee Creek and Central Parks

**ARTICLE II
PAYMENT**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed Two Hundred Thousand Four and 50 /100 Dollars (\$200,004.50).

**ARTICLE III
TIME OF PERFORMANCE AND CONSTRUCTION COST**

3.01 The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Furthermore, the Consultant shall perform with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

- (a) Conceptual Design: 60 calendar days after the authorization to commence planning.
- (b) Preliminary Design: 50 calendar days after authorization to commence PPD.
- (c) Final Design: 40 calendar days after authorization to commence final design.

3.02 All design work and other professional services provided under this Contract must be completed by the following date:

April 4, 2025.

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible and with adequate resources and manpower in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates, which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Consultant has control shall not be exceeded without written approval from the City. In the event that a deadline provided in this Contract is not met by the Consultant, Consultant shall provide the City with a written narrative setting forth in a reasonable degree of detail a plan of recovery to overcome or mitigate the delay which may include (i) employing additional people, or (ii) accelerating the work by working longer hours on any portion of the Project that is deemed by the City to be behind schedule ("Recovery Plan"). With the City's approval, Consultant shall execute the Recovery Plan at no additional cost to the City.

(a) **Liquidated Damages.**

- (1) The time for the completion of all Work described herein are reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines are fixed and agreed on by the Consultant because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would

sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

(2) As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Consultant to achieve timely completion of the Work, if the Consultant should neglect, fail, or refuse to complete the Work within the times herein specified, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet any of the deadlines specified for completion in this Agreement.

3.04 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

3.07 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

3.08 The construction budget for this Project, which is established as a condition of this Contract is \$1,150,000.00. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE IV CONCEPTUAL DESIGN

4.01 Upon the Consultant's receipt from the City of a letter of authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City's Program, the Project Schedule and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V PRELIMINARY DESIGN

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary

Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design, including any material changes and deviations that have taken place from the Conceptual Design, a cost estimate, and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI FINAL DESIGN

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.

6.04 The Consultant shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon

request of the City, the Consultant shall meet with City staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII BID PREPARATIONS & EVALUATION

7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.

7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.

ARTICLE VIII CONSTRUCTION

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the site, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or

deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.

8.07 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.

8.09 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX CHANGE ORDERS, DOCUMENTS & MATERIALS

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project. The schedules, milestones, timelines, and deadlines contained in this Agreement, the Scope of Services, and the Construction Schedule shall not be modified except by written change order. Additional days or changes to the number of days in the Construction Schedule shall also be by written change order. After a written change order is approved and fully executed by all parties, the Consultant shall submit an updated schedule that reflects changes authorized by approved change orders.

9.02 When the original contract amount plus all change orders is \$100,000 or less, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council must approve such change order prior to commencement of the services.

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed \$50,000 and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding \$50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the

City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with both electronic (PDF) and CAD file sets of all plans and specifications. The Consultant shall provide the City one (1) set of reproducible, mylar record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X WARRANTY, INDEMNIFICATION & RELEASE

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications, furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials,

equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity.

- (a) **To the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City, its Council members, officials, officers, agents, employees, and volunteers (separately and collectively referred to in this paragraph as "Indemnitee") from and against all claims, damages losses and expenses (including but not limited to attorney's fees) arising out of or resulting from any negligent act, error or omission, intentional tort or willful misconduct, intellectual property infringement or including failure to pay a subconsultant, subcontractor, or supplier pursuant to this Contract by Consultant, its employees, subcontractors, subconsultants, or others for whom Consultant may be legally liable ("Consultant Parties"), but only to the extent caused in whole or in part by the Consultant Parties. IF THE CLAIMS, ETC. ARE CAUSED IN PART BY CONSULTANT PARTIES, AND ALSO IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OR ALL OF THE INDEMNITEES OR ANY OTHER THIRD PARTY, THEN CONSULTANT SHALL ONLY INDEMNIFY ON A COMPARATIVE BASIS, AND ONLY FOR THE AMOUNT FOR WHICH CONSULTANT PARTIES ARE FOUND LIABLE AND NOT FOR ANY AMOUNT FOR WHICH ANY OR ALL INDEMNITEES OR OTHER THIRD PARTIES ARE LIABLE.**
- (b) **To the fullest extent permitted by law, Consultant agrees to defend the Indemnitees where the indemnifiable acts listed in Article 10 above occur outside the course of performance of professional services (i.e. non-professional services) and the claim is not based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, employee, or other entity over which the governmental agency exercises control, other than the Consultant or Consultant Parties.**

