

**SIXTH AMENDMENT TO AGREEMENT 401 BETWEEN  
THE CITY OF CUPERTINO AND MIG, INC FOR ALL-  
INCLUSIVE PLAYGROUND AT JOLLYMAN PARK**

This Sixth Amendment to Agreement 401 between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc, a Corporation ("Contractor") whose address is 2055 Junction Ave, Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

- A. On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.
- B. The City and the Contractor entered into a First Amended Agreement ("First Amended Agreement") effective October 13, 2022; and
- C. The City and the Contractor entered into a Second Amended Agreement ("Second Amended Agreement") effective July 14, 2023; and
- D. The City and the Contractor entered into a Third Amended Agreement ("Third Amended Agreement") effective September 7, 2023; and
- E. The City and the Contractor entered into a Fourth Amended Agreement ("Third Amended Agreement") effective April 8, 2024; and
- F. The City and the Contractor entered into a Fifth Amended Agreement ("Third Amended Agreement") effective May 22, 2024; and
- G. The Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- H. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$512,411.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibits A and A-1 and A-2 and A-3 and A-4 of the Agreement are modified to include Exhibit A-5 Additional Services, attached hereto.

2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$45,000.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibits A and A-1 and A-2 and A-3 and A-4 of the Agreement are modified to include Exhibit A-5 Additional Services, attached hereto.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

MIG, INC

By \_\_\_\_\_

By  \_\_\_\_\_

Title \_\_\_\_\_

Title Vice President and Chief Development Officer

Date \_\_\_\_\_

Date May 23, 2024

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment 1		\$12,000.00
Amendment 2		\$18,250.00
Amendment 3		\$38,400
Amendment 4	Extend Term to 6/30/2026	0
Amendment 5		\$9,250
Amendment 6		\$45,000
Total		\$512,411

**FIFTH AMENDMENT TO AGREEMENT 401 BETWEEN  
THE CITY OF CUPERTINO AND MIG, INC FOR ALL-  
INCLUSIVE PLAYGROUND AT JOLLYMAN PARK**

This Fifth Amendment to Agreement 401 between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc, a Corporation ("Contractor") whose address is 2055 Junction Ave, Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

- A. On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.
- B. The City and the Contractor entered into a First Amended Agreement ("First Amended Agreement") effective October 13, 2022; and
- C. The City and the Contractor entered into a Second Amended Agreement ("Second Amended Agreement") effective July 14, 2023; and
- D. The City and the Contractor entered into a Third Amended Agreement ("Third Amended Agreement") effective September 7, 2023; and
- E. The City and the Contractor entered into a Fourth Amended Agreement ("Third Amended Agreement") effective April 8, 2024; and
- F. The Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- G. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$467,411.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibits A and A-1 and A-2 and A-3 of the Agreement are modified to include Exhibit A-4 Additional Services, attached hereto.



2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorized Additional Services up to an amount not to exceed \$9,250.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibits A and A-1 and A-2 and A-3 of the Agreement are modified to include Exhibit A-4, Additional Services, attached hereto.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

By   
Title Director of Public Works  
Date May 22, 2024


MIG, INC

By   
Title Vice President and Chief Development Officer  
Date May 22, 2024

APPROVED AS TO FORM

Christopher D. Jensen  
City Attorney

ATTEST:

  
City Clerk  
Date May 22, 2024

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment 1		\$12,000.00
Amendment 2		\$18,250.00
Amendment 3		\$38,400
Amendment 4	Extend Term to 6/30/2026	0
Amendment 5		\$9,250
Total		\$467,411



April 2, 2024

Susan Michael, Capital Projects Programs Manager  
City of Cupertino, City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: Additional Services #4 Jollyman Park Inclusive Playground (MIG proj. no. 30902)

Dear Susan,

We are requesting use of contingency to assist the City with building permit application form, hardship form, project manual edits, and costs; creation of the SWMP for permit application; and additional bid support.

The following summarizes the MIG team's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021. All other terms in the original contract remain in effect.

**Add Services (Task 9: Permit Assistance)**

We are requesting additional fees to requested assistance with building permit:

Task 9 Permit Assistance	: \$9,250
• Creation and submittal of SWMP \$1,800 (BKF)	
• Supplemental permit application and bid support \$7,450 (team)	
<b>Total Add Service #4</b>	<b>\$9,250</b>

Your emailed authorization to proceed so we can begin this work will help us meet internal City schedule needs is much appreciated.

Sincerely,

Melissa Erikson  
Principal, Director of Community Design Services  
MIG

**FOURTH AMENDMENT TO AGREEMENT 401**  
**BETWEEN THE CITY OF CUPERTINO AND MIG, INC**  
**FOR ALL-INCLUSIVE PLAYGROUND AT JOLLYMAN**  
**PARK**

This Fourth Amendment to Agreement 401 between the City of Cupertino and MIG, Inc is by and between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc, a Corporation ("Contractor") whose address is 2055 Junction Ave, Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

- A. On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.
- B. The City and the Contractor entered into a First Amended Agreement ("First Amended Agreement") effective October 13, 2022; and
- C. The City and the Contractor entered into a Second Amended Agreement ("Second Amended Agreement") effective July 14, 2023; and
- D. The City and the Contractor entered into a Third Amended Agreement ("Third Amended Agreement") effective September 7, 2023; and
- E. The Agreement, First Amendment, Second Amendment and Third Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- F. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

- 1. Paragraph 3.1 of the Agreement is modified to read as follows:  
**Term.** This Agreement begins on the Effective Date and ends on June 30, 2026, unless terminated earlier as provided herein ("Contract Time"). 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.
- 2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

MIG, INC

By Jimmy Tan  
Title Assistant Director of Public Works  
Date Apr 8, 2024

By Christopher J. Beyer  
Title Vice President and Chief Development Officer  
Date Apr 8, 2024

APPROVED AS TO FORM

Christopher D. Jensen

City Attorney

ATTEST:

Kristen Squarria

City Clerk

Date Apr 8, 2024

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment 1		\$12,000.00
Amendment 2		\$18,250.00
Amendment 3		\$38,400
Amendment 4	Extend Term to 6/30/2026	-
Total		\$458,161





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/26/2024

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549  License#: 6003745 MIGINC0-01	<b>CONTACT NAME:</b> Mandy Guo	
	<b>PHONE (A/C, No, Ext):</b> 510-272-1402	<b>FAX (A/C, No):</b>
<b>INSURED</b> MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710	<b>E-MAIL ADDRESS:</b> CertsDesignPro@AssuredPartners.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> BERKLEY INSURANCE COMPANY	
	<b>INSURER B:</b> Travelers Property Casualty Company of America	
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	
	<b>INSURER D:</b> The Travelers Indemnity Company	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

## COVERAGES

CERTIFICATE NUMBER: 358873288

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 <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included 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	6801H899998	8/31/2023	8/31/2024	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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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	Y	Y	BA0S579947	8/31/2023	8/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP0H758762	8/31/2023	8/31/2024	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
D	<input checked="" type="checkbox"/> 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/A	UB2L553909	8/31/2023	8/31/2024	<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	<input checked="" type="checkbox"/> Professional Liability & Contr. Pollution Liab Included			AEC907002005	8/31/2023	8/31/2024	Per Claim/5,000,000 Included \$5,000,000/Aggr

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

Umbrella Liability policy is a follow-form to its underlying Policies: General Liability/Auto Liability/Employers Liability.

Re: Jollyman Park All-Inclusive Playground.

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

## CERTIFICATE HOLDER

## CANCELLATION 30 Day Notice of Cancellation

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

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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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**CG D3 61 03 05**

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DATE OF ISSUE: 08/06/2023

Page 1 of 1



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the products-completed operations hazard, provided that such contract was signed by you before, and is in effect when, the "bodily injury or "property damage" occurs.

#### **Location And Description Of Completed Operations**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

- 3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

- 7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

**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.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL PROPERTY</b>   |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **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



## COMMERCIAL AUTO

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 – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

1. The following is added to Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:  
This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".
2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:  
Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A) -

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
The Travelers Indemnity Company

Countersigned by \_\_\_\_\_

**THIRD AMENDMENT TO AGREEMENT 401 BETWEEN  
THE CITY OF CUPERTINO AND MIG, INC FOR ALL-  
INCLUSIVE PLAYGROUND AT JOLLYMAN PARK**

This Third Amendment to Agreement 401 between the City of Cupertino and MIG, Inc is by and between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc, a Corporation ("Contractor") whose address is 2055 Junction Ave, Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

A. On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.

B. The City and the Contractor entered into a First Amended Agreement ("First Amended Agreement") effective October 13, 2022; and

C. The City and the Contractor entered into a Second Amended Agreement ("Second Amended Agreement") effective July 14, 2023; and

D. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.


NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$458,161.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibits A and A-1 and A-2 of the Agreement are modified to include Exhibit A-3 Additional Services, attached hereto.
2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorized Additional Services up to an amount not to exceed \$30,250.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibits A and A-1 and A-2 of the Agreement are modified to include Exhibit A-3, Additional Services, attached hereto.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.


CITY OF CUPERTINO

By   
Title Director of Public Works  
Date Sep 7, 2023


MIG, INC

By   
Title Vice President and Chief Development Officer  
Date Sep 6, 2023

APPROVED AS TO FORM

  
City Attorney

ATTEST:

  
City Clerk

Date Sep 7, 2023

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment 1		\$12,000.00
Amendment 2		\$18,250.00
Amendment 3		\$38,400
Total		\$458,161



August 22, 2023

Evelyn Moran, Public Works Project Manager  
City of Cupertino, City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: REVISED -Additional Services #3 Jollyman Park Inclusive Playground (MIG proj. no. 30902): Public Art  
(continued)

Dear Evelyn,

We are requesting use of contingency to address design development of the kaleidoscope; later phases of shop drawings and fabrication will be addressed through the contractor bidding process. This is built on keeping the design and fabrication costs to a combined budget of ~\$200,000 of approved art funding.

Add Service #2 provided preliminary funding related to artist efforts and concept development. There is \$435 in Add Service #2 associated with SAS's preliminary effort that is no longer needed and which can be applied to UAP's involvement (see note below). We will use the remaining Add Service #2 fee to cover our efforts related to art coordination that have already occurred as well as ongoing efforts, plus the Commission meeting we already attended and the one that is to be rescheduled due to a lack of quorum.

The following summarizes MIG's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021. All other terms in the original contract remain in effect.

**Add Services (Task 8: Art)**

We are requesting additional fees to cover artist fees for work related to art elements and for work efforts discussed, as noted below:

- Concept development of kaleidoscope, 3D working model, samples of the 3Form leaves, preliminary engineering report, project schedule, and budget proposal for final shop drawings and fabrication (\$38,400)

Task 8 Art	UAP Total: \$ 38,400
Less Add Service #2 remaining Art Consultant fee	-\$435
<b>Total Add Service #3</b>	<b>\$37,965</b>

Your emailed authorization to proceed so we can move forward with concept development and minimize schedule impact is much appreciated.

Sincerely,

Melissa Erikson  
Principal, Director of Community Design Services  
MIG

**UAP**

**ROCK TAVERN**

453 State Route 17K  
Rock Tavern NY 12575  
+1 (845) 567 9464  
newyork@uapcompany.com  
US1170 - Rev05

**UAP**

***Jollyman Park "Kaleidoscope" Sculpture  
Design Development***

MIG  
FEE PROPOSAL  
8/21/2023

UAP Ref US2031



August 21, 2023

Melissa Erikson  
Principal, Director of Community Design Services

MIG  
506 SW Sixth Avenue, Suite 400  
Portland, OR 97204

Dear Melissa,

**SUBJECT: Design Development Proposal – Jollyman Park "Kaleidoscope" Sculpture**

UAP is pleased to submit the following proposal to work with MIG on the design development of a bespoke fabricated metal kinetic sculpture for the new Jollyman Park in Cupertino, CA. We understand the sculpture to be roughly 10 – 15ft high by 6 – 8ft wide with a mechanism to allow children to spin the kaleidoscope "leaves" at the top of the sculpture from its base.

There are details that still need to be resolved, such as height, connection details, mechanics and finish, and we know MIG and client have the highest expectations for quality. We plan to work with MIG to refine the existing concept, provide renderings, architectural drawings and preliminary engineering for fabrication.

We anticipate this design development to be an 8 week phase, allowing for up to two rounds of revision and design changes. We will deliver at the end of this phase a 3D working model, samples of the acrylic for the "leaves", drawings, preliminary engineering report, project schedule, and a budget proposal for the next phase. The next phase proposal will be for any further needed mock-ups, along with a full proposal for shop drawings and fabrication.

We understand there are budget limitations, and if it's not possible to achieve all of MIG's goals, we will provide value engineering recommendations to keep design and fabrication costs to a combined budget around \$200,000 total (Fabrication is presently projected to be \$165 - \$175,000).

We are excited to collaborate with MIG on this exciting project and we are looking forward to building a long term and successful relationship.

**SCOPE:**

- Staff a Technical Designer and Project Manager for an 8 week process.
  - Technical Designer's hours are capped at 86 hours total
  - Project Manager's hours are capped at 36 hours total
  - Hours beyond this will be charged at \$140/hour for Technical Designer and \$195/hour for Project Manager.
- Coordinate with mechanical engineer (subcontracted by UAP) to propose and design mechanical operation of kinetic and non-motorized components.



- Mechanical engineer to provide one round of revision and design changes.
- UAP NY project management with regular weekly/biweekly updates for MIG and architecture team, including project status reports and coordination for client signoffs.
- Define 3D model providing up to two rounds of revisions and design changes.
  - Illustrate mechanical connections and mounting solution.
- Provide off-the-shelf acrylic color samples from material provider for client selection and approval.
- Develop fabrication methodology.
- Present preliminary drawings to client for approval.
- Provide an estimated budget and timeline for further mock-ups and full fabrication within budget cap of \$200,000 for design and fabrication.

## EXCLUSIONS:

- Assumes MIG can provide existing model at the onset of the project.
- Assumes MIG can provide necessary requirements for site and operation.
- Excludes renderings or site visualizations.
- Excludes redesigns or 3D modelling of new concepts.
- Excludes sampling beyond listed above samples.
- Excludes site survey, shop drawings, fabrication, shipping, and installation.
- Excludes contracting additional consultants, e.g. structural engineer, lighting consultant, etc.
- Excludes coordination with other consultants/contractors, unless listed.
- Excludes applicable sales taxes.

**Design Development Fee: \$38,400**

## Payment Schedule

Item	Amount	Date Due
30% deposit on signing	\$11,520	Due on signing
35% progress payment after preliminary design review	\$13,440	Due after preliminary review
35% final payment upon completion	\$13,440	Due upon completion
<b>TOTAL</b>	<b>\$38,400</b>	

Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

*Jason Marquis*

**UAP PRODUCTION LLC**

Jason Marquis  
Special Projects  
[jason.marquis@uapcompany.com](mailto:jason.marquis@uapcompany.com) | (917)757-9913

All Billing Enquiries are to be sent to:

E | [receivable.newyork@uapcompany.com](mailto:receivable.newyork@uapcompany.com)  
P | +1 (845) 567 9464 | Ext 223



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/7/2023

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549  License#: 6003745 MIGINC0-01	<b>CONTACT NAME:</b> Jo Lusk	
	<b>PHONE (A/C, No, Ext):</b> 510-272-1465 <b>FAX (A/C, No):</b>	
	<b>E-MAIL:</b> CertsDesignPro@AssuredPartners.com	
	<b>ADDRESS:</b> CertsDesignPro@AssuredPartners.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> BERKLEY INSURANCE COMPANY	32603
	<b>INSURER B:</b> Travelers Property Casualty Company of America	25674
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	25682
	<b>INSURER D:</b> The Travelers Indemnity Company	25658
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b> 214942187	<b>REVISION NUMBER:</b>
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 <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included 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	6801H89998	8/31/2023	8/31/2024	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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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	Y	Y	BA0S579947	8/31/2023	8/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP0H758762	8/31/2023	8/31/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	<input checked="" type="checkbox"/> 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/A	UB2L553909	8/31/2023	8/31/2024	<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	<input checked="" type="checkbox"/> Professional Liability & Contr. Pollution Liab Included			AEC907002005	8/31/2023	8/31/2024	Per Claim/5,000,000 Included \$5,000,000/Aggr

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Umbrella Liability policy is a follow-form to its underlying Policies: General Liability/Auto Liability/Employers Liability.  
Re: Jollyman Park All-Inclusive Playground The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

<b>CERTIFICATE HOLDER</b>  City of Cupertino 10300 Torre Ave. Cupertino CA 95014	<b>CANCELLATION 30 Day Notice of Cancellation</b>  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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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

**Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**CG D3 61 03 05**

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DATE OF ISSUE: 08/06/2023

Page 1 of 1



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the products-completed operations hazard, provided that such contract was signed by you before, and is in effect when, the "bodily injury or "property damage" occurs.

