

CC 04-16-2024

#4

Accounts Payable

Supplemental Report



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

SUPPLEMENTAL 1

Meeting: April 16, 2024

Agenda Item #4

Subject

Ratifying Accounts Payable for the periods ending March 1, 2024; March 8, 2024; March 15, 2024; March 22, 2024; and March 29, 2024

Recommended Action

- A. *Adopt Resolution no. 24-XXX ratifying Accounts Payable for the Period ending March 1, 2024;*
- B. *Adopt Resolution no. 24-XXX ratifying Accounts Payable for the Period ending March 8, 2024;*
- C. *Adopt Resolution no. 24-XXX ratifying Accounts Payable for the Period ending March 15, 2024;*
- D. *Adopt Resolution no. 24-XXX ratifying Accounts Payable for the Period ending March 22, 2024; and*
- E. *Adopt Resolution no. 24-XXX ratifying Accounts Payable for the Period ending March 29, 2024*

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: Page 4 of 23 #734253 Billing for July-Dec 23 Clean Water & Storm Protection Fees \$10,500.76. The Accounts payable is listed as "City of Cupertino". Was the amount an internal transfer? It was paid to the City of Cupertino from the City of Cupertino. Please advise. Thanks. (**Council member Wei**)

Staff Response: The transaction pertains to billings from the special fund Environmental Management/Clean Creek/Storm Drain (Fund 230) to the General Fund (Fund 100), as well as the enterprise funds Blackberry Farm (Fund 560), Sports Center (Fund 570), and Recreation Program (Fund 580) for the Clean Water and Storm Protection Fees spanning from July to December 2023. These fees are traditionally collected via the tax roll for residential and commercial properties.

However, given that the City is exempt from property taxes, the Special Revenue Fund manages these fees by invoicing the General Fund and enterprise funds for their respective allocations. The Clean Water and Storm Protection Fee passed in 2019 is a Proposition 218 fee, and therefore, no properties are exempt, not even federal, state, or city-owned properties. The 1992 Storm Drainage Fee was not passed under Proposition 218, and thus, certain entities are exempt, including the City.

Q2: With regards to the payment register itself, could someone explain why we appear to be paying for Apple retail store burglary prevention security? (**Council member Moore**)

Staff Response: These are supplemental law enforcement payments. The City acts as an intermediary as the City contracts services with the County for law enforcement services. The City receives payment from Apple for 100% of the costs plus a 15% admin fee (included in Fee Schedule A). This works as pass-through expenses since the County cannot take direct payment from Apple.

Q3: What is the difference between a disbursement as opposed to a payment? (**Council member Moore**)

Staff Response: Disbursements typically relate to the release of funds to a recipient or vendor. The transaction stems from an obligation to the receiving individual/entity. The payment is a broader term, encompassing disbursements and other forms of settling financial obligations. Although having distinct characteristics, the terms are often used synonymously.

Q4: Ca. Gov. Code 32708[2] indicates that budgeted payroll will also be brought to the City Council, however the City Council has not been given this information in several years, is there a reason for this? Should the Council be provided this information? (**Council member Moore**)

Staff Response: Budgeted payroll is approved as part of the Final Adopted budget on an annual basis.

Q5: Resolution 5939 states that “All checks so issued shall be serially numbered and a report thereof as to date, payee, amount and purpose shall be presented to the City Council not less often than once a month for ratification.” In order to ratify the payments we might need more information, including payroll costs, it may be that a new resolution could incorporate the City of Dublin[3]’s method to bring the payments to Council monthly, and rely on the ACFR for ratification. Is the Council really just receiving the payment information, not ratifying it for correctness? (**Council member Moore**)

Staff Response: Payments issued by the City are presented to the City Council on a monthly basis for ratification, consistent with Resolution No. 5939.

Q6: Does the ACFR[4] audit all of the payments in accordance with the requirements of Ca. Gov. Code 32708 (c) regarding payment ratification and make a statement to that effect, taking care of that duty rather than the City Council? (**Council member Moore**)

Staff Response: While the City’s external auditors ensure the accuracy of financial statements (ACFR), they typically sample transactions rather than reviewing each one individually. This

sampling approach helps ensure compliance with regulations while balancing time and resources.