- (c) **Consultant shall procure liability insurance covering its obligations under this section.**
- (d) **It is mutually understood and agreed that the indemnification provided for in this section 10.05 shall indefinitely survive any expiration, completion or termination of this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.**

10.06 Release. The Consultant releases, relinquishes, and discharges the City, its Council members, officials, officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

10.07 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI INSURANCE

11.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on below.

During the term of this Contract Consultant's insurance policies shall meet the minimum requirements of this section:

11.02 Types. Consultant shall have the following types of insurance:

- (a) **Commercial General Liability.**
- (b) **Business Automobile Liability.**

- (c) Workers' Compensation/Employer's Liability.
- (d) Professional Liability.

11.03 Certificates of Insurance. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees and volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as Exhibit C, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

11.04 General Requirements Applicable to All Policies. The following General Requirements to all policies shall apply:

- (a) Only licensed insurance carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days prior written notice has been given to the City of College Station.
- (e) The Certificates of Insurance shall be prepared and executed by the insurance carrier or its authorized agent on the most current State of Texas Department of Insurance-approved forms.

11.05 Commercial General Liability Requirements. The following Commercial General Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (d) The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.06 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current. A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

11.07 Workers' Compensation/Employers Liability Insurance Requirements. The following Workers' Compensation Insurance requirements shall apply; and the term "contractor" shall be construed to mean "consultant" as identified in this Contract:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Consultant, the Consultant, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Consultant's, or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Consultants and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) The workers' compensation/Employer's Liability insurance shall include the following terms:
 - i. Employer's Liability limits of \$1,000,000 for each accident is required.
 - ii. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - iii. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Contract, the bid specifications, this Contract, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

i. **Definitions:**

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- ii. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- iii. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- iv. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- v. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2. no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the

coverage period shown on the current certificate of coverage ends during the duration of the project.

- vi. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- vii. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.
- viii. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- ix. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 3. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the Contractor:
 - A. a certificate of coverage, prior to the other person beginning work on the project; and
 - B. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the

provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
- x. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- xi. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”

11.01 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of two years after completion of the Project or termination of this Contract, as may be amended, whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

12.01 Any and all drawings, specifications and other documents prepared, furnished, or both

prepared and furnished by Consultant or any Subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) ("Work Product"), shall be the exclusive property of the City, whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all records, notes, data, memoranda, models, and equipment of any nature that are within Consultant's possession or control and that are the City's property or relate to the City or its business. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's Work Product and related documents and information relating to the Project.

12.02 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant's employees during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant's knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article 12 of the Contract.

12.04 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its subconsultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

12.05 In the event of termination of this Contract for any reason, the City shall receive all Work Product and original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The

City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

**ARTICLE XIII
TERMINATION**

13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant shall be compensated for the services satisfactorily performed prior to the termination date.

13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.

13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

**ARTICLE XIV
MISCELLANEOUS TERMS**

14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

14.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of College Station

MITCHELL AND MORGAN, LLP

Attn: Logan Cahoon

Attn: Veronica Morgan

PO BOX 9960

3204 Earl Rudder FWY S.

1101 Texas Ave

College Station, TX 77845

College Station, TX 77842

979-260-6963

lcahoon@cstx.gov

info@mitchellandmorgan.com

14.03 No action or failure to act by the City 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 there under, except as may be specifically agreed in writing. No waiver of any provision of the Contract shall be of any force or effect, unless such waiver is in writing, expressly stating to be a waiver of a specified provision of the Contract and is signed by the party to be bound thereby. In addition, no waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition and shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with the Contract or any portion or provision or right under the Contract.

