



MASTER PROFESSIONAL/SPECIALIZED SERVICES AGREEMENT WITH 4LEAF, INC

1. PARTIES

This Master Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and 4Leaf, Inc. (“Contractor”) a Corporation for Construction Management Services for Various CIP Projects, and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Scope of Services. Contractor agrees to provide the Services set forth in the Scope of Services, attached and incorporated here as **Exhibit A**, on an as-needed basis. The Services must comply with this Agreement and with each Service Order issued by the City’s Project Manager or his/her designee, in accordance with the following procedures, unless otherwise specified in **Exhibit A**. Contractor further agrees to carry out work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Service Orders. Before issuing a Service Order, the City Project Manager will request Services in writing and hold a meeting with Contractor to discuss the Service Order. Contractor will submit a written proposal that includes a specific Scope of Services, Schedule of Performance, and Compensation, which the Parties will discuss. Thereafter, City will execute a Service Order Form for the Services, attached and incorporated here as **Exhibit B**. The Service Order will specify the Scope of Services, Schedule of Performance, Compensation, and any other conditions applicable to the Service Order. Issuance of a Purchase Order is discretionary. The City Project Manager is authorized to streamline these procedures based on the City’s best interests. Contractor will not be compensated for Services performed without a duly authorized and executed Service Order.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on December 31, 2025 (“Contract Time”), unless terminated earlier as provided herein. The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

3.2 Schedule of Performance. Contractor must deliver the Services within the time specified in each Service Order, and under no circumstances should the Services go beyond the Contract Time.

3.3 Time is of the essence for the performance of all the Services required in this Agreement and in each Service Order. Contractor must have sufficient time, resources and qualified staff to deliver the Services on time. Contractor must respond promptly to each Service Order request.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services a total amount that will be based upon actual costs but that will be capped so as not to exceed \$500,000.00 ("Contract Price"), based upon the Scope of Services in **Exhibit A** and the budget and rates included. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the capped amount.

4.2 Per Service Order. Compensation for Services provided under a Service Order will be based on the rates set forth in the Service Order, which shall not exceed the capped amount specified in the Service Order.

4.3 Invoices and Payments. Except as otherwise provided in a Purchase Order, monthly invoices must state a description of the deliverables completed and the amount due for the preceding month. Thirty (30) days prior to expiration of the Agreement, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Noncompliance with this requirement relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

5.2 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

5.3 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

5.4 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability,

unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

6. **PROPRIETARY/CONFIDENTIAL INFORMATION**

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. **OWNERSHIP OF MATERIALS**

7.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

7.3 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-Contractors, prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity will be considered an assignment of the Agreement and subject to City approval. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and Contractors ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings), of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of

- Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary information;
 - (e) Claim of infringement or violation of a U.S patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

11.3 Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order or other transaction.

11.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.6. This Section 11 shall survive termination of the Agreement.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS,) or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns Susan Michael as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns Gene Barry as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with City instructions, service orders and the Schedule of Performance. Contractor must regularly update the City's project manager about the status, progress and any delays with the work. City's written approval is required prior to Contractor substituting a new Representative which shall result in no additional costs to City.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts thereof at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. **HEADINGS**

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. **SEVERABILITY/PARTIAL INVALIDITY**

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. **SURVIVAL**

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. **NOTICES**

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014 Attention: Susan Michael Email: SusanM@cupertino.org	To Contractor: 4Leaf, Inc. 2126 Rheem Dr. Pleasanton, CA 94588 Attention: Gene Barry Email: gbarry@4leafinc.com
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27. **EXECUTION**

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO
A Municipal Corporation

4LEAF, INC.

By _____
Name _____
Title _____
Date _____

By Gene Barry
Name Gene Barry
Title Vice President
Date Nov 7, 2023

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date _____

EXHIBIT A SCOPE OF SERVICES

The CONSULTANT shall provide certain Construction Management services as required and requested by the CITY.

The CONSULTANT shall provide services under this Master Agreement on an “as needed” basis and only (1) upon written request from the CITY’s Director of Public Works or authorized Agent as defined in Section 11, PROJECT COORDINATION and (2) as defined in a fully executed SERVICE ORDER (Exhibit B).