**Location And Description Of Completed Operations**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.



**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.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL PROPERTY</b>   |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **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

## COMMERCIAL AUTO

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 – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured"...

2. The following is added to Paragraph B.5., **Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.





WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A ) –

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
The Travelers Indemnity Company

Countersigned by \_\_\_\_\_

**SECOND AMENDMENT TO AGREEMENT 401**  
**BETWEEN THE CITY OF CUPERTINO AND MIG, INC**  
**FOR ALL-INCLUSIVE PLAYGROUND AT JOLLYMAN**  
**PARK**

This Second Amendment to Agreement 401 between the City of Cupertino and MIG, Inc is by and between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc, a Corporation ("Contractor") whose address is 2055 Junction Ave, Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

A. On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park .

B. The City and the Contractor entered into a First Amended Agreement ("First Amended Agreement") effective October 13, 2022; and

C. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$419,761.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibits A and A-1 of the Agreement is modified to include Exhibit A-2 Additional Services, attached hereto.
2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorized Additional Services up to an amount not to exceed \$30,250.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibits A and A-1 of the Agreement is modified to include Exhibit A-2, Additional Services, attached hereto.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

MIG, INC

By Pamela Wei  
Title City Manager  
Date Jul 14, 2023

By Christopher J. Beyer  
Title Vice President and Chief Development Officer  
Date Jul 14, 2023

APPROVED AS TO FORM

Christopher D. Jensen  
City Attorney

ATTEST:

Kristen Spencer  
City Clerk

Date Jul 14, 2023

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment 1		\$12,000.00
Amendment 2		\$18,250.00
Total		\$419,761.00



June 16, 2023

Evelyn Moran, Public Works Project Manager  
City of Cupertino  
City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: Additional Services Jollyman Park Inclusive Playground (MIG proj. no. 30902): Public Art

Dear Evelyn,

As discussed, the City is requesting a presentation to the Art Commission in support of additional funding for Jollyman AIPG. Art & Culture Commission supported moving the kaleidoscope and musical bench or walk forward. We are working with Scientific Art Studios to develop these ideas further in preparation for going back to the Commission in July. For now, we are requesting use of contingency to address the concept work to move these forward and get blessed; Design Development/Construction Documents and fabrication will be a separate add service. This is built on \$380,000 of approved art funding but knowing that the desire is to only use a portion of that.

The following summarizes MIG's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021. All other terms in the original contract remain in effect.

**Add Services #3 (New Task 8: Art)**

We are requesting additional fees under a new task number for additional work related to art elements and for work efforts discussed, as noted below:

- Creating a presentation on the art elements in support of the funding request. Melissa's virtual attendance and presentation at the Art Commission meeting in San Jose on Monday, May 22, 2023 (completed at City authorization) and in July. (\$3,550)
- Concept development of kaleidoscope and musical bench or walk (\$14,700)

Task 8 Art

**Total: \$ 18,250**

Prompt authorization to proceed so we can move forward with concept development and be able to meet the July Commission date is much appreciated.

Sincerely,

Melissa Erikson  
Principal, Director of Community Design Services  
MIG



**FIRST AMENDMENT TO AGREEMENT 401 BETWEEN  
THE CITY OF CUPERTINO AND MIG, INC., FOR  
ALL-INCLUSIVE PLAYGROUND AT JOLLYMAN PARK**

This First Amendment to Agreement 401 between the City of Cupertino and MIG, Inc., is by and between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc., a Corporation ("Contractor") whose address is 2055 Junction Ave., Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.

A. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$401,511.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibit A of the Agreement is modified to include Exhibit A-1 Additional Services, attached hereto.
2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorized Additional Services up to an amount not to exceed \$12,000.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibit A of the Agreement is modified to include Exhibit A-1, Additional Services, attached hereto.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE



IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

MIG, INC.

By *Pamela Wu*  
Title City Manager  
Date Oct 13, 2022

By *Christopher Jensen*  
Title Vice President/Chief Development Officer  
Date Oct 13, 2022

APPROVED AS TO FORM

*Christopher D. Jensen*  
City Attorney

ATTEST:

*Kristen Aguirre*  
City Clerk

Date Oct 13, 2022

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment #1	Change in Scope, Change in Contract Amount	\$12,000.00
Total Agreement		\$401,511.00



August 31, 2022

Evelyn Moran, Public Works Project Manager  
City of Cupertino  
City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: Additional Services Jollyman Park Inclusive Playground (MIG proj. no. 30902)

Dear Evelyn,

As discussed, a restroom is being added to the project expanding work beyond that in the original scope of work. The following summarizes MIG's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021; BKF's effort will be addressed through a separate agreement. All other terms in the original contract remain in effect.

**Add Services #2 (New Task 7: Restroom) ..... \$12,000**

We are requesting additional fees under a new task number for additional work related to adding a restroom to the project and for *anticipated* work efforts discussed, as noted below:

- o Coordinating with BKF who is leading the restroom portion of the project
- o Providing aesthetic coordination to ensure the restroom finishes work with the play area improvements
- o Planting and irrigation design for the expanded work area for all drawing submittals (50%, 90%, 100%, and bid set)

*It is understood that the restroom will be integrated into the play area submittals as a single project for review and bidding; the restroom will not have separate review meetings but reviews will be incorporated into the planned review meetings for the play area.*

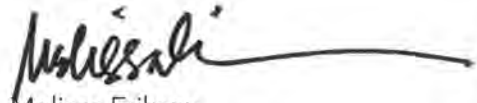
Task 7 Restroom

**Total: \$ 12,000**

Evelyn Moran  
August 31, 2022  
Page 2 of 2

Please feel free to contact us with any questions or additional information needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Erikson', followed by a long horizontal flourish.

Melissa Erikson  
Principal, Director of Community Design Services  
MIG

Please sign below to indicate your agreement to the terms outlined in this letter as a revision to the original contract and budget.

---

Evelyn Moran, Project Manager  
City of Cupertino

Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/28/2022

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549	<b>CONTACT NAME:</b> The Certificate Team	
	<b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b>	
<b>INSURED</b> MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710	<b>E-MAIL:</b> CertsDesignPro@AssuredPartners.com	
	<b>ADDRESS:</b>	
<b>License#:</b> 6003745 MIGINCO-01	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Berkley Insurance Company	32603
	<b>INSURER B:</b> Travelers Property Casualty Company of America	25674
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	25682
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** 1669425263**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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included 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	6801H899998	8/31/2022	8/31/2023	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	<b>AUTOMOBILE LIABILITY</b> <input checked="" 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	Y	Y	BA0S579947	8/31/2022	8/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP0H758762	8/31/2022	8/31/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	UB2L553909	8/31/2022	8/31/2023	<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	N	Y	AEC905795904	8/31/2022	8/31/2023	Per Claim \$5,000,000 Aggregate Limit \$5,000,000

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

Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability/Employers Liability.  
Re: Jollyman Park All-Inclusive Playground The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

**CERTIFICATE HOLDER****CANCELLATION 30 Days Notice of Cancellation**

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

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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**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.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL PROPERTY</b>   |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **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



## COMMERCIAL AUTO

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:

- If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- The airbags are not covered under any warranty; and
- 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:

- You (if you are an individual);
- A partner (if you are a partnership);
- A member (if you are a limited liability company);
- An executive officer, director or insurance manager (if you are a corporation or other organization); or
- 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.

POLICY NUMBER: 6801H899998

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

### **Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

- 3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

- 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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

- 7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A) -

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_





## **DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)** **WITH MIG, INC**

### **1. PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and MIG, Inc ("Consultant"), a Corporation for All-Inclusive Playground at Jollyman Park ("Project"), and is effective on the last date signed below ("Effective Date").

### **2. SERVICES**

**2.1 Basic Services.** Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant's written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

**2.2 Additional Services.** City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal ("Additional Services"). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to "Services" in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant's Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

### **3. TIME OF PERFORMANCE**

**3.1 Term.** This Agreement begins on the Effective Date and ends on December 31, 2024, unless terminated earlier as provided herein ("Contract Time"). 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.** All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin



work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

**3.3 Time is of the essence** for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

#### **4. COMPENSATION**

**4.1 Maximum Compensation.** City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$389,511.00 ("Contract Price"), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

**4.2 Basic Services.** City will pay Consultant \$389,511.00 ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants' costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction.

**4.3 Additional Services.** City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$0.00 Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

**4.4 Invoices and Payments.** Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing rate or Sub- Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.



- b. Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

## **5. INDEPENDENT CONTRACTOR**

**5.1 Status.** Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

**5.2 Qualifications and Standard of Care.** Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

**5.3 Permits and Licenses.** Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

**5.4 Sub-Consultants.** Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

**5.5 Tools, Materials, and Equipment.** Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

**5.6 Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. 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 Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant 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.

**5.7 Errors and Omissions.** Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

During the Contract Time, Consultant 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. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), 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 a third-party without prior written approval by City

**7.2 Copyright.** To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

**7.3 Patents and Licenses.** Consultant 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 Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

**7.5 Deliverables and Format.** Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar



items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

## **8. RECORDS**

**8.1** Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

**8.2** Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

**8.3** Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant 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**

Consultant 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 Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

## **10. PUBLICITY / SIGNS**

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) 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 Agreement, 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 or active



negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

**a. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

**b. Claims Involving Intellectual Property.** Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

**c. Claims for Other Liability.** Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.



**11.2** Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

**11.3** Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

**11.4** Consultant 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 Consultant 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.

**11.5** This Section 11 shall survive expiration or termination of this Agreement.

## **12. INSURANCE**

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

## **13. COMPLIANCE WITH LAWS**

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

**13.2 Labor Laws.** Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

**13.3 Discrimination Laws.** Consultant 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. Consultant shall comply with all anti-discrimination laws, including



Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant 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. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

**13.5 Remedies.** A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

#### **14. PROJECT COORDINATION**

**14.1 City Project Manager.** The City's Project Manager for all purposes under this Agreement will be Evelyn Moran, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

**14.2 Consultant Project Manager.** Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Jan Eiesland who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant 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. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.



**16. TERMINATION**

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

**17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant 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. This Section 18 survives the expiration/termination of this Agreement.

**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 any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

**21. ENTIRE AGREEMENT**

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. 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 this 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 contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

**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.

**25. SURVIVAL**

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

**26. NOTICES**

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery 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:

<b>To City of Cupertino:</b> Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014  Attention: Evelyn Moran Email: evelynm@cupertino.org	<b>To Consultant:</b> MIG, Inc 2055 Junction Ave, Suite 205 San Jose, CA 95131  Attention: Jan Eiesland Email: jeiesland@migcom.com
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**27. EXECUTION**

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. 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.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

**CITY OF CUPERTINO**

A Municipal Corporation

By Dianne Thompson (she/her)

Name Dianne Thompson (she/her)

Title Acting City Manager

Date Dec 9, 2021

**MIG, INC**

By Chris Beynon

Name Chris Beynon

Title Vice President/Chief Development Officer

Date Nov 24, 2021

**APPROVED AS TO FORM:**

Christopher D. Jensen

CHRISTOPHER D. JENSEN

Cupertino City Attorney

**ATTEST:**

Kirsten Squarcia

KIRSTEN SQUARCIA

City Clerk

Date Dec 9, 2021





## Jollyman Park All-Inclusive Playground

### Scope of Work

11.12.2021

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Jollyman Park All-Inclusive Playground Project. This scope captures and clarifies assumptions of the tasks incorporated in the attached Fee Proposal spreadsheet. The details are based on our understanding of the requirements stated in the Jollyman Park Aug. 2, 2021 RFQ and Addenda.

#### Project Understanding

Located in Cupertino, CA, the project entails replacing the southern existing play area at Jollyman Park with an all-inclusive playground. Per the City's RFQ, the project aims to incorporate the best in supportive play theories and practices to appeal to people of all ages and abilities. The design will support recreation and social interaction for people with autism, sensory challenges, cognitive, developmental, and physical disabilities – as well as those without special needs. The project will have specific all-inclusive play amenities that will be further developed from the initial concept design with community engagement. Potential site improvement areas include walkways, storm water runoff reduction, utility identification and adjustments, landscape, irrigation, and similar site improvements within the project area. Recommended site improvements shall be based on the established Cupertino Engineering Standards. The design will be in accordance with AIPG funding guidelines; local, state and federal ADA and playground safety guidelines and requirements.

### TASK 1: PROJECT INITIATION

#### Task 1.1 Project Kick-off Meeting & Site Tour

To initiate the project, the MIG Team will participate in a meeting with the City of Cupertino Jollyman project team ('The City') to discuss the project goals, opportunities, and challenges, as well as to establish project communication protocols, review project tasks and schedule, and other coordination topics to be determined in cooperation with the City. We see this meeting as an important step in developing a collaborative team that is committed to a shared process and vision for Jollyman Park.

The MIG Team will also conduct a site tour to observe and document the existing site conditions, uses and character of Jollyman Park. Topic areas to be observed include circulation, accessibility, signage and wayfinding, lighting, natural features, social relationships, and experiential opportunities.

Depending on weather and current safety protocols this may be staged as two meetings within the same week: a virtual kick-off/goals meeting followed by an in-person site tour of Jollyman Park. If an in-person kick-off meeting is feasible, then the meeting and site visit will be scheduled to occur consecutively on the same day.

#### Task 1.2 Project Scope & Schedule Finalization

MIG will work with the City of Cupertino to customize and finalize the scope and schedule, so that tasks meet the City's preferred process and timeline.

#### Task 1.3 Background Information Request & Assembly

The MIG team will prepare a consolidated list of background information needed from the City. MIG will assemble the information and make it available for use by all team members over the course of the project.

**Task 1.4 Community Engagement Part 1: *Prepare to Engage***

MIG will develop a plan for community engagement, mapping out how and when to use engagement and communication techniques in a Community Outreach and Engagement Plan. We will work with the City to identify stakeholders, including both City staff and community groups, whose insights and support will help build a successful park. This plan will guide our efforts as we gather information, listen to the community and work towards the final site plan. Should the community engagement plan identify different efforts than those included below, the scope and fee will need to be revised.

**Task 1.5 Inclusive Play Primer Presentation**

To assist the City in gaining internal staff support for the Jollyman Play Area mission and goals, MIG will provide a two-hour interactive virtual presentation about the importance and goals of an inclusive play area. MIG will create a virtual presentation to be attended by City Staff and key stakeholders. The goal for this meeting is to get all the various stakeholders to understand the project goals, learn information about inclusivity, and begin speaking the same language when it comes to inclusive play environments. The City may post to their website for a period of 3 months and keep a recording of the presentation for internal staff use.

**Task 1.6 Project Management and Team Coordination**

MIG will coordinate the work of the MIG Team throughout the duration of the design phases, prepare the Project schedule, monitor the Project budget, establish, and monitor project quality, setup project accounting and prepare and submit monthly invoices. The MIG Team will coordinate and strategize with the City via 1-hour video calls to review progress and discuss direction and next steps. Please refer to the accompanying fee spreadsheet for the assumed task duration and number of meetings for each phase. MIG's project manager will participate in these calls, as well as other pertinent team member at times, depending on the agenda.