14.04 This Contract represents the entire and integrated contract between the City and the Consultant and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.05 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

14.06 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the parties.

14.07 Prioritization. Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, the applicable law or the applicable provision of this Contract excluding such conflicting addition by Contractor shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

14.08 The Consultant, its agents, employees, and subconsultants must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

14.09 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.

14.10 This Contract goes into effect when duly approved by all the parties hereto.

14.11 Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.

14.12 Verification No Boycott of Israel. To the extent this Contract is considered a contract for goods or services subject to §2270.002 Texas Government Code, Consultant verifies that it (i) does not boycott Israel and (ii) will not boycott Israel during the term of this Contract.

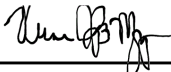
14.13 Verification No Boycott of Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Contractor verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and

14.14 Verification No Boycott of Energy Companies. Subject to § 2274.002 Texas Government Code Consultant herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

List of Exhibits

- A. Scope of Services**
- B. Payment Schedule**
- C. Certificates of Insurance**

MITCHELL AND MORGAN, LLP

By: 

Printed Name: Veronica JB Morgan

Title: Managing Partner

Date: 5/16/2023

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

City Attorney
Date: _____

Assistant City Manager/CFO
Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

See attached proposal...



Logan Cahoon
Assistant Project Manager of Capital Projects
City of College Station
P.O. Box 9960,
College Station, Texas 77842

April 13, 2023

Re: Proposal to Provide Professional Engineering Design Services for Tennis Courts at Bee Creek and Central Parks in College Station, Texas

Dear Mr. Cahoon,

Thank you for the opportunity to provide professional engineering services for Tennis Courts at Bee Creek and Central Parks in College Station, Texas. As we understand, you would like us to provide Conceptual Design (30%), Preliminary Design (60%), Final Design (90%) and Bid Construction Plans and Specifications for this project, based upon the following parameters:

General

- Provide Conceptual Design (30%), Preliminary Design (60%), Final Design (90%) and Bid Construction Plans and Specifications for this project.
- Per discussions with Staff, this project will be designed and bid as one project. Therefore, these will not be two construction plan sets, one for each park.
- The design of four (4) new tennis courts at Bee Creek Park on one post-tensioned slab;
 - Indicate location (no design) of future four court tennis slab on site plan;
- The design of two (2) new tennis courts at Central Park on one post-tensioned slab;
- Research surface options for the tennis courts and provide pros and cons for them;
- Research fencing and windscreen options for the tennis courts and provide pros and cons for them;
- Provide benches for spectators at each court;
- Provide trash receptacle locations at each court;
- Within areas of designed improvements, assure TAS compliance has been met;
- Provide new Musco lighting around the new tennis courts;
 - It is anticipated that the electrical service will need to be upgraded at both parks to handle the new court lighting;
- Provide new fencing and windscreens around the new tennis courts;
- The design of a waterline relocation at Bee Creek Park to move the waterline from under the court location;
 - We have assumed that the new route for the waterline will be such that it does not include any pavement removal or replacement;
- The design of waterline extensions to one (1) proposed water fountain at each park (including bottle refill and dog drinking options);
- Provide a minor landscape plan to replace trees if needed. This plan will not be designed to meet city landscape requirements;
- No irrigation system will be designed with this project. If any irrigation system is desired, it will be provided by the Contractor as a design build;