Attachments Provided with Original Staff Report:

- A – Draft Resolution 3.1.24*
- B – Weekly AP Payment Register for the Period Ending 3.1.24*
- C – Draft Resolution 3.8.24*
- D – Weekly AP Payment Register for the Period Ending 3.8.24*
- E – Draft Resolution 3.15.24*
- F – Weekly AP Payment Register for the Period Ending 3.15.24*
- G – Draft Resolution 3.22.24*
- H – Weekly AP Payment Register for the Period Ending 3.22.24*
- I – Draft Resolution 3.29.24*
- J – Weekly AP Payment Register for the Period Ending 3.29.24*

CC 04-16-2024

#9

Moore Iacofano
Goltsman, Inc (MIG)
Contract Amendment

Desk Item



PUBLIC WORKS DEPARTMENT

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

CITY COUNCIL STAFF REPORT

DESK ITEM

Meeting: April 16, 2024

Agenda Item #9

Subject

Approve a Fifth Amendment with Moore Iacofano Goltsman, Inc. (MIG) to provide additional design and project management services for the Lawrence-Mitty Park and Trail Project for a total not-to-exceed amount of \$955,403 and extend the contract date to December 31, 2027.

Recommended Action

Authorize the City Manager to execute a fifth amendment (Agreement #402, P.O. 2022-0325) with MIG to extend the contract term end date to December 31, 2027, and to provide additional design and project management services on the Lawrence-Mitty Park and Trail Project, for a revised total and additional service amount of \$661,619, increasing the maximum compensation amount to \$955,403.

Background

Some pages in Attachment A needed to be re-scanned. Resubmitting for clarity.

Q1: Did the contract include payment for meals plus 5%? **(Chao)**

Staff response: The current agreement and approved scope includes allowance for expenditures occurred for consultant visits to Cupertino. These reimbursement of expenses, include meals and a 5% mark-up. MIG has not submitted any invoices for meals for this project.

Q1A: Did other contracts of the City also include payment for meals? **(Chao)**

Staff response: It depends. There are other City contracts that allow for reimbursement of project-related expenses.

Q2: It is not clear from the staff report why there is a need to increase the contingency from 10% to 20%. Please provide rationale. **(Chao)**

Staff response: As noted in the staff report: "A 20% contingency, rather than typical 10% contingency, is recommended to allow the Project team to address and respond to unknown issues that may be encountered during the extensive environmental review process." Other

projects, such as the DeAnza Bike Lanes, involve a more limited scope and minimal opportunity for increased costs so that no contingency has been included.

Q3: It is not clear from reading the staff report why there is a need to increase the contract amount. Please provide explanation. **(Chao)**

Staff response: As stated in the staff report under "Recommended Action," the proposed amendment is both for extending the term and additional services to complete the Lawrence-Mitty project.

While the original agreement scope includes public outreach, environmental clearance, and design services through the end of Conceptual Design, the proposed amendment would include future services for preparation of construction design documents, acquisition of all of the necessary permitting, and construction support through the completion of the project.

Q4: MIG has been paid \$341,819 to date, which included extensive community outreach and developing conceptual designs. The requested additional amount is \$613,584, for "design and project management" for the next phase, not including construction, which is almost twice the amount paid so far. Why the cost for the next design phase is much higher? **(Chao)**

Staff response: The original agreement covered the design phase up to Conceptual Design and was projected to last one year (Exhibits A and B on pages 86-99 of Attachment A- Draft contract – Updated). The remainder of the project is estimated to require three years of work and will include Schematic Design, Design Development, Construction Documentation, environmental permitting, and approval, and bid and construction administration. As stated in the staff report, Design and Engineering costs typically fall within 15% to 20% of the overall project cost. The project budget that remains (after acquisition and annexation of the property) is roughly \$6 million. 15% - 20% of \$6million is \$900,000 to \$1.2 million. The proposed contract amendment would bring the maximum compensation to this consultant to \$955,403, in alignment with anticipated design costs.

Q5: The cost matrix in the contract attachment is cut off due to the page size, can we have a replacement" **(Chao)**

Staff Response: An updated draft Contract is provided.