SECTION 1- GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY’s Public Works Director or authorized Agent.
- B. The CONSULTANT shall perform all services under this agreement to the currently prevailing professional standards and quality found among Program and Project Management Consultants with similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. The CONSULTANT shall perform services under this AGREEMENT only by authorization of a fully executed SERVICE ORDER which shall clearly provide the nature of the specific services, the time limit within which such services must be completed, and the compensation for such services. Unauthorized services performed by the CONSULTANT shall be at no cost to the CITY.
- D. The CONSULTANT shall begin work only after receipt of a fully authorized and executed SERVICE ORDER. The CITY shall incorporate each authorized and fully executed SERVICE ORDER into the terms and conditions of this MASTER AGREEMENT.
- E. The CITY shall designate a Project Manager for each authorized and fully executed SERVICE ORDER under this AGREEMENT. The CONSULTANT shall coordinate the SERVICE ORDER performance with the CITY’s designated Project Manager.

SECTION 2. BASIC SERVICES

The Consultant shall provide Construction Management services for various CITY Public Works projects. All services performed shall be authorized by a fully executed SERVICE ORDER prior to work commencement.

A. General Performance Requirements

1. The performance of all services by CONSULTANT shall be to the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard of care provisions contained in this AGREEMENT.
2. CONSULTANT shall be responsible for coordinating the work of all consultants and contractors, as needed or as directed by the CITY. CONSULTANT shall schedule meetings and prepare meeting agendas and minutes for all PROJECT meetings during the execution of this agreement under the scope of work. All minutes of meetings are due to the CITY within five (5) working days after the meeting. CONSULTANT shall provide copies of such documentation to the CITY, and as directed by the CITY, to other appropriate agencies and entities.
3. CONSULTANT shall designate and provide to the CITY the names of their team members for the PROJECT. The team members shall be satisfactory to the CITY. CONSULTANT shall not substitute any team members without the prior approval of the CITY. CITY retains the right to reject team members assigned by CONSULTANT or require replacement of team members.
4. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. CONSULTANT shall consult with the CITY, research applicable information, and communicate with members of the PROJECT team.
5. During the course of work of an assigned PROJECT, CONSULTANT shall meet weekly with CITY's assigned project manager for the respective construction projects to provide an update on the current status of the construction project. CM will provide the CITY's assigned project manager with a summary report.

- B.** CONSULTANT shall effectively manage the assigned construction projects for the efficient, progressive, and proactive delivery of each construction project. For each assigned construction project, the CONSULTANT may provide any or all of the following tasks and subtasks under Section 2, as is required for each specific project.

C. TASKS

Consultant services for any assigned project under this Master Agreement may include, but is not limited to the following tasks:

Task 1 – Pre-Construction Phase - work may include but is not limited to the following:

- 1) Conduct a constructability review of the construction documents (50%, 95% and 100%) for the various projects. Provide a written report with recommendations for changes.
- 2) Cost Estimate review and value engineering for various projects. Provide a written report with recommendations.
- 3) Utility coordination for projects. Work may include a survey of existing utilities, the

development of utility service plan for new and existing structures, coordinating with consultant preparing the project plans and making application to the utility companies for service.

- 4) Assist with the building permit approval process. Work may include but is not limited to coordinating with design consultant and building department to receive an approved building permit.
- 5) Assist with the review and approval process for other permits and regulatory requirements. Work may include but is not limited to coordinating with design consultant, city staff, and regulatory agencies to apply for and secure approved permits and authorizations as needed.
- 6) Assist with the development and conducting of public outreach programs to assist in providing public information regarding project.
- 7) Assist with grant administration during the project.

Task 2 – Bid Phase - work may include but is not limited to the following:

- 1) Conduct a pre-bid Conference with prospective Bidders.
- 2) Assist with the issuing of Addendums.
- 3) Assist in the development of bidders' interest in a project.
- 4) Review bid documents and assist the CITY in evaluation of bidders Statement of Qualifications for responsible low bidder and assist in analyzing bid protest as may be necessary.
- 5) Tabulation and evaluation of bid results. Assist in the evaluation of bid alternatives and make recommendations on award.
- 6) Assist in review and processing of substitution submittals during bid and construction phase.