- Structural Design Services for the courts, lighting foundations and fencing have been included in this scope;
- Surveying Services have been included in this scope;
- Geotechnical Investigation Services have been included in this scope;
- Arborist Services have been included in this scope;
- Construction Phase Services have been included in this scope;
- Construction Material Testing Services have been included in this scope;
- TAS Plan Review and Construction Inspection Services have been included in this scope;
- Work with City Staff to purchase items via the BuyBoard Purchasing System;
- No environmental analysis;
- Water fountain drain discharge will meet building code;
- No city fiber conduit will be provided with this design;
- No gas design will be included in this scope;
- No franchised telecom facilities will be included in this scope;
- No easement and ROW acquisition services will be needed for this project; and
- Water fountains will connect to existing water / sanitary sewer private lines in the park. These locations are unknown at present. Potholing for utility investigation for connection points is not included in this proposal.

Project Management

This project requires the combined efforts of several disciplines and significant input from the staff of the City of College Station. With this in mind, milestones as delineated on the attached schedule shall be created to keep the project moving forward. Additionally, to improve communications, bi-weekly in person meetings or virtual meetings will be scheduled to keep all team members engaged in the progress of the project.

After each design phase has been completed and city staff has reviewed all aspects of the design, a round table meeting will be held to ensure that all comments are understood and the direction is clearly defined prior to proceeding into the next design phase. These meetings will likely take one to two hours and should include all stakeholders in the project.

Conceptual Design Phase (30%):

Upon receiving a written Notice to Proceed, Mitchell & Morgan, LLP will commence Conceptual Design Phase services. This phase will include the following items described below:

Topographical Surveying/Geotechnical Investigation/Tree Inventory

The survey, geotechnical investigation, and tree inventory will be completed during this phase.

Deliverables

The Conceptual Design documents will include survey, geotechnical reports, a tree inventory, and core samples of the courts to determine the slab integrity in proximity to the existing trees. This investigation is desired to understand if the trees have contributed to the pavement distress.

This phase will include a site layout of the courts at each park, along with a design narrative discussing all aspects (slab design, utilities, drainage, lighting, landscaping) of the design and a discussion of the core samples and recommendations based upon those results.

Mitchell & Morgan, LLP will provide the City with PDF files (electronic submission only) of the Conceptual Design Documents to review. This phase shall be completed within Sixty (60) calendar days after receiving a Notice to Proceed to commence this phase of design.

Preliminary Design Phase (60%):

Upon receiving a written Notice to Proceed, Mitchell & Morgan, LLP will develop Preliminary Design drawings. This phase is also called 60% Phase, as the design shall not be complete but shall be sufficient for the City departments to review and provide input on the design. This phase will include the following items described below:

Deliverables

These Preliminary Design documents will include preliminary engineering drawings for the tennis courts, utility, pavement, drainage, lighting, minor landscaping, and opinions of probable construction costs based upon the comments received from the review of the conceptual plans and narrative.

Mitchell & Morgan, LLP will provide the City with PDF files (electronic submission only) of the Preliminary Design Documents to review. This phase shall be completed within Fifty (50) calendar days after receiving a Notice to Proceed to commence this phase of design.

Final Design Phase (90%)

Upon receiving a written Notice to Proceed, Mitchell & Morgan, LLP will develop Final Design drawings for the Tennis Courts at Bee Creek and Central Parks based upon City comments received during the Preliminary Design phase. These construction drawings will include final design for the tennis courts, utility, pavement, drainage, lighting, minor landscaping, and final engineer's estimates. This phase shall be completed within Forty (40) calendar days after receiving a Notice to proceed to commence this phase of design.

Final Bid Document Preparation

Upon receiving a written Notice to Proceed, Mitchell & Morgan, LLP will provide the City of College Station with electronic final construction drawings and specifications sufficient for public bidding. These documents will include:

- Final Plans
- Final Specifications
- Bid Proposal
- Special Conditions
- Estimate of construction costs based upon the final construction drawings.

This phase shall be completed within thirty (30) calendar days after receiving a Notice to proceed to commence this phase of design.

Bid Preparation and Evaluation

We understand that there will be NO bid preparation and evaluation as part of this project.