Attachments Provided with Original Staff Report:

A. Draft Contract - Updated

FIFTH AMENDMENT TO AGREEMENT 402
BETWEEN THE CITY OF CUPERTINO AND MIG, INC
FOR LAWRENCE-MITTY PARK AND TRAIL
IMPLEMENTATION PLAN

revised 4/16/2024

This Fifth Amendment to Agreement 402 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 402 ("Agreement") was entered into by and between City and Contractor for Lawrence-Mitty Park and Trail Implementation Plan.
- B. The City and Contractor entered into a First Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("First Amendment") effective February 28, 2022.
- C. The City and Contractor entered into a Second Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("Second Amendment") effective August 25, 2022.
- D. The City and Contractor entered into a Third Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("Third Amendment") effective October 13, 2022.
- E. The City and Contractor entered into a Fourth Amended and Reinstated Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("Fourth Amendment") effective March 27, 2024.
- F. The Original Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment are collectively referred to as the "Agreement" unless otherwise indicated.

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

1. **Paragraph 3.1 Term** of the Agreement is modified to read as follows: This Agreement begins on the Effective Date and ends on December 31, 2027, 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. Schedule of Performance, Exhibit B of the Agreement is modified to include Exhibit B-1 Additional Services, attached hereto.

2. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: 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 \$955,403.00 ("Contract Price"), as specified in Exhibit C and Exhibit C-1, 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. Description of Services, Exhibits A, A-1, A-2, and A-3 of the Agreement are modified to include Exhibit A-4 Additional Services, attached hereto. Compensation, Exhibit C of the Agreement is modified to include Exhibit C-1 Additional Services, attached hereto.
3. **Paragraph 4.3 Additional Services.** City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$661,619.00 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. Description of Services, Exhibits A, A-1, A-2, and A-3 of the Agreement are modified to include Exhibit A-4 Additional Services, attached hereto.
4. 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 _____

By  _____

Title _____

Title Vice President and Chief Development Officer

Date _____

Date Apr 4, 2024

APPROVED AS TO FORM

City Attorney

ATTEST:

City Clerk

Date _____

EXPENDITURE DISTRIBUTION

Item	PO Number	Amount
Original Agreement	2022-325	293,784.00
Amendment No. 1	Increase Compensation	\$28,500.00
Amendment No. 2	Update Scope of Work	-
Amendment No. 3	Increase Compensation	\$19,535.00
Amendment No. 4	Extend Term and Reinstate	-
Amendment No. 5	Extend Term & Increase Compensation	\$613,584.00
Amendments Subtotal		\$661,619.00
Total Contract Amount		\$955,403.00