**TASK 1 DELIVERABLES**

- Final Scope and Schedule
- Community Outreach and Engagement Plan
- Inclusive Play Primer Recording
- Coordination meeting notes (for meetings led by the MIG Team)
- Monthly invoices

**TASK 2: DATA COLLECTION AND EXISTING CONDITIONS****TASK 2.1 Topographic Survey**

BKF will prepare a topographic survey of the 1.75 ac project area and surroundings as outlined on the project limits diagram (see Survey Exhibit on the last page). Topographic survey will not include a boundary survey.

**Task 2.2 Existing Utilities & Stormwater Coordination**

BKF will identify existing utility locations, through records research and online databases, perform a Site visit to document those utilities whose above ground features can be determined by visual means and discuss potential utility constraints with MIG and the City. BKF will also document in a graphic the existing project site drainage conditions, along with new stormwater requirements to meet City/County/Regional requirements.

**TASK 2.3 Geotechnical Report**

Ninyo + Moore will conduct geotechnical sampling, to include taking two exploratory borings within the project site to ascertain subsurface soil conditions. They will interpret borings and provide a geotechnical report to address design of the playground pavement types and footings. Provide a copy of the Geotechnical Report to the City.



**TASK 2.4 Review of Requirements, Existing Conditions and Background Documents**

The MIG Team will review codes, standards and environmental regulations applicable to Jollyman Park and the potential park improvements. We will review City-provided documents and on-line research, regarding the site's natural, social and cultural history, including land use, demographics, property boundaries, as well as ongoing site operations and maintenance issues.

**Task 2.5 Site Analysis, Opportunities & Constraints**

The MIG Team will develop a scaled base map of the park site, using an aerial and/or the survey, which assembles relevant information on the existing park site and the area immediately adjacent, including circulation, park features, trees and other information as appropriate. We will prepare a graphic summarizing existing assets, issues and opportunities, including circulation and accessibility, landscape features and overall character, paying special attention to human developmental needs and environmental health and sustainability.

**Task 2.6 Community Engagement Part 2: *Listen, Learn, Vision***

Building on the engagement plan and key stakeholders identified in Community Engagement Part 1, The MIG Team will prepare graphic materials to be used in several outreach methods identified in the plan. Our assumption is that this will include an online survey; boards with similar content and a QR code that the City may print, laminate and hang at the park; (1) virtual community meeting; and (2) smaller stakeholder meetings—either virtual or outdoors. Materials will be designed to both share the site analysis and listen to the community's own site expertise and local knowledge. In addition to patterns of use and desired experiences, MIG will work with the City to strategize engagement activities that will also provide an understanding of the site and area's underlying character and cultural influences, which can be expressed in the design.

**Task 2.7 Analysis and Outreach Summary Report**

The MIG team will prepare an existing condition report that details the requirements, existing conditions, assumptions, constraints, opportunities, risks and risk mitigation. The report should also reflect community outreach participant input. This report will be available for the City to post to the web to keep the community informed, for help with fundraising, and for use as background for other City presentations made by City staff.

**Task 2.8 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 2 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Topographic Survey (AutoCad file and PDF)
- Existing Utilities and Drainage Conditions Summary Graphic
- Geotechnical Report
- Project Base Map & Site Analysis
- Site Analysis, Opportunities & Constraints Graphics
- Community Engagement Part 2 materials
- Analysis and Engagement Summary Report
- City Review Meetings Agendas & Meeting summaries
- Monthly invoices

**TASK 3: CONCEPT DESIGN****Task 3.1 Draft Concept Designs**

The MIG Team will prepare up to (2) Concept Plans that depict the scale and relationships between the different park areas and show how the elements are organized and connected within each area. Alternatively, the analysis

and input may direct the project towards one primary layout with options. The Concept drawings will contain enough information to explain the general form, content, and quality of the design, including:

- Site vision statement with a short narrative description that characterize the main features, unique aspects, visitor experience, program elements, and operations
- Concept plan
- Precedent design images to support the design ideas
- Opinion of Probable Costs
- Monthly Invoices

### **Task 3.2 City Review Meeting**

Two-hour virtual meeting. MIG will present the (2) Concept Plans to City Staff for feedback and approval. MIG and the City will also use this meeting to coordinate the details of the upcoming public engagement actions and events.

### **Task 3.3 Commission/Council Meetings**

MIG will present the Concept Plans at (2) Commission/Council meetings for input and approval, such as Parks and Recreation Commission and City Council. Assume each is a virtual one-hour meeting. More presentations can be accommodated through extra services if needed.

### **Task 3.4 Community Engagement Part 3: *Consider the Concepts***

MIG will revise/finalize the Concept Plans per City feedback and create both analog and digital content to share the Concept Plans with the public for evaluation and feedback. MIG will review the public engagement materials with City Staff for approval. MIG will monitor any online survey results over a two- to three-week period. MIG will also lead up to (2) additional community conversations (either facilitated online or, if social distancing policies allow as small coffee meetings), intercept events, pop-ups, or outreach opportunities as determined with the City.

### **Task 3.5 City Review Meeting**

Two-hour virtual meeting. MIG will meet with the City to discuss the community engagement process and feedback; and to go over options and direction for developing the Preferred Concept.

### **Task 3.6 Preferred Concept Design**

The MIG Team will incorporate the public and City feedback into a Preferred Concept. The Preferred Concept will contain enough information to explain the general form, content, and quality of the design, including:

- a statement describing the vision for the site
- a short narrative description that characterizes the main features, unique aspects, visitor experience, program elements, and operations
- precedent design images to support the concept plan
- Conceptual level grading plans for disturbed areas within the project limits
- Conceptual utility connection plans including storm drainage, preliminary stormwater treatment and detention facility sizes, sanitary sewer, water, and fire protection services
- Opinion of Probable Costs

### **Task 3.7 City Review Meeting**

Two-hour virtual meeting. MIG will present the Preferred Concept to the City for review and feedback.

### **Task 3.8 Illustrative 3d/Bird's-eye view Graphic**

Provide an illustrative 3d or Bird's-eye view site graphic to share with the community and help with fundraising.

### **Task 3.9 Community Engagement Part 4: *Define the Project***

MIG will finalize the Preferred Concept per the City feedback and will create graphics and materials for a final virtual public presentation. MIG will review the public engagement materials with City Staff for approval. Allow for (1) round of revisions.



MIG will share the Preferred Concept design and Illustrative Graphic with the public to show how earlier community input shaped the final concept. MIG will provide a multi-media, online walk-through of the Preferred Concept with an opportunity to provide general feedback. This step is an opportunity to celebrate the culmination of the community engagement process and mark the transition to the next stage—construction drawings and building the new playground.

**Task 3.10 City Review Meeting**

Two-hour virtual meeting. MIG will meet with City Staff to discuss the public's comments and get final approval before moving into the Construction Documents phase.

**Task 3.11 Environmental Approvals Coordination**

MIG will provide minor assistance with graphics and coordination. More help may be provided if desired as additional services.

**Task 3.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 3 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Draft Plans & Opinion of Probable Costs
- Commission/Council Presentations (2)
- Community Engagement Part 3 materials and summaries
- City Review Meetings Agendas & Meeting summaries
- Preferred Concept Plan & Opinion of Probable Costs
- Illustrative 3D/Birdseye Graphic
- Community Engagement Part 4 materials and summaries
- Monthly invoices

**TASK 4: CONSTRUCTION DOCUMENTS (CD)**

The MIG Team will prepare design plans, construction documents, specifications and opinions of probable costs at the milestones noted below. We will schedule the design and bid process, identifying significant milestone dates and actions items for the project team and assist the City in developing bid documents to advertise for construction. The City will provide any City-required standard details, titleblocks, requirements, and specifications to the MIG team at the beginning of this phase. All submittals will be in the form of a PDF submitted through email, Google drive, or other free and readily available digital sharing format approved by The City.

**Task 4.1 Preliminary CD Plans**

The MIG Team will prepare preliminary plans in AutoCAD showing the layout of proposed play area elements, including play elements, paving, site furnishings, planting areas and other site features.

**Task 4.2 Preliminary CD City Check-in Meeting**

MIG will facilitate a meeting with City staff to review consolidated comments on the preliminary plans to clarify questions and confirm corrections or minor refinements needed for the 50% set. A summary of the meeting will be prepared.

**Task 4.3 50% CD Submittal**

The MIG Team will prepare construction documents to a 50% level of completion, drafted in digital format using AutoCAD. Plans shall be prepared at a minimum of 1" = 20' scale. As part of the package, the MIG Team will

develop a materials and equipment schedule reflecting site material, equipment and furnishing selections so the City can review the new playground's proposed aesthetic vision.

This scope assumes the development of one set of construction drawings for a single-phase project. If the City's budgeting results in the need for phasing or alternates, these can be provided for an additional fee.

**Task 4.4 50% CD Opinion of Probable Costs**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans.

**Task 4.5 50% CD Regulatory Approval Coordination/Assistance (Allowance)**

The MIG Team has a small allowance to allow for regulatory approval document preparation and coordination for City reviews such as ADA review, stormwater, and the maintenance department.

**Task 4.6 City Review Meeting**

The City will provide one set of consolidated review comments detailing the required changes to the 50% CD drawings and opinion of probable costs. These will be discussed in a two-hour (maximum) virtual meeting between the City and MIG to confirm design direction before beginning the 90% CD package.

**Task 4.7 90% CD Submittal**

Based on the 50% CD's submittal and incorporating the City's direction from the 50% CD review meeting, the MIG Team will prepare construction documents to a 90% level of completion. The MIG Team will also provide CSI format technical specifications related to the scope of work. Design documentation, including specifications, will be consistent with required federal, state, and local codes and regulations.

**Task 4.8 90% CD Opinion of Probable Costs & QA/QC Review**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans. MIG's QAQC team will perform an in-house review of drawing set and specifications to ensure Quality Assurance + Quality Control.

**Task 4.9 City Review Meeting**

The City will provide one set of consolidated review comments detailing any required changes to the Design 90% CD package. These will be discussed and finalized in a two-hour (maximum) virtual meeting between the City and MIG prior to finalizing the 100% CD package.

**Task 4.10 100% CD Submittal/Permit Set**

Based on the final consolidated list of comments and direction from the City, the MIG Team will advance the construction documents set to a level of 100% completion. We will produce final technical specifications in CSI format to describe the requirements for construction materials, equipment, systems, standards, and workmanship. The City will be responsible for providing the Division I specifications sections. The MIG team assumes that multiple permit packages are not required and that 100% construction documents will be comprise the construction permitting set. The MIG Team will package the 100% complete construction documents and submit to the City for final review and comment (PDF format). One round of minor edits may be incorporated by the MIG Team to create the final Permit Set.

**Task 4.11 Bid Set Preparation**

Incorporating minor revisions related to comments from the permitting review, the MIG Team will prepare final design (bid) documents based on the 100% drawings and technical specifications.

**Task 4.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 4 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Preliminary plans (In-progress check-in) for City Review
- Design Development (50% CD) Submittal - Drawings and Spec TOC
- Design Development (50% CD) Opinion of Probable Costs

- 90% CD Submittal - Drawings and Specs
- 90% CD Opinion of Probable Costs
- 100% CD Drawing Set - Drawings and Specs
- 100% CD Opinion of Probable Costs
- Monthly invoices

## **TASK 5: BIDDING SUPPORT**

### **Task 5.1 Pre-bid Meeting**

MIG will attend the pre-bid meeting to respond to questions about the Construction Documents.

### **Task 5.2 Bid Assistance Allowance (Bidder Question Response)**

The MIG Team has made an allowance to prepare responses to bidders' questions to clarify the construction documents.

### **Task 5.3 Conformed Construction Set Submittal**

Once the bid period is complete and the contractor has been selected, the MIG Team will prepare a final conformed set for the contractor's use during construction. The conformed construction set will incorporate the addenda and responses to bidders' questions.

### **Task 5.4 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

## **TASK 5 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Responses to Bidders' Questions
- Conformed Construction Set
- Monthly invoices

No allowance has been made for any value engineering at the Bid Phase. Should bids come in higher than anticipated due to unforeseen market conditions, the MIG Team will meet with the Client to discuss options to move the project forward. Any additional design, coordination or submittals can be provided for additional services.

## **TASK 6: CONSTRUCTION ADMINISTRATION**

### **Task 6.1 Preconstruction Meeting Participation**

The MIG Team will attend and participate in a Pre-Construction meeting scheduled and lead by the City. The MIG Team will attend the meeting to support the City in answering the contractor's questions. This scope assumes attendance by the lead landscape architect and civil engineer. If needed, other design team members can be made available through additional services.

### **Task 6.2 Responses to Contractor Submittals**

The MIG Team will review and take appropriate action (approve with modifications, reject, etc.) on the Contractor's submittals such as RFI's, Shop Drawings, Product Data and Samples, to confirm conformance with the design intent of the project and compliance with the information given in the Contract Documents. Reviews will take place in accordance with reasonable promptness and according to language agreed upon in the bid documents. Reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto. Approval of a specific item shall not indicate approval of an assembly of which the item is a component. The MIG Team assumes a maximum



of two reviews of contractor submittals and shop drawings. Additional reviews can be provided through additional services (see last section).

#### **Task 6.3 Construction Meetings and Site visits**

MIG will attend up to (4) construction meetings to review construction progress and Contractor's compliance with the design intent. These meetings can be virtual or on-site, depending on current safety measures. In addition, MIG will perform up to (8) site visits and the Civil engineer will perform up to three (3) site visit/reviews, as requested by City. Task assumes a maximum construction duration of ten months.

#### **Task 6.4 Preliminary Punch List Site Visit and Preparation**

When notified that the construction is substantially complete, the MIG team will make one site visit with the City's representative and perform a Preliminary Punch List inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a "punch list," describing the items it recommends for the contractor's correction prior to scheduling the Final Punch List Site Visit.

#### **Task 6.5 Final Punch List Site Visit and Preparation**

When notified that the construction is fully complete, the MIG team will make one site visit with the City's representative and perform a "Final" inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a Final Punch List, describing the items it recommends for the contractor's correction prior to closing out the construction contract.

#### **Task 6.6 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 6 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Submittal and Shop Drawing review documentation
- Responses to contractor's Requests for Information
- Construction Meetings – (up to 4)
- Site Visits – (up to 11)
- Preliminary Punch List
- Final Punch List
- Monthly invoices

### **ADDITIONAL SERVICES**

The MIG Team has a broad range of experience, skills and services. The following is a non-exhaustive list of items that are not included in this scope but could be provided as additional services if they are needed or desired by the City:

- Additional community engagement beyond the scoped items in the process (including digital advertisement, intercept surveys, additional surveys/workshops/open houses/pop-up events).
- Additional public meetings beyond the scoped items in the process (including attending City Council meetings, public hearings, hearing examiner meetings, public open houses, and local association meetings).
- City project team meetings beyond those listed
- Additional design alternative drafts or renderings other than those listed.
- Preparation of phased or multiple-packaged construction documents.