Task 3 – Construction Phase – work may include but is not limited to the following:

- 1) Administration and Coordination of Construction Contract: CM will provide administrative, construction management and related services necessary to administer the Construction Contract on each assigned project. CM's services shall include but are not limited to the following:
 - a. Scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof.
 - b. Prior to start of project construction the CM and CITY will come to agreement on the format for all project records to be kept and turned over to the CITY at the completion of the project. Documents may be hard copies and/or electronic. CM will make recommendations on programs to be used for tracking and other record keeping needs.
 - c. Develop and implement a procedure for the submittal and processing of submittals with the design consultant. This shall include preparing and updating

logs. Provide preliminary review for completeness and general compliance of submittals that are to be reviewed by the design consultant. Provide review and response for submittals that do not involve the design consultant (such as Safety Plan, Fire Protection Plan). Sign and date such submittals with response: Reviewed or Revise and Resubmit.

- d. Develop and implement a procedure for the submittal and processing of substitution requests with the CITY and the design consultant. This shall include preparing and updating logs.
 - e. Develop and implement a procedure for timely handling and disposition of the Contractor's request for information (RFI) or clarifications with the design consultant. This shall include preparing and updating logs.
 - f. Establish and implement procedures for the timely transmittal and receipt of communications, drawing and other information between CM, design consultant and the Contractor relating to construction of the project.
 - g. Develop and implement a procedure for the timely submittal, processing and tracking of Contract Change Orders (CCO), Request for Price Quote (RPQ), etc. with the CITY. This shall include preparing and updating logs.
 - h. Coordinate and maintain a project directory for the project, with emergency contact information.
 - i. Review the Contractor's comprehensive schedule that establishes a base line and reports the status and progress of the project. The schedule should include details such as milestones and key activities to track project progress. Review the Contractor's three week look ahead schedule. Verify that schedules conform to the construction contract documents.
 - j. Work with CITY and Contractor to maintain use of existing facilities that are affected by the construction, to minimize the disruption to the existing facilities and to have their continued use during the construction of the project. This includes all phase of construction and delivery of materials.
- 2) Monitoring of construction costs and progress payments, CM services may include but are not limited to the following:
- a. Provide and maintain project level reports for budgeting and contingency tracking; contract payment status; cash flow forecasting and analysis; grant documentation; and other financial reporting as necessary to support the CITY's accounting needs. CM shall maintain records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis. CM shall monitor and advise the CITY of costs pertaining to potential, pending and completed changes; and potential or pending claims.
 - b. Develop a procedure for submittal, review and processing of the progress payments to Contractor, along with associated forms and reporting systems. CM shall review progress payment applications and work with Contractor to achieve agreement on the progress payment amount. CM will verify that the "as built"

check set of plans by the Contractor are updated prior to approval of progress payment being submitted to the CITY. CM will require Contractor to provide a conditional waiver and release for progress payments and a final release and waiver for the final payment. CM will certify that the data in each application for progress payment is to the best of CM's knowledge, information and belief, the work has progressed to the point indicated in the application for progress payment and the quality of the work is generally in accordance with the contract documents. CM's review of application for progress payment shall be undertaken and completed in a timely manner so that the CITY can meet its obligations to make progress payment due Contractor within the time permitted by applicable law without incurring interest liability or other penalties/liabilities. CM shall also verify the progress payment satisfies any grant requirement.

- 3) Substantial completion and final completion, CM services may include but are not limited to the following:
 - a. Consult with the design consultants and CITY to jointly ascertain the achievement of substantial completion of the project. If upon inspection of the project substantial completion has not been achieved, the CM will assist the design consultant in noting the conditions of the work and the measures necessary for the Contractor to achieve substantial completion. Upon determining that the Contractor has achieved substantial completion the CM will coordinate the CITY's and design consultant's final inspection of the work to note punch list items to be completed by the Contractor as a condition to achieve final completion.
 - b. Assist the CITY in issuing a certificate of substantial completion and final completion, as applicable.
- 4) Progress Records, CM services may include but are not limited to the following:
 - a. Maintain records of the progress of construction of the project, including written progress reports and photographs reflecting the status of construction and percentage completion of the project. CM will maintain daily records during construction of the project showing weather conditions, personnel of the Contractor and Subcontractor at the site, work accomplished, problems encountered and other matters materially affecting the project, completion of the project or construction cost to complete construction of the project. CM shall maintain project records for test results and special inspection results.
 - b. Provide monthly progress reports on the project.
- 5) Site observations of project, CM services may include but are not limited to the following:
 - a. CM shall be on-site during construction of the project and substantially at all times during which there are construction activities at the site. CITY and CM may agree to the amount of time required to be at the site for observation, however this does not relieve the CM from the requirement of having knowledge of the status of the work.