Construction Phase

Construction phase services have been included in the scope of this project.

Payment and Schedule Terms

Payment is a fixed fee based upon the above scope of services. Payments will be made on a monthly basis based upon the services completed during that month. The basic services fees are as outlined in *Attachment A*. The schedule is outlined in *Attachment B*.

If there are other services that you desire, we will provide those services on an hourly basis at the rates described below.

Hourly Rates:

Sr. Professional Engineer – Project Coordination.....	\$185/hr
Principal Design Engineer.....	\$175/hr
Sr. Professional Design Engineer	\$140/hr
Jr. Professional Design Engineer	\$125/hr
Staff Planner	\$100/hr
Project Manager.....	\$100/hr
GIS Technician	\$90/hr
Civil Designer.....	\$90/hr
Sr. EIT	\$90/hr
Jr. EIT	\$80/hr
Drafter	\$75/hr
Administrative	\$65/hr

Services not utilized will not be billed. If you would like us to add services other than those listed, they may be added at the above listed hourly rates. Mitchell & Morgan, LLP will work diligently to provide these services in a timely manner and will begin work immediately upon a Notice to Proceed. Please let us know if you have any questions or comments. We really look forward to working with you on this project.

Sincerely,

Veronica J.B. Morgan, PE, CFM
Managing Partner

cc: file

Attachments:

- Attachment A – Fees
- Attachment B – Schedule

Attachment A
Fees
Tennis Courts at Bee Creek and Central Parks Project
Conceptual, Preliminary, Final Design, & Bid Documents Proposal

Project Task	Bee Creek Design Fee	Central Park Design Fee
Survey:	\$3,190	\$2,310
Geotechnical Investigation:	\$5,060	\$3,630
Structural Design:	\$13,640	\$9,680
MEP Design:	\$15,950	\$13,200
TAS Plan Review and Inspection:	\$646.25	\$646.25
Arborist Services	\$8,079.50	\$8,079.50
Civil Design:	\$45,000	\$35,000
Project Coordination / Administration:	\$5,500	\$5,500
Construction Material Testing	\$14,360.50	\$10,532.50
Total	\$111,426.25	\$88,578.25
OVERALL TOTAL	\$200,004.50	

Attachment B
Schedule
Tennis Courts at Bee Creek and Central Parks Project
Conceptual, Preliminary, Final Design, & Bid Documents Proposal

Project Task	Contract Duration (Calendar Days)
Conceptual Phase Design:	60 Days
Preliminary Phase Design:	50 Days
Final Design Phase Design:	40 Days
Bid Documents:	30 Days