- Preparation of special studies outside our scope of work.
- Intensive research and testing to determine conditions of existing site utilities (i.e., potholing, smoke testing, dye testing, pressure testing, fire flow testing, videotaping, etc.).
- Utility Relocation Plans
- Supplemental surveying services beyond the initial survey necessary for completeness.
- Appeal, Design Exception, and Alternative Review applications.
- Services related to future facilities and improvements.
- Design of water capture/re-use systems, pump stations, sump pumps, or force mains for sanitary sewer or storm drainage systems, if required.
- Design of systems to comply with or obtain LEED certification, including preparation of LEED documentation and addressing review comments from the USGBC.
- Redesign of civil/landscape items following completion of construction document as a result of site and building plan changes or unforeseen existing conditions.
- Design for areas not identified in the project understanding.
- Value Engineering. If the MIG Team is needed to assist with VE and/or bid negotiations, it is available on a Time and Materials basis.
- Arborist Report
- Project Record Drawings

#### PROJECT SCOPE ASSUMPTIONS:

- CLIENT: 'The City' refers to the City of Cupertino's Jollyman project team.
- BUDGET: Scope and fee is based on a construction budget of \$2,910,000 (\$2,670,000 base budget with a \$240,000 contingency). The City has identified a fundraising goal of \$1,000,000. If fundraising goals are not met, there will be a shortfall. Redesign to value engineer the project will require a contract modification.
- DELIVERABLES: Unless otherwise indicated, all deliverables will be provided in PDF format. Native files will be created in software selected at the consultant team's discretion. If the City desires printed copies or specific file formats, the MIG Team is happy to work with the City to develop a strategy that meets the project's budget and needs.
- IN-PERSON MEETINGS: Team meetings and most community engagement events are assumed to be virtual with some limited outdoor engagement events as noted.
- TRANSLATION: All documentation will be in English; however, as an additional service, the MIG Team can provide exhibits in other languages.
- CONSOLIDATED COMMENTS: The City will provide MIG with (1) set of vetted and consolidated comments from all parties/agencies in all tasks involving review and feedback.
- PERMIT FEES: All permit fees and agency charges will be paid by others.
- UTILITIES: The site is adequately served by utilities adjacent to the site.
- OFFSITE UTILITIES/STREET/PARKING DESIGN: Offsite utility or street/parking design beyond the identified playground area is not included in this proposal.
- ENVIRONMENTAL WORK: Floodplain, wetland, soil remediation or environmental work is not included in this proposal.
- CONSTRUCTION TESTING + INSPECTIONS: Necessary testing and inspections during construction will be provided by others.
- EXISTING UTILITY DISTRIBUTION: It is assumed that existing utility distribution systems will not be impacted by the proposed development.

**SURVEY AREA:**





[illegible]





## EXHIBIT B: Schedule

### Jollyman Park All-Inclusive Playground

Task 1: Project Initiation and Ongoing Project Management – January 2022 (0.5 month)

Task 2: Data Collection and Existing Conditions – Jan -Feb 2022 (1.5 months)

Task 3: Concept Design – Mar – June 2022 (4 months)

Task 4: Construction Documents – June 2022 – Mar 2023 (7 months)

Task 5: Bidding Support – Apr.-June 2023 (2.5 months)

Task 6: Construction Administration – June 2023 – Mar. 2024 (9.5 months)

Project schedule is subject to refinement at the kickoff meeting and will be regularly updated during the course of the project, working with City staff, to better reflect project needs and City review times.



## EXHIBIT C: Hourly Rates and Reimbursable Expenses

### Jollyman Park All-Inclusive Playground

Unless specified otherwise, invoices are submitted monthly showing time and charges for professional services by staff category and a separate figure for expenses. Invoices are payable upon receipt. Invoices unpaid past 30 days are subject to interest at 1-1/2% per month. MIG Inc. labor includes all overhead. Hourly rates by position are noted below:

<u>Role</u>	<u>\$/hour</u>
Principal-in-Charge	\$210
Project Manager	\$180
Play Specialist/CPSI	\$160
Project Associate	\$95
Irrigation Designer	\$145
Community Outreach Specialist	\$140
Senior Urban Designer	\$150
Project Assistant	\$80
Planner/Master Plan Advisor	\$165
ADA Specialist	\$135
Graphic Designer	\$140

Expenses are as follows:

<u>Type</u>	<u>Rate</u>
Automobile travel	current IRS rate
Meals	cost + 5%
Photocopy (letter and tabloid)	\$0.10/print
Color copies (letter and tabloid)	\$0.50/print
Commercial printing/plotting	cost + 5%
Subcontractors	cost + 5%
Other (lab tests, aerial photos, etc)	cost + 5%

**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement 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 (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant'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 Form 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 CA 00 01 covering any auto (including owned, hired, and non-owned autos) 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. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. 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 Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

**OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:



***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant'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***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

***Verification of Coverage***

Consultant must furnish acceptable insurance 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 prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

***Higher Insurance Limits***

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

***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2021

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549  License#: 6003745 MIGINCO-01	<b>CONTACT NAME:</b> The Certificate Team <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL:</b> CertsDesignPro@AssuredPartners.com <b>ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Berkley Insurance Company <b>INSURER B:</b> Travelers Property Casualty Company of America <b>INSURER C:</b> The Travelers Indemnity Company of Connecticut <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
<b>INSURED</b> MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710	<b>NAIC #</b> 32603 25674 25682	

**COVERAGES** **CERTIFICATE NUMBER:** 2075696555 **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
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	6801H899998	8/31/2021	8/31/2022	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 - COM/OP AGG \$ 2,000,000 \$
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" 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	Y	Y	BA0S579947	8/31/2021	8/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ n	Y	Y	CUP0H758762	8/31/2021	8/31/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N	Y	UB2L553909	8/31/2021	8/31/2022	<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	N	Y	AEC904725003	8/31/2021	8/31/2022	Each Claim \$3,000,000 Annual Aggregate \$5,000,000


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

Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability/Employers Liability.

Re: Jollyman Park All-Inclusive Playground

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

## CERTIFICATE HOLDER

City of Cupertino 10300 Torre Ave. Cupertino CA 95014	<b>CANCELLATION 30 Days Notice of Cancellation</b>  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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POLICY NUMBER: 6801H899998

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE****Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

**Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.



occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.
3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:  
**Sale Of Pharmaceuticals**  
"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:  
"Incidental medical services" means:
  - a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
  - b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.
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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

#### **K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

#### **L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

#### **M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;  
subsequent to the signing of that contract or agreement.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following is added to Paragraph c. in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **BUSINESS AUTO COVERAGE FORM** and Paragraph e. in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **MOTOR CARRIER COVERAGE FORM**, whichever Coverage Form is part of your policy:

This includes any person or organization who you are required under a written contract or agreement

between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph **A.5., Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

**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 executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.





**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 99 03 76 ( A) –**

**POLICY NUMBER:** UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_

**DATE OF ISSUE:** 11/22/2021

Page 1 of 1




# SIGNED\_MIG for All-Inclusive Playground at Jollyman Park

Final Audit Report

2021-12-10

Created:	2021-12-09
By:	Julia Kinst (juliak@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4F2c7BjpwgFJsSICx8DpGz7IC4gcweSm

## "SIGNED\_MIG for All-Inclusive Playground at Jollyman Park" History

-  Document created by Julia Kinst (juliak@cupertino.org)  
2021-12-09 - 6:39:15 PM GMT - IP address: 64.165.34.3
-  Document approved by Julia Kinst (juliak@cupertino.org)  
Approval Date: 2021-12-09 - 6:41:23 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval  
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-  Document approved by Araceli Alejandre (aracelia@cupertino.org)  
Approval Date: 2021-12-09 - 11:56:31 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Christopher D. Jensen (christopherj@cupertino.org) for signature  
2021-12-09 - 11:56:33 PM GMT
-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)  
2021-12-10 - 0:10:34 AM GMT - IP address: 172.225.89.120
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)  
Signature Date: 2021-12-10 - 1:47:55 AM GMT - Time Source: server- IP address: 136.24.42.212
-  Document emailed to Dianne Thompson (she/her) (diannet@cupertino.org) for signature  
2021-12-10 - 1:47:59 AM GMT
-  Email viewed by Dianne Thompson (she/her) (diannet@cupertino.org)  
2021-12-10 - 3:18:35 AM GMT - IP address: 104.28.124.179
-  Document e-signed by Dianne Thompson (she/her) (diannet@cupertino.org)  
Signature Date: 2021-12-10 - 3:28:01 AM GMT - Time Source: server- IP address: 99.179.16.200



Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature

2021-12-10 - 3:28:04 AM GMT



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2021-12-10 - 4:33:05 AM GMT- IP address: 172.225.89.144



Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)

Signature Date: 2021-12-10 - 4:33:24 AM GMT - Time Source: server- IP address: 69.110.137.176



Agreement completed.

2021-12-10 - 4:33:24 AM GMT



POWERED BY  
Adobe Sign




# MIG Amendment 2 for All-Inclusive Playground at Jollyman Park












Final Audit Report

2023-07-14

Created:	2023-07-11
By:	City of Cupertino (webmaster@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuesLuV_v2UKEpjhsW4IriEEyl7ilud

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-  Document created by City of Cupertino (webmaster@cupertino.org)  
2023-07-11 - 0:54:24 AM GMT- IP address: 35.229.54.2
-  Document emailed to Julia Kinst (juliak@cupertino.org) for approval  
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-  Document emailed to Chris Beynon (chrisb@migcom.com) for signature  
2023-07-11 - 4:05:39 PM GMT
-  Email viewed by Chris Beynon (chrisb@migcom.com)  
2023-07-11 - 7:22:09 PM GMT- IP address: 74.125.209.35
-  Email viewed by Chris Beynon (chrisb@migcom.com)  
2023-07-13 - 3:19:52 AM GMT- IP address: 104.28.116.106
-  Email viewed by Chris Beynon (chrisb@migcom.com)  
2023-07-14 - 3:43:04 AM GMT- IP address: 74.125.210.141
-  Document e-signed by Chris Beynon (chrisb@migcom.com)  
Signature Date: 2023-07-14 - 5:36:19 PM GMT - Time Source: server- IP address: 64.191.87.162

-  Document emailed to christopherj@cupertino.org for signature  
2023-07-14 - 5:36:24 PM GMT
-  Email viewed by christopherj@cupertino.org  
2023-07-14 - 5:38:58 PM GMT- IP address: 104.47.74.126
-  Signer christopherj@cupertino.org entered name at signing as Christopher D. Jensen  
2023-07-14 - 5:39:15 PM GMT- IP address: 136.24.22.194
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)  
Signature Date: 2023-07-14 - 5:39:17 PM GMT - Time Source: server- IP address: 136.24.22.194
-  Document emailed to Pamela Wu (pamelaw@cupertino.org) for signature  
2023-07-14 - 5:39:21 PM GMT
-  Email viewed by Pamela Wu (pamelaw@cupertino.org)  
2023-07-14 - 6:47:48 PM GMT- IP address: 104.47.73.126
-  Document e-signed by Pamela Wu (pamelaw@cupertino.org)  
Signature Date: 2023-07-14 - 6:48:02 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature  
2023-07-14 - 6:48:07 PM GMT
-  Email viewed by Kirsten Squarcia (kirstens@cupertino.org)  
2023-07-14 - 6:48:20 PM GMT- IP address: 104.28.123.94
-  Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)  
Signature Date: 2023-07-14 - 7:31:21 PM GMT - Time Source: server- IP address: 162.245.20.145
-  Agreement completed.  
2023-07-14 - 7:31:21 PM GMT



**FIRST AMENDMENT TO AGREEMENT 401 BETWEEN  
THE CITY OF CUPERTINO AND MIG, INC., FOR  
ALL-INCLUSIVE PLAYGROUND AT JOLLYMAN PARK**

This First Amendment to Agreement 401 between the City of Cupertino and MIG, Inc., is by and between the City of Cupertino, a municipal corporation (hereinafter "City") and MIG, Inc., a Corporation ("Contractor") whose address is 2055 Junction Ave., Suite 205, San Jose, CA 95131, and is made with reference to the following:

RECITALS:

On December 09, 2021 Agreement 401 ("Agreement") was entered into by and between City and Contractor for All-Inclusive Playground at Jollyman Park.

A. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: City will pay Consultant for satisfactory performance of the Service a total amount that will be based upon actual costs but that will be capped so as not to exceed \$401,511.00 ("Contract Price"), based on the budget and rates set forth in Exhibit C, Compensation, and attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price. Exhibit A of the Agreement is modified to include Exhibit A-1 Additional Services, attached hereto.
2. **Paragraph 4.3 Additional Services** of the Agreement is modified to read as follows: City has the discretion, but not the obligation, to authorized Additional Services up to an amount not to exceed \$12,000.00. Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in Exhibit C. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge. ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site. Exhibit A of the Agreement is modified to include Exhibit A-1, Additional Services, attached hereto.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE



IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

MIG, INC.

By Pamela Wu  
Title City Manager  
Date Oct 13, 2022

By Christopher Jensen  
Title Vice President/Chief Development Officer  
Date Oct 13, 2022

APPROVED AS TO FORM

Christopher D. Jensen  
City Attorney

ATTEST:

Kristen Sparacio  
City Clerk  
Date Oct 13, 2022

**EXPENDITURE DISTRIBUTION**

Item	PO Number	Amount
Original Agreement	2022-326	\$389,511.00
Amendment #1	Change in Scope, Change in Contract Amount	\$12,000.00
Total Agreement		\$401,511.00



August 31, 2022

Evelyn Moran, Public Works Project Manager  
City of Cupertino  
City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: Additional Services Jollyman Park Inclusive Playground (MIG proj. no. 30902)

Dear Evelyn,

As discussed, a restroom is being added to the project expanding work beyond that in the original scope of work. The following summarizes MIG's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021; BKF's effort will be addressed through a separate agreement. All other terms in the original contract remain in effect.

**Add Services #2 (New Task 7: Restroom) ..... \$12,000**

We are requesting additional fees under a new task number for additional work related to adding a restroom to the project and for *anticipated* work efforts discussed, as noted below:

- Coordinating with BKF who is leading the restroom portion of the project
- Providing aesthetic coordination to ensure the restroom finishes work with the play area improvements
- Planting and irrigation design for the expanded work area for all drawing submittals (50%, 90%, 100%, and bid set)

*It is understood that the restroom will be integrated into the play area submittals as a single project for review and bidding; the restroom will not have separate review meetings but reviews will be incorporated into the planned review meetings for the play area.*

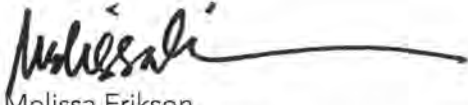
Task 7 Restroom

**Total: \$ 12,000**

Evelyn Moran  
August 31, 2022  
Page 2 of 2

Please feel free to contact us with any questions or additional information needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Erikson', with a long horizontal flourish extending to the right.

Melissa Erikson  
Principal, Director of Community Design Services  
MIG

Please sign below to indicate your agreement to the terms outlined in this letter as a revision to the original contract and budget.

---

Evelyn Moran, Project Manager  
City of Cupertino

Date





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/28/2022

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549  License#: 6003745 MIGINC0-01	<b>CONTACT NAME:</b> The Certificate Team	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
<b>INSURED</b> MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710	<b>E-MAIL ADDRESS:</b> CertsDesignPro@AssuredPartners.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Berkley Insurance Company	
	<b>INSURER B:</b> Travelers Property Casualty Company of America	
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		
<b>NAIC #</b>		

## COVERAGES

CERTIFICATE NUMBER: 1669425263

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 <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included 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	6801H899998	8/31/2022	8/31/2023	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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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	Y	Y	BA0S579947	8/31/2022	8/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP0H758762	8/31/2022	8/31/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	Y	UB2L553909	8/31/2022	8/31/2023	<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	N	Y	AEC905795904	8/31/2022	8/31/2023	Per Claim Aggregate Limit \$5,000,000 \$5,000,000

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

Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability/Employers Liability.  
Re: Jollyman Park All-Inclusive Playground The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

## CERTIFICATE HOLDER

## CANCELLATION 30 Days Notice of Cancellation

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

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

### **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



## COMMERCIAL AUTO

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.

POLICY NUMBER: 6801H899998

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

**Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**COMMERCIAL GENERAL LIABILITY****c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.



occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
  - b. "Personal and advertising injury" caused by an offense that is committed;
- subsequent to the signing of that contract or agreement.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A) -

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_



## **DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)** **WITH MIG, INC**

### **1. PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and MIG, Inc ("Consultant"), a Corporation for All-Inclusive Playground at Jollyman Park ("Project"), and is effective on the last date signed below ("Effective Date").

### **2. SERVICES**

**2.1 Basic Services.** Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant's written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

**2.2 Additional Services.** City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal ("Additional Services"). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to "Services" in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant's Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

### **3. TIME OF PERFORMANCE**

**3.1 Term.** This Agreement begins on the Effective Date and ends on December 31, 2024, unless terminated earlier as provided herein ("Contract Time"). 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.** All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin



work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

**3.3 Time is of the essence** for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

#### **4. COMPENSATION**

**4.1 Maximum Compensation.** City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$389,511.00 ("Contract Price"), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

**4.2 Basic Services.** City will pay Consultant \$389,511.00 ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants' costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction.

