



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: May 2, 2023

Subject

Consider approving the use of funds from the Art In-Lieu Fees for the Jollyman All-Inclusive Playground (AIPG) Capital Improvement Programs (CIP) project.

Recommended Action

1. Approve the use of appropriations of \$338,146.86 from the Art In-Lieu Fee in the General Fund, for artwork within the Jollyman AIPG CIP project;
2. Adopt Resolution No. 23-XXX (Attachment A) approving budget modification no. 2223-274 increasing appropriations and revenue by \$338,146.86 in the Capital Improvement Program Capital Projects Fund and increasing apportionments in the General Fund to transfer out restricted funds for the Jollyman All-Inclusive Playground Project (budget unit 420-99-051, PVAR 007); and
3. Authorize the City Manager to execute any necessary contract amendments for a contingency of \$100,489 for a total contract amount of \$490,000 on the professional design services agreement between the City of Cupertino and MIG, Inc. for the Jollyman AIPG Project (Project 2019-15).

Reasons for Recommendation

Per Cupertino Municipal Code (CMC) Section 19.149.020(A), private development projects are required to provide public artwork in any development of 10,000 square feet or more for the construction of new buildings, and/or the expansion of existing buildings. In some instances, the placement of artwork on a particular property may not be feasible. The applicant may then apply to the Arts and Culture Commission for an in-lieu alternative if the development lacks an appropriate location for public art. In certain cases, an in-lieu payment of 1.25% of the construction valuation may be made to the City pursuant to the approval authority provisions of CMC Section 19.148.090.

Art and Culture commissioners approved the in-lieu payment for artwork at the "Public Storage" development site on November 22, 2021, at the Art and Culture Commission meeting. As this is the first art in-lieu fee received by the City, no policy has been developed, and the CMC does not provide guidance. Staff recommends that these funds be used for commissioning artwork within the Jollyman Park AIPG CIP project. Staff placed the restricted funds in the General Fund in Fiscal Year (FY) 2022-23 in a

Restricted Fund balance category. Restricted fund balance means that the use of these funds has been restricted by the governing board of the organization. Jollyman AIPG would be a pilot project involving the art in-lieu fee and could serve as a model for future projects. At a future date, a policy and procedural document, which could be based on this project's successes and lessons-learned, will be developed for ongoing use and application of this fund.

Staff recommends that the art in-lieu funds be applied to the Jollyman AIPG project because the opportunity to apply these funds to this project is limited by the grant-driven schedule. The Jollyman AIPG project must meet the schedule requirements set forth in our grant agreement. If Council prefers to appropriate the funds after a policy can be considered and initiated, the AIPG can continue its current schedule and scope definition without the public art element. Using the developer-paid art in-lieu fee/funding for Jollyman AIPG as a public art consignment is a single effort that produces two returns. First, adding public-facing interactive art on an easily accessible City-owned site enhances a sense of place and discovery. Second, the City can capitalize on construction and site preparation already in place with the established CIP project, which should allow for the art-in-lieu funds to be utilized more effectively than they might if the Jollyman AIPG project were not in place.

If the use of funds from the Art in-lieu Fee for the Jollyman AIPG is approved, it will be used to fund the following interactive art elements as part of the project:

- Decorative sun kaleidoscope feature
- Interactive Musical Bench
- Nature-related art, such as a bird-watching scavenger hunt, viewing binoculars, and colorful peeking windows
- Multilingual Tactile Sign
- Stair Mural

Examples of the art concept options can be seen in Attachment B.

If Council approves the use of the art in-lieu fee/funding, the next steps will include:

1. Project Team/Design consultant develops the artwork concepts and proposal within the context of the AIPG's design, visual style, and site constraints.
2. Project Team/Design consultant presents the artwork proposal to the Arts and Culture Commission for their review.
3. After Art and Culture Commission approval of the artwork proposal, the Project Team/Design consultant will finalize the designs and proceed with fabrication and installation of the artwork in conjunction with the construction of the Jollyman AIPG. (The art will be included in the City's ARTour program which catalogs and displays art inventory throughout the City.)
4. Create a policy and procedure document for this fund based on the project's successes and lessons learned.

If City Council does not approve the transfer of the art-in-lieu funds to the Jollyman AIPG budget, the funds will stay in the current account, and the fully funded project will move forward without these unique art features. Since the Jollyman AIPG project is on a set schedule to meet grant requirements, the City would need to continue to advance the project without the public art element.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The restricted fund balance category for art in-lieu totals \$338,146.86. Staff recommends an appropriation of all the funds to a general fund non-departmental transfer out, and then transferring these funds into the Jollyman Park All-Inclusive Playground budget unit. This will result in a transfer in of revenue to the project. In addition, the project budget will be increased by a corresponding amount.

The Jollyman AIPG Project Budget (budget unit 420-99-051) has \$4,532,235. The City has encumbered \$554,428 to date, leaving a remaining budget of \$3,977,807. The City is a recipient of two grants. The first was \$1,448,201 from the AIPG Grant Funds from Santa Clara County. The second was \$1,000,000 from the Specified Grant Funds from the State of California. The City has also funded \$2,084,034 for the project. The City also received a \$25,000 donation from Pacific Gas & Electric. With the approval of the recommended actions, the overall project funding would increase by \$338,146.86 for the artwork features.

SOURCE	AMOUNT
City funds	\$2,084,034.00
County of Santa Clara AIPG	\$1,448,201.00
State Allocation (Specified Grant Funds)	\$1,000,000.00
PG&E Donation	\$25,000.00
<i>Art in-lieu Fee</i>	<i>\$338,146.86</i>
TOTAL	\$4,895,381.86

California Environmental Quality Act (CEQA)

The project is categorically exempt from CEQA per CA type and section numbers: 15301(c), 15302(c), and 15304(a), (b), (e), and (f).

Prepared by: Evelyn Moran, Project Manager

Reviewed by: Chad Mosley, Interim Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution

B – Art Concept Options