**Actual Dates are Dependent on Notice to Proceed for each phase



Parkway (CS)
Limited
Partnership

College Station
Cemetery

Da Andy
Anderson
Arboretum

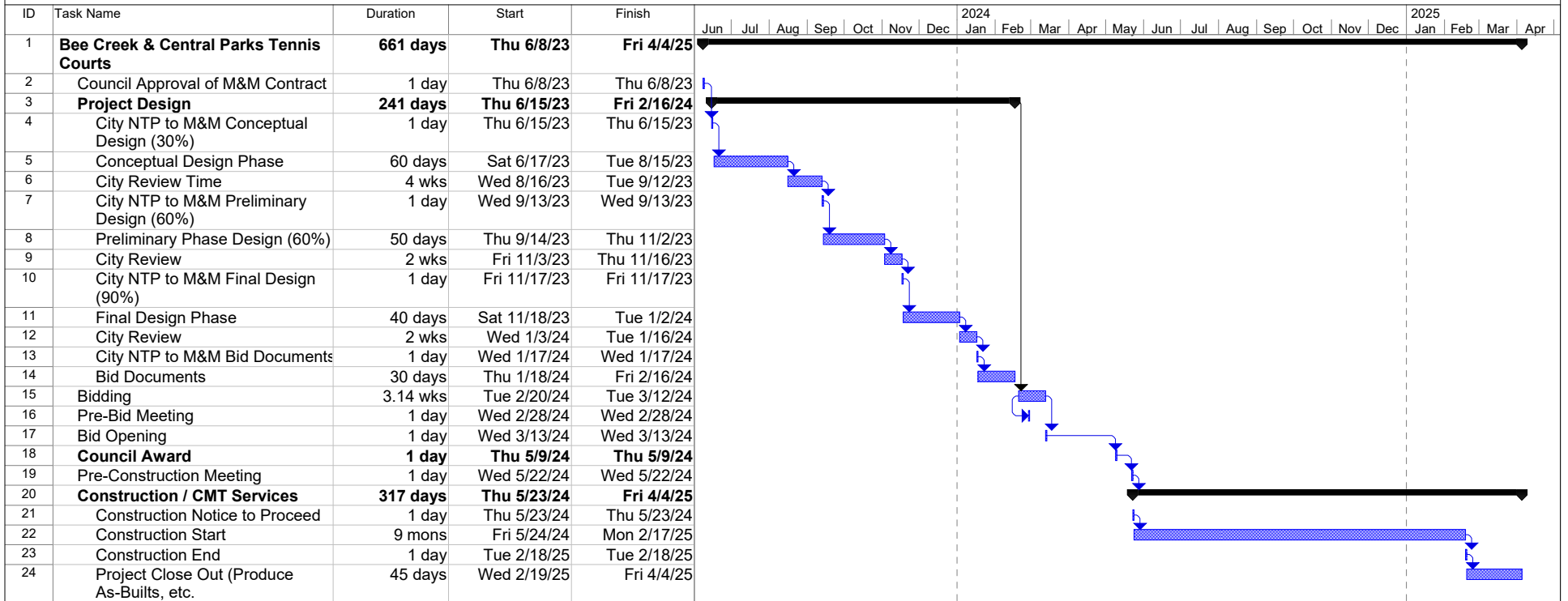
Bee Creek Park

Adamson
Lagoon

Bee Creek Park



Bee Creek & Central Park Tennis Courts Design & Construction Timeline



Project: Project1 Date: Fri 5/5/23	Task		External Tasks		Duration-only		External Tasks	
	Split		External Milestone		Manual Summary Rollup		External Milestone	
	Milestone		Inactive Milestone		Manual Summary		Progress	
	Summary		Inactive Summary		Start-only		Deadline	
	Project Summary		Manual Task		Finish-only			

**EXHIBIT B
PAYMENT TERMS**

Compensation is based on *actual* hours of work/time devoted to providing the described professional services. The Consultant will be paid at a rate of \$ _____ per hour, or at the rates per service or employee shown below. The City will reimburse the Consultant for *actual*, non-salary expenses at the rate of _____ percent (____%) above the Consultant's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract: (\$ _____).

The Consultant must submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

-OR-

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

The Consultant may submit *monthly* invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Schedule of Payment for each phase:

See "Attachment A Fees" in attached proposal...

EXHIBIT C
CERTIFICATE(S) OF INSURANCE

Contract No. 23300524
A&E Professional Services with Construction
Form 12-15-2022



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 1900 West Loop South Suite 1600 Houston TX 77027	CONTACT NAME: Donna Ward PHONE (A/C, No, Ext): 281-655-6702 E-MAIL ADDRESS: Donna_Ward@ajg.com	FAX (A/C, No): 281-655-6752	
	INSURER(S) AFFORDING COVERAGE		
INSURED Mitchell & Morgan, LLP 3204 Earl Rudder Fwy S College Station TX 77845	INSURER A: National Casualty Company		NAIC # 11991
	INSURER B: Travelers Property Casualty Co of America		25674
	INSURER C: Charter Oak Fire Insurance Company		25615
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 1362260140