**4.3 Additional Services.** City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$0.00 Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

**4.4 Invoices and Payments.** Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing rate or Sub- Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.



- b. Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

## **5. INDEPENDENT CONTRACTOR**

**5.1 Status.** Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

**5.2 Qualifications and Standard of Care.** Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

**5.3 Permits and Licenses.** Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

**5.4 Sub-Consultants.** Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

**5.5 Tools, Materials, and Equipment.** Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

**5.6 Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. 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 Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant 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.

**5.7 Errors and Omissions.** Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

During the Contract Time, Consultant 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. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), 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 a third-party without prior written approval by City

**7.2 Copyright.** To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

**7.3 Patents and Licenses.** Consultant 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 Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

**7.5 Deliverables and Format.** Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar



items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

## **8. RECORDS**

**8.1** Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

**8.2** Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

**8.3** Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant 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**

Consultant 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 Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

## **10. PUBLICITY / SIGNS**

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) 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 Agreement, 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 or active



negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

**a. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

**b. Claims Involving Intellectual Property.** Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

**c. Claims for Other Liability.** Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.



**11.2** Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnatee.

**11.3** Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

**11.4** Consultant 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 Consultant 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.

**11.5** This Section 11 shall survive expiration or termination of this Agreement.

## **12. INSURANCE**

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

## **13. COMPLIANCE WITH LAWS**

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

**13.2 Labor Laws.** Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

**13.3 Discrimination Laws.** Consultant 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. Consultant shall comply with all anti-discrimination laws, including



Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant 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. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

**13.5 Remedies.** A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

#### **14. PROJECT COORDINATION**

**14.1 City Project Manager.** The City's Project Manager for all purposes under this Agreement will be Evelyn Moran, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

**14.2 Consultant Project Manager.** Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Jan Eiesland who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant 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. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.



**16. TERMINATION**

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

**17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant 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. This Section 18 survives the expiration/termination of this Agreement.

**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 any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

**21. ENTIRE AGREEMENT**

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. 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 this 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 contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

**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.

**25. SURVIVAL**

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

**26. NOTICES**

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery 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:

<b>To City of Cupertino:</b> Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014  Attention: Evelyn Moran Email: evelynm@cupertino.org	<b>To Consultant:</b> MIG, Inc 2055 Junction Ave, Suite 205 San Jose, CA 95131  Attention: Jan Eiesland Email: jeiesland@migcom.com
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**27. EXECUTION**

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. 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.



IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

**CITY OF CUPERTINO**

A Municipal Corporation

By Dianne Thompson (she/her)

Name Dianne Thompson (she/her)

Title Acting City Manager

Date Dec 9, 2021

**MIG, INC**

By Chris Beynon

Name Chris Beynon

Title Vice President/Chief Development Officer

Date Nov 24, 2021

**APPROVED AS TO FORM:**

Christopher D. Jensen

CHRISTOPHER D. JENSEN

Cupertino City Attorney

**ATTEST:**

Kirsten Squarcia

KIRSTEN SQUARCIA

City Clerk

Date Dec 9, 2021



## Jollyman Park All-Inclusive Playground

### Scope of Work

11.12.2021

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Jollyman Park All-Inclusive Playground Project. This scope captures and clarifies assumptions of the tasks incorporated in the attached Fee Proposal spreadsheet. The details are based on our understanding of the requirements stated in the Jollyman Park Aug. 2, 2021 RFQ and Addenda.

#### Project Understanding

Located in Cupertino, CA, the project entails replacing the southern existing play area at Jollyman Park with an all-inclusive playground. Per the City's RFQ, the project aims to incorporate the best in supportive play theories and practices to appeal to people of all ages and abilities. The design will support recreation and social interaction for people with autism, sensory challenges, cognitive, developmental, and physical disabilities – as well as those without special needs. The project will have specific all-inclusive play amenities that will be further developed from the initial concept design with community engagement. Potential site improvement areas include walkways, storm water runoff reduction, utility identification and adjustments, landscape, irrigation, and similar site improvements within the project area. Recommended site improvements shall be based on the established Cupertino Engineering Standards. The design will be in accordance with AIPG funding guidelines; local, state and federal ADA and playground safety guidelines and requirements.

### TASK 1: PROJECT INITIATION

#### Task 1.1 Project Kick-off Meeting & Site Tour

To initiate the project, the MIG Team will participate in a meeting with the City of Cupertino Jollyman project team ('The City') to discuss the project goals, opportunities, and challenges, as well as to establish project communication protocols, review project tasks and schedule, and other coordination topics to be determined in cooperation with the City. We see this meeting as an important step in developing a collaborative team that is committed to a shared process and vision for Jollyman Park.

The MIG Team will also conduct a site tour to observe and document the existing site conditions, uses and character of Jollyman Park. Topic areas to be observed include circulation, accessibility, signage and wayfinding, lighting, natural features, social relationships, and experiential opportunities.

Depending on weather and current safety protocols this may be staged as two meetings within the same week: a virtual kick-off/goals meeting followed by an in-person site tour of Jollyman Park. If an in-person kick-off meeting is feasible, then the meeting and site visit will be scheduled to occur consecutively on the same day.

#### Task 1.2 Project Scope & Schedule Finalization

MIG will work with the City of Cupertino to customize and finalize the scope and schedule, so that tasks meet the City's preferred process and timeline.

#### Task 1.3 Background Information Request & Assembly

The MIG team will prepare a consolidated list of background information needed from the City. MIG will assemble the information and make it available for use by all team members over the course of the project.

**Task 1.4 Community Engagement Part 1: Prepare to Engage**

MIG will develop a plan for community engagement, mapping out how and when to use engagement and communication techniques in a Community Outreach and Engagement Plan. We will work with the City to identify stakeholders, including both City staff and community groups, whose insights and support will help build a successful park. This plan will guide our efforts as we gather information, listen to the community and work towards the final site plan. Should the community engagement plan identify different efforts than those included below, the scope and fee will need to be revised.

**Task 1.5 Inclusive Play Primer Presentation**

To assist the City in gaining internal staff support for the Jollyman Play Area mission and goals, MIG will provide a two-hour interactive virtual presentation about the importance and goals of an inclusive play area. MIG will create a virtual presentation to be attended by City Staff and key stakeholders. The goal for this meeting is to get all the various stakeholders to understand the project goals, learn information about inclusivity, and begin speaking the same language when it comes to inclusive play environments. The City may post to their website for a period of 3 months and keep a recording of the presentation for internal staff use.

**Task 1.6 Project Management and Team Coordination**

MIG will coordinate the work of the MIG Team throughout the duration of the design phases, prepare the Project schedule, monitor the Project budget, establish, and monitor project quality, setup project accounting and prepare and submit monthly invoices. The MIG Team will coordinate and strategize with the City via 1-hour video calls to review progress and discuss direction and next steps. Please refer to the accompanying fee spreadsheet for the assumed task duration and number of meetings for each phase. MIG's project manager will participate in these calls, as well as other pertinent team member at times, depending on the agenda.

**TASK 1 DELIVERABLES**

- Final Scope and Schedule
- Community Outreach and Engagement Plan
- Inclusive Play Primer Recording
- Coordination meeting notes (for meetings led by the MIG Team)
- Monthly invoices

**TASK 2: DATA COLLECTION AND EXISTING CONDITIONS****TASK 2.1 Topographic Survey**

BKF will prepare a topographic survey of the 1.75 ac project area and surroundings as outlined on the project limits diagram (see Survey Exhibit on the last page). Topographic survey will not include a boundary survey.

**Task 2.2 Existing Utilities & Stormwater Coordination**

BKF will identify existing utility locations, through records research and online databases, perform a Site visit to document those utilities whose above ground features can be determined by visual means and discuss potential utility constraints with MIG and the City. BKF will also document in a graphic the existing project site drainage conditions, along with new stormwater requirements to meet City/County/Regional requirements.

**TASK 2.3 Geotechnical Report**

Ninyo + Moore will conduct geotechnical sampling, to include taking two exploratory borings within the project site to ascertain subsurface soil conditions. They will interpret borings and provide a geotechnical report to address design of the playground pavement types and footings. Provide a copy of the Geotechnical Report to the City.



**TASK 2.4 Review of Requirements, Existing Conditions and Background Documents**

The MIG Team will review codes, standards and environmental regulations applicable to Jollyman Park and the potential park improvements. We will review City-provided documents and on-line research, regarding the site's natural, social and cultural history, including land use, demographics, property boundaries, as well as ongoing site operations and maintenance issues.

**Task 2.5 Site Analysis, Opportunities & Constraints**

The MIG Team will develop a scaled base map of the park site, using an aerial and/or the survey, which assembles relevant information on the existing park site and the area immediately adjacent, including circulation, park features, trees and other information as appropriate. We will prepare a graphic summarizing existing assets, issues and opportunities, including circulation and accessibility, landscape features and overall character, paying special attention to human developmental needs and environmental health and sustainability.

**Task 2.6 Community Engagement Part 2: Listen, Learn, Vision**

Building on the engagement plan and key stakeholders identified in Community Engagement Part 1, The MIG Team will prepare graphic materials to be used in several outreach methods identified in the plan. Our assumption is that this will include an online survey; boards with similar content and a QR code that the City may print, laminate and hang at the park; (1) virtual community meeting; and (2) smaller stakeholder meetings—either virtual or outdoors. Materials will be designed to both share the site analysis and listen to the community's own site expertise and local knowledge. In addition to patterns of use and desired experiences, MIG will work with the City to strategize engagement activities that will also provide an understanding of the site and area's underlying character and cultural influences, which can be expressed in the design.

**Task 2.7 Analysis and Outreach Summary Report**

The MIG team will prepare an existing condition report that details the requirements, existing conditions, assumptions, constraints, opportunities, risks and risk mitigation. The report should also reflect community outreach participant input. This report will be available for the City to post to the web to keep the community informed, for help with fundraising, and for use as background for other City presentations made by City staff.

**Task 2.8 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 2 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Topographic Survey (AutoCad file and PDF)
- Existing Utilities and Drainage Conditions Summary Graphic
- Geotechnical Report
- Project Base Map & Site Analysis
- Site Analysis, Opportunities & Constraints Graphics
- Community Engagement Part 2 materials
- Analysis and Engagement Summary Report
- City Review Meetings Agendas & Meeting summaries
- Monthly invoices

**TASK 3: CONCEPT DESIGN****Task 3.1 Draft Concept Designs**

The MIG Team will prepare up to (2) Concept Plans that depict the scale and relationships between the different park areas and show how the elements are organized and connected within each area. Alternatively, the analysis

and input may direct the project towards one primary layout with options. The Concept drawings will contain enough information to explain the general form, content, and quality of the design, including:

- Site vision statement with a short narrative description that characterize the main features, unique aspects, visitor experience, program elements, and operations
- Concept plan
- Precedent design images to support the design ideas
- Opinion of Probable Costs
- Monthly invoices

#### **Task 3.2 City Review Meeting**

Two-hour virtual meeting. MIG will present the (2) Concept Plans to City Staff for feedback and approval. MIG and the City will also use this meeting to coordinate the details of the upcoming public engagement actions and events.

#### **Task 3.3 Commission/Council Meetings**

MIG will present the Concept Plans at (2) Commission/Council meetings for input and approval, such as Parks and Recreation Commission and City Council. Assume each is a virtual one-hour meeting. More presentations can be accommodated through extra services if needed.

#### **Task 3.4 Community Engagement Part 3: *Consider the Concepts***

MIG will revise/finalize the Concept Plans per City feedback and create both analog and digital content to share the Concept Plans with the public for evaluation and feedback. MIG will review the public engagement materials with City Staff for approval. MIG will monitor any online survey results over a two- to three-week period. MIG will also lead up to (2) additional community conversations (either facilitated online or, if social distancing policies allow as small coffee meetings), intercept events, pop-ups, or outreach opportunities as determined with the City.

#### **Task 3.5 City Review Meeting**

Two-hour virtual meeting. MIG will meet with the City to discuss the community engagement process and feedback; and to go over options and direction for developing the Preferred Concept.

#### **Task 3.6 Preferred Concept Design**

The MIG Team will incorporate the public and City feedback into a Preferred Concept. The Preferred Concept will contain enough information to explain the general form, content, and quality of the design, including:

- a statement describing the vision for the site
- a short narrative description that characterizes the main features, unique aspects, visitor experience, program elements, and operations
- precedent design images to support the concept plan
- Conceptual level grading plans for disturbed areas within the project limits
- Conceptual utility connection plans including storm drainage, preliminary stormwater treatment and detention facility sizes, sanitary sewer, water, and fire protection services
- Opinion of Probable Costs

#### **Task 3.7 City Review Meeting**

Two-hour virtual meeting. MIG will present the Preferred Concept to the City for review and feedback.

#### **Task 3.8 Illustrative 3d/Bird's-eye view Graphic**

Provide an illustrative 3d or Bird's-eye view site graphic to share with the community and help with fundraising.

#### **Task 3.9 Community Engagement Part 4: *Define the Project***

MIG will finalize the Preferred Concept per the City feedback and will create graphics and materials for a final virtual public presentation. MIG will review the public engagement materials with City Staff for approval. Allow for (1) round of revisions.

MIG will share the Preferred Concept design and Illustrative Graphic with the public to show how earlier community input shaped the final concept. MIG will provide a multi-media, online walk-through of the Preferred Concept with an opportunity to provide general feedback. This step is an opportunity to celebrate the culmination of the community engagement process and mark the transition to the next stage—construction drawings and building the new playground.

#### **Task 3.10 City Review Meeting**

Two-hour virtual meeting. MIG will meet with City Staff to discuss the public's comments and get final approval before moving into the Construction Documents phase.

#### **Task 3.11 Environmental Approvals Coordination**

MIG will provide minor assistance with graphics and coordination. More help may be provided if desired as additional services.

#### **Task 3.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 3 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Draft Plans & Opinion of Probable Costs
- Commission/Council Presentations (2)
- Community Engagement Part 3 materials and summaries
- City Review Meetings Agendas & Meeting summaries
- Preferred Concept Plan & Opinion of Probable Costs
- Illustrative 3D/Birdseye Graphic
- Community Engagement Part 4 materials and summaries
- Monthly invoices

## **TASK 4: CONSTRUCTION DOCUMENTS (CD)**

The MIG Team will prepare design plans, construction documents, specifications and opinions of probable costs at the milestones noted below. We will schedule the design and bid process, identifying significant milestone dates and actions items for the project team and assist the City in developing bid documents to advertise for construction. The City will provide any City-required standard details, titleblocks, requirements, and specifications to the MIG team at the beginning of this phase. All submittals will be in the form of a PDF submitted through email, Google drive, or other free and readily available digital sharing format approved by The City.

#### **Task 4.1 Preliminary CD Plans**

The MIG Team will prepare preliminary plans in AutoCAD showing the layout of proposed play area elements, including play elements, paving, site furnishings, planting areas and other site features.

#### **Task 4.2 Preliminary CD City Check-in Meeting**

MIG will facilitate a meeting with City staff to review consolidated comments on the preliminary plans to clarify questions and confirm corrections or minor refinements needed for the 50% set. A summary of the meeting will be prepared.

#### **Task 4.3 50% CD Submittal**

The MIG Team will prepare construction documents to a 50% level of completion, drafted in digital format using AutoCAD. Plans shall be prepared at a minimum of 1" = 20' scale. As part of the package, the MIG Team will



develop a materials and equipment schedule reflecting site material, equipment and furnishing selections so the City can review the new playground's proposed aesthetic vision.

This scope assumes the development of one set of construction drawings for a single-phase project. If the City's budgeting results in the need for phasing or alternates, these can be provided for an additional fee.