- b. Coordinate testing, lab services and inspections, this includes by outside firms. CM will work with the Building Department for permit inspections coordination and final approvals of permit. Provide testing and test results by testing firm acceptable to CITY. Such testing services shall be a reimbursable expense as described in Task 5.
- c. Maintain at the site the following documents at a minimum: Contract, Drawings, Specifications, approved Change Orders, Submittals, building permit, SWPPP and associated testing or monitoring documentation, other permits, applicable codes, rules and regulation and other written or electronic materials relating to the project.
- d. CM will endeavor to guard the CITY against defects and deficiencies in construction and workmanship of the project on the basis of its site observations, and a quality control program established and implemented hereunder to monitor construction workmanship for conformity: 1) accepted industry standards; 2) applicable laws, codes, regulations, ordinances or rules; 3) and the requirements of the construction documents.
- e. CM shall reject work whenever in the ordinary course of discharging its services the CM discovers or observes patent conditions of defective or deficient construction and workmanship which as or may have an adverse impact upon the project's life-safety systems or operations, structural elements or integrity of the safety of persons or property. CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the CITY in writing. CM's responsibilities hereunder shall be limited to defective or deficient work or an apparent or patent nature.
- f. Review the Contactor safety program and the requirements of the construction documents and applicable law. CM shall monitor the Contractor's compliance with safety programs and advise the CITY of measures, if any, necessary or appropriate to obtain the Contractor's compliance. By undertaking the obligation hereunder, CM shall not be deemed to have assumed responsibility of the adequacy or sufficiency of safety programs implemented by the Contractor, but the CM is responsible for verifying that the Contractor has established a safety program, that the safety program established by the Contractor is in compliance with applicable law, rule or regulation and that the Contractor has implemented its safety program.
- g. CM shall promptly notify the CITY in writing of all CM observed instances of Contractor's failure to comply with applicable safety requirements. If in the course of performing services during the construction, the CM observes a safety violation or other unsafe condition on or about the site or surrounding area which have a immediate or potential or actual adverse effect on life or property, the CM is authorized, without prior notice to the CITY or prior directive by the CITY, to take all actions deemed necessary and appropriate by the CM under the then existing circumstances to prevent such actual or potential adverse effect.

caused or contributed to a Contractor claim, the CM's claims handling services, including without limitation, claims analysis, assistance in preparing briefs/graphic materials in connection with negotiations or dispute resolution proceeding relating to a Contractor claim shall be deemed part of the CM's basic services under this agreement.

- 8) CM equipment, CM shall provide the following equipment necessary to carry out CM duties:
 - a. Provide all equipment, furnishings and other items necessary to complete the services required for the project. Including without limitation, trailer, computers, related hardware, software, vehicles, cell phones, office equipment and copiers.

Task 4 – Inspections and Testing – work may include but is not limited to the following:

- 1) CM shall conduct routine inspection of the construction work over the course of construction to ensure compliance of the work with the construction contract, including all drawings and specifications.
- 2) CM shall monitor the contractor's compliance with required Regulatory Agency Permit inspections and advise CITY of coordination problems and Contractor's compliance with permit/inspection requirements.
- 3) CM shall engage the necessary subconsultants to perform the necessary inspections and testing as required for the project. CM shall schedule and coordinate with the contractor and subconsultant for the necessary testing and inspection for the project.
- 4) Compensation to the CM for inspections and testing by subconsultant shall be for the actual billed amount only, no mark up or overhead will be allowed for these subcontracted services. CM shall bill monthly for actual inspections and testing completed. CM shall attach copies of subconsultants' invoice for verification of cost being billed.

Task 5 – Post-Construction Phase – work may include but is not limited to the following:

- 1) Contractor closeout document review, CM services shall include but are not limited to the following:
- 2) Receive from the Contractor the closeout documents and items to be submitted by the Contractor under the terms of the Construction Contract upon completion of its obligations under the Construction Contract. The CM shall review each Contractor's closeout submittals to determine conformity with the requirements of the Construction Contract. If the CM determines that any Contractor's closeout submittals are not in conformity with requirements of the construction contract, the CM shall make recommendations to the CITY for measures to secure compliance with the requirements of the construction contract. The CM shall deliver to the CITY all of the Contractor's closeout submittals, including the Contractor's as-build drawings which the CM shall

transmit to the design consultant for preparation of the record drawings. The CM shall monitor the design consultant's preparation and completion of the project record drawings prior to delivering to the CITY.