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	6806H611591	1/22/2023	1/22/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			6806H611591	1/22/2023	1/22/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	CUP1005X588	1/22/2023	1/22/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB9J854080	1/22/2023	1/22/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Retro Date: 8/13/1999			JEO0001658	1/22/2023	1/22/2024	Per Claim \$1,000,000 Per Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

If required by written contract between the insured and the Certificate Holder, the following endorsements forms apply:

General Liability: Additional Insured Endorsement # CG D3 81 09 15
 Waiver of Subrogation Endorsement # CG D3 79 01 16
 Primary Non-Contributory Endorsement #CG T1 00 02 19

Umbrella: Additional Insured - Included (follows underlying insurance)
 Waiver of Our Right to Recover From Others # UM 04 88 07 08
 See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of College Station
 P.O. Box 9960
 College Station TX 77842-9960

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Mitchell & Morgan, LLP 3204 Earl Rudder Fwy S College Station TX 77845	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Organization must be scheduled by Travelers
 Workers Compensation: Waiver of Subrogation Endorsement # WC 42 03 04B (12/20/2016) All Texas Operations

Additional Insured(s): City of College Station.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.



COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

COMMERCIAL GENERAL LIABILITY

does not apply to any "bodily injury" arising out of any providing or failing to provide first aid or "Good Samaritan services" by any of your "employees", other than an employed doctor. Any such "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** in **COVERAGES**:

Sale of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

C. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the

insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

D. NON-OWNED WATERCRAFT – INCREASED TO UP TO 75 FEET

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

(a) Less than 75 feet long; and

(b) Not being used to carry any person or property for a charge;

2. The following is added to Paragraph 2. of **SECTION II – WHO IS AN INSURED**:

Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

(a) Less than 75 feet long; and

(b) Not being used to carry any person or property for a charge;

3. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured for "bodily injury" that arises out of the use of a watercraft that you do not own that is:

(a) Less than 75 feet long; and

(b) Not being used to carry any person or property for a charge.

E. AIRCRAFT CHARTERED WITH CREW

1. The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** in **COVERAGES**:

This exclusion does not apply to an aircraft that is:

(a) Chartered with crew to any insured;

- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

2. The following is added to Paragraph 4.b., **Excess Insurance**, of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured for use of an aircraft that is:

- (a) Chartered with crew to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

F. DAMAGE TO PREMISES RENTED TO YOU

1. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of SECTION I – **COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** in **COVERAGES**:

Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Fire;
- b. Explosion;
- c. Lightning;
- d. Smoke resulting from such fire, explosion, or lightning; or
- e. Water.

A separate limit of insurance applies to such damage to premises as described in Paragraph 6. of Section III – Limits Of Insurance. This insurance does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- a. Rupture, bursting, or operation of pressure relief devices;
- b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
- c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.

2. The following replaces Paragraph 6. of SECTION III – **LIMITS OF INSURANCE**:

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water. The Damage To Premises Rented To You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these.

The Damage To Premises Rented To You Limit will be the higher of:

- a. \$1,000,000; or
- b. The amount shown on the Declarations of this Coverage Part for Damage To Premises Rented To You Limit.

3. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

- (1) Fire;
 - (2) Explosion;
 - (3) Lightning;
 - (4) Smoke resulting from such fire, explosion, or lightning; or
 - (5) Water,
- is not an "insured contract";

4. The following replaces Paragraph 4.b.(1)(b) of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- (b) That is insurance for premises rented to you, or temporarily occupied by you with the permission of the owner;



G. MALICIOUS PROSECUTION – EXCEPTION TO KNOWING VIOLATION OF RIGHTS OF ANOTHER EXCLUSION

The following is added to Exclusion a., **Knowing Violation Of Rights Of Another**, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:

This exclusion does not apply to "personal injury" caused by malicious prosecution.

H. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of SECTION III – LIMITS OF INSURANCE:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C. for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- (a) \$10,000; or
- (b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

I. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B of SECTION I – COVERAGES:**

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B of SECTION I – COVERAGES:**

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

J. ADDITIONAL INSURED – OWNER, MANAGER OR LESSOR OF PREMISES

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract to name as an additional insured on this Coverage Part is an

insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after you have signed that contract; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you under that written contract.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations of this Coverage Part, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
 - (1) "Bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

K. ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is an equipment lessor and that you have agreed in a written contract to name as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is

committed, after you have signed that written contract; and

- b. Is caused, in whole or in part, by acts or omissions of you or any person or organization performing operations on your behalf, in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations of this Coverage Part, whichever are less; and
- b. The insurance provided to such equipment lessor does not apply:
 - (1) To any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after the equipment lease expires; or
 - (2) If the equipment is leased with an operator.
- c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

L. ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS RELATING TO PREMISES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any state or political subdivision that has issued a permit in connection with premises owned or occupied by, or rented or loaned to, you, is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations for which that state or political subdivision has issued such permit.

M. ADDITIONAL INSURED – STATE OR POLITICAL SUBDIVISIONS – PERMITS RELATING TO OPERATIONS

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any state or political subdivision that has issued a permit with respect to operations performed by you or on your behalf is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed by you or on your behalf for which that state or political subdivision has issued such permit. However, no such state or political subdivision is an insured for:

- (1) "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
- (2) "Bodily injury" or "property damage" included within the "products – completed operations hazard".

N. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4.a. of SECTION II – WHO IS AN INSURED:

- a. Coverage under this provision is afforded only:
 - (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
 - (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organizations, if you report such organization in writing to us within 180 days after you acquire or form it.

O. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., Duties In The Event of Occurrence, Offense, Claim Or Suit, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:



COMMERCIAL GENERAL LIABILITY

- (1) Notice to us of such "occurrence" or of an offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust), or any "employee" (such as an insurance, loss control or risk manager or administrator) authorized by you to give notice of an "occurrence" or offense.

Knowledge by any other "employee" of an "occurrence" or offense does not imply that you also have such knowledge.

- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

- (i) A partner or member of any partnership or joint venture;
- (ii) A manager of any limited liability company;
- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation, accident, or

health insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under the Coverage Part may apply.

P. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US WHEN REQUIRED BY WRITTEN CONTRACT

The following is added to Paragraph 8., **Transfer of Rights of Recovery Against Others to Us**, of SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a written contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract signed by you prior to loss.

R. AMENDED INSURED CONTRACT DEFINITION – RAILROAD EASEMENT

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

The following is added to Paragraph 11., **OUR RIGHT TO RECOVER FROM OTHERS.**, of SECTION IV – **CONDITIONS.**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an "offense" that is committed;
subsequent to the execution of the contract or agreement.



TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Specific Waiver
Name of person or organization

(X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
2. Operations: ALL TEXAS OPERATIONS
3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium: INCLUDED, SEE INFORMATION PAGE.

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 01/22/2018 at 12:01 a.m. standard time, forms a part of:

Policy No. UB9J854080 Travelers Casualty Insurance Co of America effective on 1/22/2023

Issued to: MITCHELL AND MORGAN LLP

Premium: \$1,866.00

NCCI Carrier Code: 29939



Authorized Representative

12/20/2016



RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS THAT:

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$1,700,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 12th DAY OF June, 2023.

John Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

(Seal)

APPROVED:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The project to be financed that are the subject of this Statement is:

Bee Creek Park and Central Park Tennis Court Replacement (\$1,700,000)

The project will reconstruct the Bee Creek Park and Central Park tennis courts with new playing surfaces, court lighting, fencing, netting, and windscreens.

The project was approved via the City of College Station's November 2022 General Obligation Bond Election. This project was approved as part of Proposition D.



Parkway (CS)
Limited
Partnership

College Station
Cemetery

Da Andy
Anderson
Arboretum

Bee Creek Park

Adamson
Lagoon

Bee Creek Park