**Task 4.4 50% CD Opinion of Probable Costs**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans.

**Task 4.5 50% CD Regulatory Approval Coordination/Assistance (Allowance)**

The MIG Team has a small allowance to allow for regulatory approval document preparation and coordination for City reviews such as ADA review, stormwater, and the maintenance department.

**Task 4.6 City Review Meeting**

The City will provide one set of consolidated review comments detailing the required changes to the 50% CD drawings and opinion of probable costs. These will be discussed in a two-hour (maximum) virtual meeting between the City and MIG to confirm design direction before beginning the 90% CD package.

**Task 4.7 90% CD Submittal**

Based on the 50% CD's submittal and incorporating the City's direction from the 50% CD review meeting, the MIG Team will prepare construction documents to a 90% level of completion. The MIG Team will also provide CSI format technical specifications related to the scope of work. Design documentation, including specifications, will be consistent with required federal, state, and local codes and regulations.

**Task 4.8 90% CD Opinion of Probable Costs & QA/QC Review**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans. MIG's QAQC team will perform an in-house review of drawing set and specifications to ensure Quality Assurance + Quality Control.

**Task 4.9 City Review Meeting**

The City will provide one set of consolidated review comments detailing any required changes to the Design 90% CD package. These will be discussed and finalized in a two-hour (maximum) virtual meeting between the City and MIG prior to finalizing the 100% CD package.

**Task 4.10 100% CD Submittal/Permit Set**

Based on the final consolidated list of comments and direction from the City, the MIG Team will advance the construction documents set to a level of 100% completion. We will produce final technical specifications in CSI format to describe the requirements for construction materials, equipment, systems, standards, and workmanship. The City will be responsible for providing the Division I specifications sections. The MIG team assumes that multiple permit packages are not required and that 100% construction documents will be comprise the construction permitting set. The MIG Team will package the 100% complete construction documents and submit to the City for final review and comment (PDF format). One round of minor edits may be incorporated by the MIG Team to create the final Permit Set.

**Task 4.11 Bid Set Preparation**

Incorporating minor revisions related to comments from the permitting review, the MIG Team will prepare final design (bid) documents based on the 100% drawings and technical specifications.

**Task 4.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 4 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Preliminary plans (In-progress check-in) for City Review
- Design Development (50% CD) Submittal - Drawings and Spec TOC
- Design Development (50% CD) Opinion of Probable Costs

- 90% CD Submittal - Drawings and Specs
- 90% CD Opinion of Probable Costs
- 100% CD Drawing Set - Drawings and Specs
- 100% CD Opinion of Probable Costs
- Monthly invoices

## **TASK 5: BIDDING SUPPORT**

### **Task 5.1 Pre-bid Meeting**

MIG will attend the pre-bid meeting to respond to questions about the Construction Documents.

### **Task 5.2 Bid Assistance Allowance (Bidder Question Response)**

The MIG Team has made an allowance to prepare responses to bidders' questions to clarify the construction documents.

### **Task 5.3 Conformed Construction Set Submittal**

Once the bid period is complete and the contractor has been selected, the MIG Team will prepare a final conformed set for the contractor's use during construction. The conformed construction set will incorporate the addenda and responses to bidders' questions.

### **Task 5.4 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

## **TASK 5 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Responses to Bidders' Questions
- Conformed Construction Set
- Monthly invoices

No allowance has been made for any value engineering at the Bid Phase. Should bids come in higher than anticipated due to unforeseen market conditions, the MIG Team will meet with the Client to discuss options to move the project forward. Any additional design, coordination or submittals can be provided for additional services.

## **TASK 6: CONSTRUCTION ADMINISTRATION**

### **Task 6.1 Preconstruction Meeting Participation**

The MIG Team will attend and participate in a Pre-Construction meeting scheduled and lead by the City. The MIG Team will attend the meeting to support the City in answering the contractor's questions. This scope assumes attendance by the lead landscape architect and civil engineer. If needed, other design team members can be made available through additional services.

### **Task 6.2 Responses to Contractor Submittals**

The MIG Team will review and take appropriate action (approve with modifications, reject, etc.) on the Contractor's submittals such as RFI's, Shop Drawings, Product Data and Samples, to confirm conformance with the design intent of the project and compliance with the information given in the Contract Documents. Reviews will take place in accordance with reasonable promptness and according to language agreed upon in the bid documents. Reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto. Approval of a specific item shall not indicate approval of an assembly of which the item is a component. The MIG Team assumes a maximum

of two reviews of contractor submittals and shop drawings. Additional reviews can be provided through additional services (see last section).

#### **Task 6.3 Construction Meetings and Site visits**

MIG will attend up to (4) construction meetings to review construction progress and Contractor's compliance with the design intent. These meetings can be virtual or on-site, depending on current safety measures. In addition, MIG will perform up to (8) site visits and the Civil engineer will perform up to three (3) site visit/reviews, as requested by City. Task assumes a maximum construction duration of ten months.

#### **Task 6.4 Preliminary Punch List Site Visit and Preparation**

When notified that the construction is substantially complete, the MIG team will make one site visit with the City's representative and perform a Preliminary Punch List inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a "punch list," describing the items it recommends for the contractor's correction prior to scheduling the Final Punch List Site Visit.

#### **Task 6.5 Final Punch List Site Visit and Preparation**

When notified that the construction is fully complete, the MIG team will make one site visit with the City's representative and perform a "Final" inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a Final Punch List, describing the items it recommends for the contractor's correction prior to closing out the construction contract.

#### **Task 6.6 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 6 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Submittal and Shop Drawing review documentation
- Responses to contractor's Requests for Information
- Construction Meetings – (up to 4)
- Site Visits – (up to 11)
- Preliminary Punch List
- Final Punch List
- Monthly invoices

### **ADDITIONAL SERVICES**

The MIG Team has a broad range of experience, skills and services. The following is a non-exhaustive list of items that are not included in this scope but could be provided as additional services if they are needed or desired by the City:

- Additional community engagement beyond the scoped items in the process (including digital advertisement, intercept surveys, additional surveys/workshops/open houses/pop-up events).
- Additional public meetings beyond the scoped items in the process (including attending City Council meetings, public hearings, hearing examiner meetings, public open houses, and local association meetings).
- City project team meetings beyond those listed
- Additional design alternative drafts or renderings other than those listed.
- Preparation of phased or multiple-packaged construction documents.



- Preparation of special studies outside our scope of work.
- Intensive research and testing to determine conditions of existing site utilities (i.e., potholing, smoke testing, dye testing, pressure testing, fire flow testing, videotaping, etc.).
- Utility Relocation Plans
- Supplemental surveying services beyond the initial survey necessary for completeness.
- Appeal, Design Exception, and Alternative Review applications.
- Services related to future facilities and improvements.
- Design of water capture/re-use systems, pump stations, sump pumps, or force mains for sanitary sewer or storm drainage systems, if required.
- Design of systems to comply with or obtain LEED certification, including preparation of LEED documentation and addressing review comments from the USGBC.
- Redesign of civil/landscape items following completion of construction document as a result of site and building plan changes or unforeseen existing conditions.
- Design for areas not identified in the project understanding.
- Value Engineering. If the MIG Team is needed to assist with VE and/or bid negotiations, it is available on a Time and Materials basis.
- Arborist Report
- Project Record Drawings

#### PROJECT SCOPE ASSUMPTIONS:

- CLIENT: 'The City' refers to the City of Cupertino's Jollyman project team.
- BUDGET: Scope and fee is based on a construction budget of \$2,910,000 (\$2,670,000 base budget with a \$240,000 contingency). The City has identified a fundraising goal of \$1,000,000. If fundraising goals are not met, there will be a shortfall. Redesign to value engineer the project will require a contract modification.
- DELIVERABLES: Unless otherwise indicated, all deliverables will be provided in PDF format. Native files will be created in software selected at the consultant team's discretion. If the City desires printed copies or specific file formats, the MIG Team is happy to work with the City to develop a strategy that meets the project's budget and needs.
- IN-PERSON MEETINGS: Team meetings and most community engagement events are assumed to be virtual with some limited outdoor engagement events as noted.
- TRANSLATION: All documentation will be in English; however, as an additional service, the MIG Team can provide exhibits in other languages.
- CONSOLIDATED COMMENTS: The City will provide MIG with (1) set of vetted and consolidated comments from all parties/agencies in all tasks involving review and feedback.
- PERMIT FEES: All permit fees and agency charges will be paid by others.
- UTILITIES: The site is adequately served by utilities adjacent to the site.
- OFFSITE UTILITIES/STREET/PARKING DESIGN: Offsite utility or street/parking design beyond the identified playground area is not included in this proposal.
- ENVIRONMENTAL WORK: Floodplain, wetland, soil remediation or environmental work is not included in this proposal.
- CONSTRUCTION TESTING + INSPECTIONS: Necessary testing and inspections during construction will be provided by others.
- EXISTING UTILITY DISTRIBUTION: It is assumed that existing utility distribution systems will not be impacted by the proposed development.

**SURVEY AREA:**











## EXHIBIT B: Schedule

### Jollyman Park All-Inclusive Playground

Task 1: Project Initiation and Ongoing Project Management – January 2022 (0.5 month)

Task 2: Data Collection and Existing Conditions – Jan -Feb 2022 (1.5 months)

Task 3: Concept Design – Mar – June 2022 (4 months)

Task 4: Construction Documents – June 2022 – Mar 2023 (7 months)

Task 5: Bidding Support – Apr.-June 2023 (2.5 months)

Task 6: Construction Administration – June 2023 – Mar. 2024 (9.5 months)

Project schedule is subject to refinement at the kickoff meeting and will be regularly updated during the course of the project, working with City staff, to better reflect project needs and City review times.



## EXHIBIT C: Hourly Rates and Reimbursable Expenses

### Jollyman Park All-Inclusive Playground

Unless specified otherwise, invoices are submitted monthly showing time and charges for professional services by staff category and a separate figure for expenses. Invoices are payable upon receipt. Invoices unpaid past 30 days are subject to interest at 1-1/2% per month. MIG Inc. labor includes all overhead.

Hourly rates by position are noted below:

<u>Role</u>	<u>\$/hour</u>
Principal-in-Charge	\$210
Project Manager	\$180
Play Specialist/CPSI	\$160
Project Associate	\$95
Irrigation Designer	\$145
Community Outreach Specialist	\$140
Senior Urban Designer	\$150
Project Assistant	\$80
Planner/Master Plan Advisor	\$165
ADA Specialist	\$135
Graphic Designer	\$140

Expenses are as follows:

<u>Type</u>	<u>Rate</u>
Automobile travel	current IRS rate
Meals	cost + 5%
Photocopy (letter and tabloid)	\$0.10/print
Color copies (letter and tabloid)	\$0.50/print
Commercial printing/plotting	cost + 5%
Subcontractors	cost + 5%
Other (lab tests, aerial photos, etc)	cost + 5%

**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement 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 (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant'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 Form 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 CA 00 01 covering any auto (including owned, hired, and non-owned autos) 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. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. 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 Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

**OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:



***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant'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***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

***Verification of Coverage***

Consultant must furnish acceptable insurance 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 prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

***Higher Insurance Limits***

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

***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/22/2021

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549	<b>CONTACT NAME:</b> The Certificate Team	
	<b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b>	
	<b>E-MAIL ADDRESS:</b> CertsDesignPro@AssuredPartners.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Berkley Insurance Company	32603
	<b>INSURER B:</b> Travelers Property Casualty Company of America	25674
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	25682
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** 2075696555 **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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y Y	6801H899998	8/31/2021	8/31/2022	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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y Y	BA0S579947	8/31/2021	8/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y Y	CUP0H758762	8/31/2021	8/31/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<input checked="" type="checkbox"/> 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/A	UB2L553909	8/31/2021	8/31/2022	<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	N Y	AEC904725003	8/31/2021	8/31/2022	Each Claim \$3,000,000 Annual Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability/Employers Liability.

Re: Jollyman Park All-Inclusive Playground  
The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

## CERTIFICATE HOLDER

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

## CANCELLATION 30 Days Notice of Cancellation

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

POLICY NUMBER: 6801H899998

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE****Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

**Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

## COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.



occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed; subsequent to the signing of that contract or agreement.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following is added to Paragraph c. in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **BUSINESS AUTO COVERAGE FORM** and Paragraph e. in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **MOTOR CARRIER COVERAGE FORM**, whichever Coverage Form is part of your policy:

This includes any person or organization who you are required under a written contract or agreement

between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph **A.5., Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

**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 executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.





WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A ) –

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_

DATE OF ISSUE: 11/22/2021

Page 1 of 1






# SIGNED\_MIG for All-Inclusive Playground at Jollyman Park


Final Audit Report


2021-12-10


Created:	2021-12-09
By:	Julia Kinst (juliak@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4F2c7BjpwgFJsSICx8DpGz7IC4gcweSm


## "SIGNED\_MIG for All-Inclusive Playground at Jollyman Park" History

-  Document created by Julia Kinst (juliak@cupertino.org)  
2021-12-09 - 6:39:15 PM GMT - IP address: 64.165.34.3
-  Document approved by Julia Kinst (juliak@cupertino.org)  
Approval Date: 2021-12-09 - 6:41:23 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval  
2021-12-09 - 6:41:25 PM GMT
-  Document approved by Araceli Alejandre (aracelia@cupertino.org)  
Approval Date: 2021-12-09 - 11:56:31 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Christopher D. Jensen (christopherj@cupertino.org) for signature  
2021-12-09 - 11:56:33 PM GMT
-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)  
2021-12-10 - 0:10:34 AM GMT - IP address: 172.225.89.120
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)  
Signature Date: 2021-12-10 - 1:47:55 AM GMT - Time Source: server- IP address: 136.24.42.212
-  Document emailed to Dianne Thompson (she/her) (diannet@cupertino.org) for signature  
2021-12-10 - 1:47:59 AM GMT
-  Email viewed by Dianne Thompson (she/her) (diannet@cupertino.org)  
2021-12-10 - 3:18:35 AM GMT - IP address: 104.28.124.179
-  Document e-signed by Dianne Thompson (she/her) (diannet@cupertino.org)  
Signature Date: 2021-12-10 - 3:28:01 AM GMT - Time Source: server- IP address: 99.179.16.200

 Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature  
2021-12-10 - 3:28:04 AM GMT

 Email viewed by Kirsten Squarcia (kirstens@cupertino.org)  
2021-12-10 - 4:33:05 AM GMT- IP address: 172.225.89.144

 Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)  
Signature Date: 2021-12-10 - 4:33:24 AM GMT - Time Source: server- IP address: 69.110.137.176

 Agreement completed.  
2021-12-10 - 4:33:24 AM GMT



POWERED BY  
Adobe Sign





## **DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)** **WITH MIG, INC**

### **1. PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and MIG, Inc ("Consultant"), a Corporation for All-Inclusive Playground at Jollyman Park ("Project"), and is effective on the last date signed below ("Effective Date").

### **2. SERVICES**

**2.1 Basic Services.** Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant's written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

**2.2 Additional Services.** City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal ("Additional Services"). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to "Services" in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant's Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

### **3. TIME OF PERFORMANCE**

**3.1 Term.** This Agreement begins on the Effective Date and ends on December 31, 2024, unless terminated earlier as provided herein ("Contract Time"). 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.** All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin

work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

**3.3 Time is of the essence** for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

#### **4. COMPENSATION**

**4.1 Maximum Compensation.** City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$389,511.00 ("Contract Price"), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

**4.2 Basic Services.** City will pay Consultant \$389,511.00 ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants' costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction.

**4.3 Additional Services.** City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$0.00 Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

**4.4 Invoices and Payments.** Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing rate or Sub-Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.



- b. **Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

## **5. INDEPENDENT CONTRACTOR**

**5.1 Status.** Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

**5.2 Qualifications and Standard of Care.** Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

**5.3 Permits and Licenses.** Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

**5.4 Sub-Consultants.** Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

**5.5 Tools, Materials, and Equipment.** Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

**5.6 Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. 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 Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant 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.