- 3) Within thirty (30) days of the date of issuance of a Certificate of Final Completion for the construction contract, the CM shall assemble and deliver to the CITY all of the records maintained by the CM relating to the project.

END OF EXHIBIT

COMPENSATION

The City shall compensate the Consultant according to the hourly rate(s) stated in this Exhibit which shall remain in effect for the Master Agreement schedule of performance unless changed by written amendment to the Master Agreement.

Each authorized Service Order under this Master Agreement shall identify the method of compensation consistent with the scope of services provided by the Consultant. In any case, the Consultant's total payment for each authorized Service Order shall not exceed the maximum compensation identified in that Service Order, unless authorized by a written amendment executed by the City and the Consultant, and the total compensation for all authorized Service Orders shall not exceed the maximum compensation stated in Article 4, Compensation, of the Master Agreement.

Work exceeding the total authorized amount for a Service Order or the total compensation for the Master Agreement shall be at no cost to the City.

Consultant Hourly Rate(s)

The Consultant shall be compensated according to the following hourly rate(s) for all work performed under authorized Service Orders:

Labor Category	CY2024 Hourly Rate	CY2025 Hourly Rate
Principal Engineer	\$207	\$218
Resident Engineer/ Construction Manager	\$175	\$184
Assistant Engineer / Office Engineer	\$160	\$168
Construction Inspector	\$95-148	\$100-156

*CY = Calendar Year; 3% escalation indicated

Reimbursable Expenses

Reimbursable expenses represent the acquisition cost of items, other than direct labor, specifically required to perform the scope of services and beyond normal business operating expenses which are included in the direct labor rate. Such expenses include, but are not limited to:

- Individual or multiple document reproductions that exceed 50 pages;
- Drawing or bid set reproductions;
- Software required by City other than Microsoft Word, Excel, PowerPoint, and Project; Adobe Acrobat; and a photo editor program.
- Travel expenses to the extent allowed by City policy;

COMPENSATION

- Sub-consultants required by project scope of services;
- Safety equipment required by City policy or the project scope of services;
- Mass mailing notifications;
- Expenses for public meetings, such as refreshments, interpreters, security, valet parking, facility rental, tents or booths, easels, markers, paper, presentation equipment.

The City shall compensate the Consultant for such reimbursable expenses **only** with prior written authorization by the City representative designated in Section 14, Project Coordination, of the Master Agreement. All compensation, including reimbursable expenses, shall not exceed the maximum compensation for the Service Order.

The City shall compensate the Consultant for reimbursable expenses for the documented actual cost only, allowing for no surcharge for Consultant administration. Reimbursable expenses shall be separately identified on the Consultant invoice.

Method of Payment

The Consultant shall submit an invoice to the City by the 5th business day of each month that clearly identifies the work performed in the previous month and authorized reimbursable expenses. All invoices from Consultant shall be emailed to PWInvoices@Cupertino.org and the Project Manager or mail to the City at:

Attention: Susan Michael, Capital Improvement Programs Manager
City of Cupertino
10300 Torre Ave.
Cupertino, CA 95014

The invoice shall identify the applicable period of work, a description of the work performed consistent with the Service Order scope of services, the number of hours, hourly rate, reimbursable expenses, Service Order maximum compensation, Service Order compensation to date including invoice number, total invoice amount for current invoice, Service Order maximum compensation balance remaining.

All Consultant payments shall be addressed to:

4Leaf, Inc.
2126 Rheem Drive
Pleasanton, CA 94588
Attention: Gene Barry

END OF EXHIBIT

EXHIBIT B
SERVICE ORDER PROCESS

The CONSULTANT shall provide services under this Master Agreement on an "as needed" basis and only (1) upon written request from the CITY's Director of Public Works or authorized Agent as defined in Section 14 , Project Coordination, and (2) as defined in a fully executed Service Order.

SECTION 1- SERVICE ORDER INITIATION

- A. The City Public Works Director or his/her designee shall provide written request for Consultant services as defined in this agreement. The Consultant and City shall meet to discuss the services after which the consultant shall provide a written proposal including specific scope of services, performance schedule, and compensation to the City.
- B. The City and Consultant shall discuss the proposal in detail and agree upon the terms of the Service Order.
- C. The City shall prepare a Project Service Order consistent with the City's standard form, Service Order, and Attachment A. The Service Order shall, at a minimum, include (1) specific scope of services, deliverables, schedule of performance, and compensation.