**5.7 Errors and Omissions.** Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

During the Contract Time, Consultant 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. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), 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 a third-party without prior written approval by City

**7.2 Copyright.** To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

**7.3 Patents and Licenses.** Consultant 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 Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

**7.5 Deliverables and Format.** Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar



items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

## **8. RECORDS**

**8.1** Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

**8.2** Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

**8.3** Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant 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**

Consultant 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 Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

## **10. PUBLICITY / SIGNS**

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) 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 Agreement, 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 or active



negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

**a. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

**b. Claims Involving Intellectual Property.** Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

**c. Claims for Other Liability.** Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.



**11.2** Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

**11.3** Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

**11.4** Consultant 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 Consultant 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.

**11.5** This Section 11 shall survive expiration or termination of this Agreement.

## **12. INSURANCE**

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

## **13. COMPLIANCE WITH LAWS**

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

**13.2 Labor Laws.** Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

**13.3 Discrimination Laws.** Consultant 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. Consultant shall comply with all anti-discrimination laws, including



Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant 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. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

**13.5 Remedies.** A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

#### **14. PROJECT COORDINATION**

**14.1 City Project Manager.** The City's Project Manager for all purposes under this Agreement will be Evelyn Moran, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

**14.2 Consultant Project Manager.** Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Jan Eiesland who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant 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. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.



**16. TERMINATION**

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

**17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant 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. This Section 18 survives the expiration/termination of this Agreement.

**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 any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

**21. ENTIRE AGREEMENT**

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. 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 this 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 contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

**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.

**25. SURVIVAL**

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

**26. NOTICES**

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery 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:

<b>To City of Cupertino:</b> Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014  Attention: Evelyn Moran Email: evelynm@cupertino.org	<b>To Consultant:</b> MIG, Inc 2055 Junction Ave, Suite 205 San Jose, CA 95131  Attention: Jan Eiesland Email: jeiesland@migcom.com
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**27. EXECUTION**

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. 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.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

**CITY OF CUPERTINO**

A Municipal Corporation

By Dianne Thompson (she/her)

Name Dianne Thompson (she/her)

Title Acting City Manager

Date Dec 9, 2021

**MIG, INC**

By Chris Beynon

Name Chris Beynon

Title Vice President/Chief Development Officer

Date Nov 24, 2021

**APPROVED AS TO FORM:**

Christopher D. Jensen

CHRISTOPHER D. JENSEN  
Cupertino City Attorney

**ATTEST:**

Kirsten Squarcia

KIRSTEN SQUARCIA  
City Clerk

Date Dec 9, 2021



## Jollyman Park All-Inclusive Playground

### Scope of Work

11.12.2021

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Jollyman Park All-Inclusive Playground Project. This scope captures and clarifies assumptions of the tasks incorporated in the attached Fee Proposal spreadsheet. The details are based on our understanding of the requirements stated in the Jollyman Park Aug. 2, 2021 RFQ and Addenda.

#### Project Understanding

Located in Cupertino, CA, the project entails replacing the southern existing play area at Jollyman Park with an all-inclusive playground. Per the City's RFQ, the project aims to incorporate the best in supportive play theories and practices to appeal to people of all ages and abilities. The design will support recreation and social interaction for people with autism, sensory challenges, cognitive, developmental, and physical disabilities – as well as those without special needs. The project will have specific all-inclusive play amenities that will be further developed from the initial concept design with community engagement. Potential site improvement areas include walkways, storm water runoff reduction, utility identification and adjustments, landscape, irrigation, and similar site improvements within the project area. Recommended site improvements shall be based on the established Cupertino Engineering Standards. The design will be in accordance with AIPG funding guidelines; local, state and federal ADA and playground safety guidelines and requirements.

### TASK 1: PROJECT INITIATION

#### Task 1.1 Project Kick-off Meeting & Site Tour

To initiate the project, the MIG Team will participate in a meeting with the City of Cupertino Jollyman project team ('The City') to discuss the project goals, opportunities, and challenges, as well as to establish project communication protocols, review project tasks and schedule, and other coordination topics to be determined in cooperation with the City. We see this meeting as an important step in developing a collaborative team that is committed to a shared process and vision for Jollyman Park.

The MIG Team will also conduct a site tour to observe and document the existing site conditions, uses and character of Jollyman Park. Topic areas to be observed include circulation, accessibility, signage and wayfinding, lighting, natural features, social relationships, and experiential opportunities.

Depending on weather and current safety protocols this may be staged as two meetings within the same week: a virtual kick-off/goals meeting followed by an in-person site tour of Jollyman Park. If an in-person kick-off meeting is feasible, then the meeting and site visit will be scheduled to occur consecutively on the same day.

#### Task 1.2 Project Scope & Schedule Finalization

MIG will work with the City of Cupertino to customize and finalize the scope and schedule, so that tasks meet the City's preferred process and timeline.

#### Task 1.3 Background Information Request & Assembly

The MIG team will prepare a consolidated list of background information needed from the City. MIG will assemble the information and make it available for use by all team members over the course of the project.



**Task 1.4 Community Engagement Part 1: *Prepare to Engage***

MIG will develop a plan for community engagement, mapping out how and when to use engagement and communication techniques in a Community Outreach and Engagement Plan. We will work with the City to identify stakeholders, including both City staff and community groups, whose insights and support will help build a successful park. This plan will guide our efforts as we gather information, listen to the community and work towards the final site plan. Should the community engagement plan identify different efforts than those included below, the scope and fee will need to be revised.

**Task 1.5 Inclusive Play Primer Presentation**

To assist the City in gaining internal staff support for the Jollyman Play Area mission and goals, MIG will provide a two-hour interactive virtual presentation about the importance and goals of an inclusive play area. MIG will create a virtual presentation to be attended by City Staff and key stakeholders. The goal for this meeting is to get all the various stakeholders to understand the project goals, learn information about inclusivity, and begin speaking the same language when it comes to inclusive play environments. The City may post to their website for a period of 3 months and keep a recording of the presentation for internal staff use.

**Task 1.6 Project Management and Team Coordination**

MIG will coordinate the work of the MIG Team throughout the duration of the design phases, prepare the Project schedule, monitor the Project budget, establish, and monitor project quality, setup project accounting and prepare and submit monthly invoices. The MIG Team will coordinate and strategize with the City via 1-hour video calls to review progress and discuss direction and next steps. Please refer to the accompanying fee spreadsheet for the assumed task duration and number of meetings for each phase. MIG's project manager will participate in these calls, as well as other pertinent team member at times, depending on the agenda.

**TASK 1 DELIVERABLES**

- Final Scope and Schedule
- Community Outreach and Engagement Plan
- Inclusive Play Primer Recording
- Coordination meeting notes (for meetings led by the MIG Team)
- Monthly invoices

**TASK 2: DATA COLLECTION AND EXISTING CONDITIONS****TASK 2.1 Topographic Survey**

BKF will prepare a topographic survey of the 1.75 ac project area and surroundings as outlined on the project limits diagram (see Survey Exhibit on the last page). Topographic survey will not include a boundary survey.

**Task 2.2 Existing Utilities & Stormwater Coordination**

BKF will identify existing utility locations, through records research and online databases, perform a Site visit to document those utilities whose above ground features can be determined by visual means and discuss potential utility constraints with MIG and the City. BKF will also document in a graphic the existing project site drainage conditions, along with new stormwater requirements to meet City/County/Regional requirements.

**TASK 2.3 Geotechnical Report**

Ninyo + Moore will conduct geotechnical sampling, to include taking two exploratory borings within the project site to ascertain subsurface soil conditions. They will interpret borings and provide a geotechnical report to address design of the playground pavement types and footings. Provide a copy of the Geotechnical Report to the City.

**TASK 2.4 Review of Requirements, Existing Conditions and Background Documents**

The MIG Team will review codes, standards and environmental regulations applicable to Jollyman Park and the potential park improvements. We will review City-provided documents and on-line research, regarding the site's natural, social and cultural history, including land use, demographics, property boundaries, as well as ongoing site operations and maintenance issues.

**Task 2.5 Site Analysis, Opportunities & Constraints**

The MIG Team will develop a scaled base map of the park site, using an aerial and/or the survey, which assembles relevant information on the existing park site and the area immediately adjacent, including circulation, park features, trees and other information as appropriate. We will prepare a graphic summarizing existing assets, issues and opportunities, including circulation and accessibility, landscape features and overall character, paying special attention to human developmental needs and environmental health and sustainability.

**Task 2.6 Community Engagement Part 2: *Listen, Learn, Vision***

Building on the engagement plan and key stakeholders identified in Community Engagement Part 1, The MIG Team will prepare graphic materials to be used in several outreach methods identified in the plan. Our assumption is that this will include an online survey; boards with similar content and a QR code that the City may print, laminate and hang at the park; (1) virtual community meeting; and (2) smaller stakeholder meetings—either virtual or outdoors. Materials will be designed to both share the site analysis and listen to the community's own site expertise and local knowledge. In addition to patterns of use and desired experiences, MIG will work with the City to strategize engagement activities that will also provide an understanding of the site and area's underlying character and cultural influences, which can be expressed in the design.

**Task 2.7 Analysis and Outreach Summary Report**

The MIG team will prepare an existing condition report that details the requirements, existing conditions, assumptions, constraints, opportunities, risks and risk mitigation. The report should also reflect community outreach participant input. This report will be available for the City to post to the web to keep the community informed, for help with fundraising, and for use as background for other City presentations made by City staff.

**Task 2.8 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

**TASK 2 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Topographic Survey (AutoCad file and PDF)
- Existing Utilities and Drainage Conditions Summary Graphic
- Geotechnical Report
- Project Base Map & Site Analysis
- Site Analysis, Opportunities & Constraints Graphics
- Community Engagement Part 2 materials
- Analysis and Engagement Summary Report
- City Review Meetings Agendas & Meeting summaries
- Monthly invoices

**TASK 3: CONCEPT DESIGN****Task 3.1 Draft Concept Designs**

The MIG Team will prepare up to (2) Concept Plans that depict the scale and relationships between the different park areas and show how the elements are organized and connected within each area. Alternatively, the analysis



and input may direct the project towards one primary layout with options. The Concept drawings will contain enough information to explain the general form, content, and quality of the design, including:

- Site vision statement with a short narrative description that characterize the main features, unique aspects, visitor experience, program elements, and operations
- Concept plan
- Precedent design images to support the design ideas
- Opinion of Probable Costs
- Monthly invoices

### **Task 3.2 City Review Meeting**

Two-hour virtual meeting. MIG will present the (2) Concept Plans to City Staff for feedback and approval. MIG and the City will also use this meeting to coordinate the details of the upcoming public engagement actions and events.

### **Task 3.3 Commission/Council Meetings**

MIG will present the Concept Plans at (2) Commission/Council meetings for input and approval, such as Parks and Recreation Commission and City Council. Assume each is a virtual one-hour meeting. More presentations can be accommodated through extra services if needed.

### **Task 3.4 Community Engagement Part 3: *Consider the Concepts***

MIG will revise/finalize the Concept Plans per City feedback and create both analog and digital content to share the Concept Plans with the public for evaluation and feedback. MIG will review the public engagement materials with City Staff for approval. MIG will monitor any online survey results over a two- to three-week period. MIG will also lead up to (2) additional community conversations (either facilitated online or, if social distancing policies allow as small coffee meetings), intercept events, pop-ups, or outreach opportunities as determined with the City.

### **Task 3.5 City Review Meeting**

Two-hour virtual meeting. MIG will meet with the City to discuss the community engagement process and feedback; and to go over options and direction for developing the Preferred Concept.

### **Task 3.6 Preferred Concept Design**

The MIG Team will incorporate the public and City feedback into a Preferred Concept. The Preferred Concept will contain enough information to explain the general form, content, and quality of the design, including:

- a statement describing the vision for the site
- a short narrative description that characterizes the main features, unique aspects, visitor experience, program elements, and operations
- precedent design images to support the concept plan
- Conceptual level grading plans for disturbed areas within the project limits
- Conceptual utility connection plans including storm drainage, preliminary stormwater treatment and detention facility sizes, sanitary sewer, water, and fire protection services
- Opinion of Probable Costs

### **Task 3.7 City Review Meeting**

Two-hour virtual meeting. MIG will present the Preferred Concept to the City for review and feedback.

### **Task 3.8 Illustrative 3d/Bird's-eye view Graphic**

Provide an illustrative 3d or Bird's-eye view site graphic to share with the community and help with fundraising.

### **Task 3.9 Community Engagement Part 4: *Define the Project***

MIG will finalize the Preferred Concept per the City feedback and will create graphics and materials for a final virtual public presentation. MIG will review the public engagement materials with City Staff for approval. Allow for (1) round of revisions.



MIG will share the Preferred Concept design and Illustrative Graphic with the public to show how earlier community input shaped the final concept. MIG will provide a multi-media, online walk-through of the Preferred Concept with an opportunity to provide general feedback. This step is an opportunity to celebrate the culmination of the community engagement process and mark the transition to the next stage—construction drawings and building the new playground.

#### **Task 3.10 City Review Meeting**

Two-hour virtual meeting. MIG will meet with City Staff to discuss the public's comments and get final approval before moving into the Construction Documents phase.

#### **Task 3.11 Environmental Approvals Coordination**

MIG will provide minor assistance with graphics and coordination. More help may be provided if desired as additional services.

#### **Task 3.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 3 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format. We assume one round of minor revisions for each based on the City's consolidated comments.

- Draft Plans & Opinion of Probable Costs
- Commission/Council Presentations (2)
- Community Engagement Part 3 materials and summaries
- City Review Meetings Agendas & Meeting summaries
- Preferred Concept Plan & Opinion of Probable Costs
- Illustrative 3D/Birdseye Graphic
- Community Engagement Part 4 materials and summaries
- Monthly invoices

## **TASK 4: CONSTRUCTION DOCUMENTS (CD)**

The MIG Team will prepare design plans, construction documents, specifications and opinions of probable costs at the milestones noted below. We will schedule the design and bid process, identifying significant milestone dates and actions items for the project team and assist the City in developing bid documents to advertise for construction. The City will provide any City-required standard details, titleblocks, requirements, and specifications to the MIG team at the beginning of this phase. All submittals will be in the form of a PDF submitted through email, Google drive, or other free and readily available digital sharing format approved by The City.

#### **Task 4.1 Preliminary CD Plans**

The MIG Team will prepare preliminary plans in AutoCAD showing the layout of proposed play area elements, including play elements, paving, site furnishings, planting areas and other site features.

#### **Task 4.2 Preliminary CD City Check-in Meeting**

MIG will facilitate a meeting with City staff to review consolidated comments on the preliminary plans to clarify questions and confirm corrections or minor refinements needed for the 50% set. A summary of the meeting will be prepared.

#### **Task 4.3 50% CD Submittal**

The MIG Team will prepare construction documents to a 50% level of completion, drafted in digital format using AutoCAD. Plans shall be prepared at a minimum of 1" = 20' scale. As part of the package, the MIG Team will

develop a materials and equipment schedule reflecting site material, equipment and furnishing selections so the City can review the new playground's proposed aesthetic vision.

This scope assumes the development of one set of construction drawings for a single-phase project. If the City's budgeting results in the need for phasing or alternates, these can be provided for an additional fee.

#### **Task 4.4 50% CD Opinion of Probable Costs**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans.

#### **Task 4.5 50% CD Regulatory Approval Coordination/Assistance (Allowance)**

The MIG Team has a small allowance to allow for regulatory approval document preparation and coordination for City reviews such as ADA review, stormwater, and the maintenance department.

#### **Task 4.6 City Review Meeting**

The City will provide one set of consolidated review comments detailing the required changes to the 50% CD drawings and opinion of probable costs. These will be discussed in a two-hour (maximum) virtual meeting between the City and MIG to confirm design direction before beginning the 90% CD package.

#### **Task 4.7 90% CD Submittal**

Based on the 50% CD's submittal and incorporating the City's direction from the 50% CD review meeting, the MIG Team will prepare construction documents to a 90% level of completion. The MIG Team will also provide CSI format technical specifications related to the scope of work. Design documentation, including specifications, will be consistent with required federal, state, and local codes and regulations.

#### **Task 4.8 90% CD Opinion of Probable Costs & QA/QC Review**

The MIG Team will develop an Opinion of Probable Costs based on the submitted plans. MIG's QAQC team will perform an in-house review of drawing set and specifications to ensure Quality Assurance + Quality Control.

#### **Task 4.9 City Review Meeting**

The City will provide one set of consolidated review comments detailing any required changes to the Design 90% CD package. These will be discussed and finalized in a two-hour (maximum) virtual meeting between the City and MIG prior to finalizing the 100% CD package.

#### **Task 4.10 100% CD Submittal/Permit Set**

Based on the final consolidated list of comments and direction from the City, the MIG Team will advance the construction documents set to a level of 100% completion. We will produce final technical specifications in CSI format to describe the requirements for construction materials, equipment, systems, standards, and workmanship. The City will be responsible for providing the Division I specifications sections. The MIG team assumes that multiple permit packages are not required and that 100% construction documents will be comprise the construction permitting set. The MIG Team will package the 100% complete construction documents and submit to the City for final review and comment (PDF format). One round of minor edits may be incorporated by the MIG Team to create the final Permit Set.

#### **Task 4.11 Bid Set Preparation**

Incorporating minor revisions related to comments from the permitting review, the MIG Team will prepare final design (bid) documents based on the 100% drawings and technical specifications.

#### **Task 4.12 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 4 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Preliminary plans (In-progress check-in) for City Review
- Design Development (50% CD) Submittal - Drawings and Spec TOC
- Design Development (50% CD) Opinion of Probable Costs



- 90% CD Submittal - Drawings and Specs
- 90% CD Opinion of Probable Costs
- 100% CD Drawing Set - Drawings and Specs
- 100% CD Opinion of Probable Costs
- Monthly invoices

## **TASK 5: BIDDING SUPPORT**

### **Task 5.1 Pre-bid Meeting**

MIG will attend the pre-bid meeting to respond to questions about the Construction Documents.

### **Task 5.2 Bid Assistance Allowance (Bidder Question Response)**

The MIG Team has made an allowance to prepare responses to bidders' questions to clarify the construction documents.

### **Task 5.3 Conformed Construction Set Submittal**

Once the bid period is complete and the contractor has been selected, the MIG Team will prepare a final conformed set for the contractor's use during construction. The conformed construction set will incorporate the addenda and responses to bidders' questions.

### **Task 5.4 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

## **TASK 5 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Responses to Bidders' Questions
- Conformed Construction Set
- Monthly invoices

No allowance has been made for any value engineering at the Bid Phase. Should bids come in higher than anticipated due to unforeseen market conditions, the MIG Team will meet with the Client to discuss options to move the project forward. Any additional design, coordination or submittals can be provided for additional services.

## **TASK 6: CONSTRUCTION ADMINISTRATION**

### **Task 6.1 Preconstruction Meeting Participation**

The MIG Team will attend and participate in a Pre-Construction meeting scheduled and lead by the City. The MIG Team will attend the meeting to support the City in answering the contractor's questions. This scope assumes attendance by the lead landscape architect and civil engineer. If needed, other design team members can be made available through additional services.

### **Task 6.2 Responses to Contractor Submittals**

The MIG Team will review and take appropriate action (approve with modifications, reject, etc.) on the Contractor's submittals such as RFI's, Shop Drawings, Product Data and Samples, to confirm conformance with the design intent of the project and compliance with the information given in the Contract Documents. Reviews will take place in accordance with reasonable promptness and according to language agreed upon in the bid documents. Reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto. Approval of a specific item shall not indicate approval of an assembly of which the item is a component. The MIG Team assumes a maximum



of two reviews of contractor submittals and shop drawings. Additional reviews can be provided through additional services (see last section).

#### **Task 6.3 Construction Meetings and Site visits**

MIG will attend up to (4) construction meetings to review construction progress and Contractor's compliance with the design intent. These meetings can be virtual or on-site, depending on current safety measures. In addition, MIG will perform up to (8) site visits and the Civil engineer will perform up to three (3) site visit/reviews, as requested by City. Task assumes a maximum construction duration of ten months.

#### **Task 6.4 Preliminary Punch List Site Visit and Preparation**

When notified that the construction is substantially complete, the MIG team will make one site visit with the City's representative and perform a Preliminary Punch List inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a "punch list," describing the items it recommends for the contractor's correction prior to scheduling the Final Punch List Site Visit.

#### **Task 6.5 Final Punch List Site Visit and Preparation**

When notified that the construction is fully complete, the MIG team will make one site visit with the City's representative and perform a "Final" inspection of the Project to observe any apparent defects in the completed construction regarding conformance with design intent of the Contract Documents. MIG will consolidate observations and provide a Final Punch List, describing the items it recommends for the contractor's correction prior to closing out the construction contract.

#### **Task 6.6 Project Management and Team Coordination**

The MIG Team will continue Project Management and Team Coordination duties as described in Task 1 and with additional meetings as noted on the accompanying fee spreadsheet.

### **TASK 6 DELIVERABLES**

Unless otherwise noted, all deliverables will be provided in PDF format.

- Submittal and Shop Drawing review documentation
- Responses to contractor's Requests for Information
- Construction Meetings – (up to 4)
- Site Visits – (up to 11)
- Preliminary Punch List
- Final Punch List
- Monthly invoices

### **ADDITIONAL SERVICES**

The MIG Team has a broad range of experience, skills and services. The following is a non-exhaustive list of items that are not included in this scope but could be provided as additional services if they are needed or desired by the City:

- Additional community engagement beyond the scoped items in the process (including digital advertisement, intercept surveys, additional surveys/workshops/open houses/pop-up events).
- Additional public meetings beyond the scoped items in the process (including attending City Council meetings, public hearings, hearing examiner meetings, public open houses, and local association meetings).
- City project team meetings beyond those listed
- Additional design alternative drafts or renderings other than those listed.
- Preparation of phased or multiple-packaged construction documents.

- Preparation of special studies outside our scope of work.
- Intensive research and testing to determine conditions of existing site utilities (i.e., potholing, smoke testing, dye testing, pressure testing, fire flow testing, videotaping, etc.).
- Utility Relocation Plans
- Supplemental surveying services beyond the initial survey necessary for completeness.
- Appeal, Design Exception, and Alternative Review applications.
- Services related to future facilities and improvements.
- Design of water capture/re-use systems, pump stations, sump pumps, or force mains for sanitary sewer or storm drainage systems, if required.
- Design of systems to comply with or obtain LEED certification, including preparation of LEED documentation and addressing review comments from the USGBC.
- Redesign of civil/landscape items following completion of construction document as a result of site and building plan changes or unforeseen existing conditions.
- Design for areas not identified in the project understanding.
- Value Engineering. If the MIG Team is needed to assist with VE and/or bid negotiations, it is available on a Time and Materials basis.
- Arborist Report
- Project Record Drawings

#### PROJECT SCOPE ASSUMPTIONS:

- CLIENT: 'The City' refers to the City of Cupertino's Jollyman project team.
- BUDGET: Scope and fee is based on a construction budget of \$2,910,000 (\$2,670,000 base budget with a \$240,000 contingency). The City has identified a fundraising goal of \$1,000,000. If fundraising goals are not met, there will be a shortfall. Redesign to value engineer the project will require a contract modification.
- DELIVERABLES: Unless otherwise indicated, all deliverables will be provided in PDF format. Native files will be created in software selected at the consultant team's discretion. If the City desires printed copies or specific file formats, the MIG Team is happy to work with the City to develop a strategy that meets the project's budget and needs.
- IN-PERSON MEETINGS: Team meetings and most community engagement events are assumed to be virtual with some limited outdoor engagement events as noted.
- TRANSLATION: All documentation will be in English; however, as an additional service, the MIG Team can provide exhibits in other languages.
- CONSOLIDATED COMMENTS: The City will provide MIG with (1) set of vetted and consolidated comments from all parties/agencies in all tasks involving review and feedback.
- PERMIT FEES: All permit fees and agency charges will be paid by others.
- UTILITIES: The site is adequately served by utilities adjacent to the site.
- OFFSITE UTILITIES/STREET/PARKING DESIGN: Offsite utility or street/parking design beyond the identified playground area is not included in this proposal.
- ENVIRONMENTAL WORK: Floodplain, wetland, soil remediation or environmental work is not included in this proposal.
- CONSTRUCTION TESTING + INSPECTIONS: Necessary testing and inspections during construction will be provided by others.
- EXISTING UTILITY DISTRIBUTION: It is assumed that existing utility distribution systems will not be impacted by the proposed development.



**SURVEY AREA:**





[illegible]



## EXHIBIT B: Schedule

### Jollyman Park All-Inclusive Playground

Task 1: Project Initiation and Ongoing Project Management – January 2022 (0.5 month)

Task 2: Data Collection and Existing Conditions – Jan -Feb 2022 (1.5 months)

Task 3: Concept Design – Mar – June 2022 (4 months)

Task 4: Construction Documents – June 2022 – Mar 2023 (7 months)

Task 5: Bidding Support – Apr.-June 2023 (2.5 months)

Task 6: Construction Administration – June 2023 – Mar. 2024 (9.5 months)

Project schedule is subject to refinement at the kickoff meeting and will be regularly updated during the course of the project, working with City staff, to better reflect project needs and City review times.



## EXHIBIT C: Hourly Rates and Reimbursable Expenses

### Jollyman Park All-Inclusive Playground

Unless specified otherwise, invoices are submitted monthly showing time and charges for professional services by staff category and a separate figure for expenses. Invoices are payable upon receipt. Invoices unpaid past 30 days are subject to interest at 1-1/2% per month. MIG Inc. labor includes all overhead. Hourly rates by position are noted below:

<u>Role</u>	<u>\$/hour</u>
Principal-in-Charge	\$210
Project Manager	\$180
Play Specialist/CPSI	\$160
Project Associate	\$95
Irrigation Designer	\$145
Community Outreach Specialist	\$140
Senior Urban Designer	\$150
Project Assistant	\$80
Planner/Master Plan Advisor	\$165
ADA Specialist	\$135
Graphic Designer	\$140

Expenses are as follows:

<u>Type</u>	<u>Rate</u>
Automobile travel	current IRS rate
Meals	cost + 5%
Photocopy (letter and tabloid)	\$0.10/print
Color copies (letter and tabloid)	\$0.50/print
Commercial printing/plotting	cost + 5%
Subcontractors	cost + 5%
Other (lab tests, aerial photos, etc)	cost + 5%



**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement 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 (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant'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 Form 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 CA 00 01 covering any auto (including owned, hired, and non-owned autos) 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. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. 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 Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

**OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant'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***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

***Verification of Coverage***

Consultant must furnish acceptable insurance 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 prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

***Higher Insurance Limits***

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

***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2021

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).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549	<b>CONTACT NAME:</b> The Certificate Team	
	<b>PHONE (A/C, No, Ext):</b> <b>E-MAIL ADDRESS:</b> CertsDesignPro@AssuredPartners.com	
<b>INSURED</b> MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Berkley Insurance Company	32603
	<b>INSURER B:</b> Travelers Property Casualty Company of America	25674
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	25682
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		

License#: 6003745

MIGINC0-01

**COVERAGES****CERTIFICATE NUMBER:** 2075696555**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
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input type="checkbox"/> Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	6801H899998	8/31/2021	8/31/2022	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	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BA0S579947	8/31/2021	8/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP0H758762	8/31/2021	8/31/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	UB2L553909	8/31/2021	8/31/2022	<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	N	Y	AEC904725003	8/31/2021	8/31/2022	Each Claim \$ 3,000,000 Annual Aggregate \$ 5,000,000

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

Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability/Employers Liability.

Re: Jollyman Park All-Inclusive Playground

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

**CERTIFICATE HOLDER****CANCELLATION 30 Days Notice of Cancellation**

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

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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POLICY NUMBER: 6801H899998

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE****Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

**Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part, provided that such written contract was signed by you before, and is in effect when, the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which a written contract with the Additional Insured Person(s) or Organization(s) in the Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**COMMERCIAL GENERAL LIABILITY****c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an 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 that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.



occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" 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.

3. The following replaces the last sentence of 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 providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

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

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the 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 the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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 "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

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

7. Subject to Paragraph 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 in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

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

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

If the insured has agreed in a written 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed; subsequent to the signing of that contract or agreement.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **BUSINESS AUTO COVERAGE FORM** and Paragraph e. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE** in the **MOTOR CARRIER COVERAGE FORM**, whichever Coverage Form is part of your policy:

This includes any person or organization who you are required under a written contract or agreement

between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

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

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph **A.5., Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

**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 executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 ( A) –

POLICY NUMBER: UB2L553909

**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 \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

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.)

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_











# SIGNED\_MIG for All-Inclusive Playground at Jollyman Park

Final Audit Report

2021-12-10

Created:	2021-12-09
By:	Julia Kinst (juliak@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4F2c7BjpwgFJsSICx8DpGz7IC4gcweSm

## "SIGNED\_MIG for All-Inclusive Playground at Jollyman Park" History

-  Document created by Julia Kinst (juliak@cupertino.org)  
2021-12-09 - 6:39:15 PM GMT - IP address: 64.165.34.3
-  Document approved by Julia Kinst (juliak@cupertino.org)  
Approval Date: 2021-12-09 - 6:41:23 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval  
2021-12-09 - 6:41:25 PM GMT
-  Document approved by Araceli Alejandre (aracelia@cupertino.org)  
Approval Date: 2021-12-09 - 11:56:31 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Christopher D. Jensen (christopherj@cupertino.org) for signature  
2021-12-09 - 11:56:33 PM GMT
-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)  
2021-12-10 - 0:10:34 AM GMT - IP address: 172.225.89.120
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)  
Signature Date: 2021-12-10 - 1:47:55 AM GMT - Time Source: server- IP address: 136.24.42.212
-  Document emailed to Dianne Thompson (she/her) (diannet@cupertino.org) for signature  
2021-12-10 - 1:47:59 AM GMT
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2021-12-10 - 3:18:35 AM GMT - IP address: 104.28.124.179
-  Document e-signed by Dianne Thompson (she/her) (diannet@cupertino.org)  
Signature Date: 2021-12-10 - 3:28:01 AM GMT - Time Source: server- IP address: 99.179.16.200



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 Document emailed to Kirsten Squarcia (kirstens@cupertino.org) for signature

2021-12-10 - 3:28:04 AM GMT

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2021-12-10 - 4:33:05 AM GMT- IP address: 172.225.89.144

 Document e-signed by Kirsten Squarcia (kirstens@cupertino.org)

Signature Date: 2021-12-10 - 4:33:24 AM GMT - Time Source: server- IP address: 69.110.137.176

 Agreement completed.

2021-12-10 - 4:33:24 AM GMT



EXHIBIT A-5

May 16, 2024

Susan Michael, Capital Projects Programs Manager  
City of Cupertino, City Hall  
10300 Torre Ave.  
Cupertino, CA 95014

Re: Revised Additional Services #5 Jollyman Park Inclusive Playground (MIG proj. no. 30902)

Dear Susan,

We are requesting additional services to assist the City with construction observation beyond the scope of work in the original contract. The original contract expired in December 2024, as we expected the construction to be complete well before that date. In fact, the duration of the work has been extended with construction scheduled to begin in the summer of 2024, and will continue into Spring/Summer of 2025.

The construction observation/administration work has expanded to include additional utility coordination, public art coordination, and extended involvement including site visits. The following summarizes the MIG team's request for additional work and fees that are above and beyond the original contract, signed Dec. 9, 2021. We will need a contract extension to 8/31/2025 as construction will continue beyond our 12/31/2024 contract end date. All other terms in the original contract remain in effect.

**Add Services (Task 10: Construction Observation)**

We are requesting additional fees to requested assistance with construction observation;  
effort to be coordinated with City staff:

Task 10 Construction Observation	: \$45,000
<b>Total Add Service #5</b>	<b>\$45,000</b>

Sincerely,

Melissa Erikson  
Principal, Director of Community Design Services  
MIG