SECTION 2- SERVICE ORDER EXECUTION

- D. Both parties shall execute the Service Order as evidenced by the signatures of the authorized representatives defined in Section 14 of the Master Agreement, Project Coordination, and the date signed.
- E. The Consultant shall begin work on the scope of services only after receipt of a fully executed authorized Service Order defining those services. Consultant understands and agrees that work performed before the date of the authorized Service Order or outside the scope of services once a Service Order is signed and authorized shall be at no cost to the City.
- F. The maximum compensation authorized by a single Service Order and/or the aggregate of Service Orders shall not exceed the maximum compensation set forth in Article 4 of the Master Agreement.

**CITY OF CUPERTINO
MASTER AGREEMENT CONSULTANT SERVICES
SERVICE ORDER NO.**

MASTER AGREEMENT #: _____ **MA Date:** _____

Maximum Compensation: _____ **MA End Date:** _____

Consultant: **Firm Name:** _____
Address: _____
Contact: _____ **Ph:** _____
Email Address: _____

Project Name:

Description: (simple project description if appropriate) _____

Attachment A: Includes Description of Project, Scope of Service, Schedule of Performance and Compensation

City Project Management

Managing Department: Public Works **Project Manager:** _____

Fiscal/Budget :

Master Agreement Maximum Compensation: _____
Total Previously Encumbered to Date: _____
Encumbrance this Service Order: _____
Master Agreement Unencumbered Balance: _____

SO Acc't #: _____ **PO #:** _____
Project #: _____ **Date:** _____

Approvals:

Consultant: _____ **Date:** _____

Manager: _____ **Date:** _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated and that fund are available as of this date of signature

City Finance: _____ **Date:** _____

Management Analyst

EXHIBIT C
Insurance Requirements
Professional/Specialized Services Agreement

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance and results of the Services hereunder by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, contractual liability, property damage, bodily injury, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project (ISO CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO CG 20 10 04 13
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or, if Contractor has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees).*
4. **Professional Liability.** Insurance which includes coverage for professional acts, errors and omissions, with limits no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate *(if applicable)*.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and higher insurance limits maintained by Contractor.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of the Services performed by or on behalf of Contractor including materials, parts, or equipment furnished. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not

available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

Primary Coverage

For any claims related to this Contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Contractor grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

City may approve self-insured retentions and require proof of Contractor's ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurers must be acceptable to City and licensed to do business in California, and each insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

Claims Made Policies (applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
2. Insurance must be maintained for at least five (5) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

Verification of Coverage

Contractor shall furnish the City with acceptable original certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City prior to commencing the Services. City retains the right to demand verification of compliance at any time during the Contract.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Insurance coverage shall not limit Contractor's duties to indemnify, defend and hold City harmless. City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BROAD FORM NAMED INSURED B. BLANKET ADDITIONAL INSURED C. EMPLOYEE HIRED AUTO D. EMPLOYEES AS INSURED E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS G. WAIVER OF DEDUCTIBLE – GLASS | <ul style="list-style-type: none"> H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT J. PERSONAL PROPERTY K. AIRBAGS L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS M. BLANKET WAIVER OF SUBROGATION N. UNINTENTIONAL ERRORS OR OMISSIONS |
|---|---|

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c. in A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

- 1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:**

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

- 2. The following replaces Paragraph **b. in B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:**

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and**
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your**

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (A) - 001

POLICY NUMBER: UB2T357728

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT – CALIFORNIA
(BLANKET WAIVER)**

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.

The additional premium for this endorsement shall be 2.00 % of the California workers' compensation premium.

Schedule

Person or Organization

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.

Job Description

ENGINEERS

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Insured

Policy No.

Endorsement No. Premium

Insurance Company

Countersigned by _____









4Leaf, Inc for Construction Management Services for Various CIP Projects

Final Audit Report

2023-11-07

Created:	2023-11-07
By:	City of Cupertino (webmaster@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPNY1yzhWC2eBsnZKL50OvLbnRAUCkw4

"4Leaf, Inc for Construction Management Services for Various CIP Projects" History

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