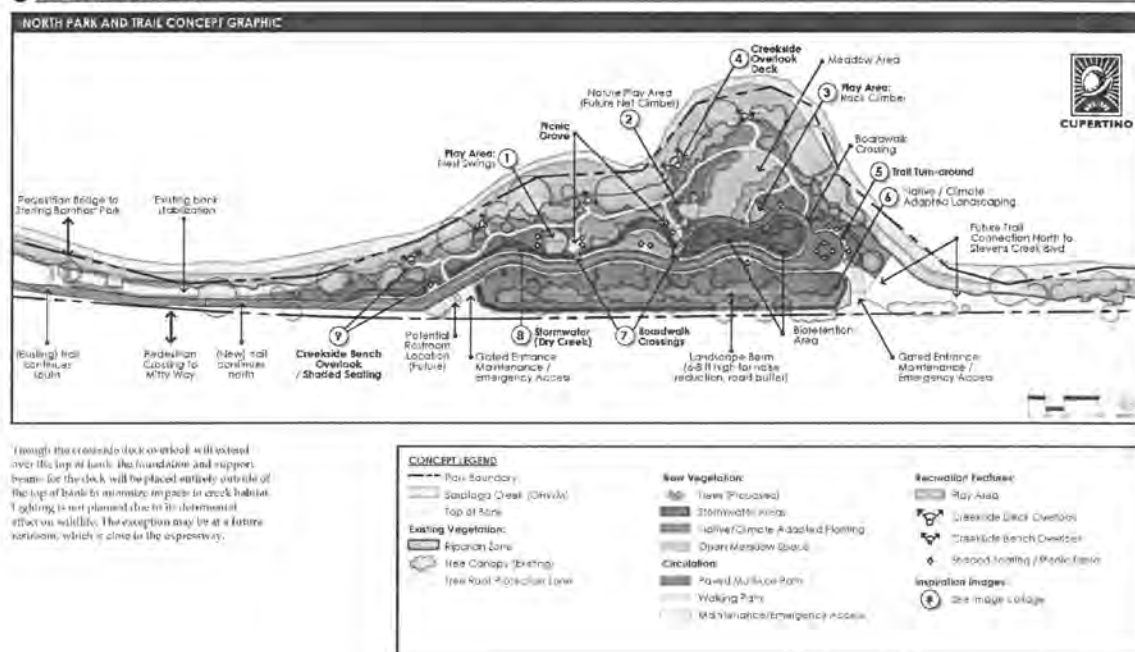
Lawrence Mitty Park and Trail

Scope of Work

03.12.2024

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Lawrence Mitty Park and Trail 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 City's desire to move forward with the concept plan shown below from December 2023 and its related and ongoing CEQA work. Note that the potential restroom is not included in this scope.

4. CONCEPT PLAN



City of Cupertino

Lawrence-Mitty Park and Trail Concept Plan | 14

PHASE 8: DESIGN DEVELOPMENT/30% CDS:

MIG team will create a Design Development/30% CD submittal based on December 2023 concept plan, shown above and without the potential restroom. 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 8.1 Opinion of Probable Cost

The MIG Team will develop an Opinion of Probable Costs based on the concept plan above to serve as a baseline for 30% effort and confirm the design is within the construction budget.

Task 8.2 Costing City Check-in Meeting

MIG will facilitate a virtual meeting with City staff to review the cost estimate relative to construction budget and confirm changes and/or minor refinements needed for the 30% set. A summary of the meeting will be prepared.

Task 8.3 Design Development/ 30% CD Plans

The MIG Team will prepare preliminary plans in AutoCAD showing the layout of proposed park and trail elements, including paving, site furnishings, planting areas and other site features. This includes utility reports for capacity studies and earthwork study.

Task 8.4 Opinion of Probable Cost

The MIG Team will develop an Opinion of Probable Costs based on the 30% plans.

Task 8.5 Preliminary CD City Review Meeting

MIG will facilitate a virtual meeting with City staff to review consolidated comments on the preliminary plans to clarify questions and confirm corrections or minor refinements needed for the 60% set. A summary of the meeting will be prepared.

Task 8.6 Project Management and Team Coordination

The MIG Team will continue Project Management and Team Coordination duties related to these tasks for the rough schedule noted on the accompanying fee spreadsheet.

TASK 8 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.

- Concept Plan Opinion of Probable Costs
- Preliminary 30% CD Plans and Opinion of Probable Costs
- City Review Meetings Agendas & Meeting summaries
- Monthly invoices

PHASE 9 TASK: REGULATORY PERMITTING**Task 9.1 Project Design Review and Impact Evaluation**

Based on the newest version of the project design, potential impacts shall be reviewed to ensure that permit requirements are met. MIG will work with the Client to accurately identify, assess, and calculate temporary and permanent impacts to jurisdictional habitats on the project site. MIG will calculate the acreages of permanent and temporary disturbances to the jurisdictional habitats within the project site. MIG will also evaluate the drainage calculations and drainage plans prepared for the project to characterize the amount of hydromodification proposed, evaluate potential impacts on water quality, and provide recommendations for Best Management Practices (BMPs) to minimize impacts.

Task 9.2 Pre-Application Regulatory Agency Consultation (CDFW and RWQCB only)

The purpose of this task is to discuss the project with regulatory agencies to learn of any concerns and ensure that we provide all relevant information in application packages. Since the proposed project will not impact Saratoga Creek below the Ordinary High Water Mark (OHWM), the project does not require authorization from the U.S. Army Corps of Engineers (USACE). However, the project may require authorization from California Department of Fish and Wildlife (CDFW) and Regional Water Quality Control Board (RWQCB) for potential impacts to riparian habitat within top of bank of the creek. In our experience, early coordination with the regulatory agencies can assist in expediting the permit approval process by addressing technical questions and comments early in the planning process which will limit delays during application review. MIG shall coordinate with the CDFW and RWQCB via email, and if appropriate through a virtual or in person meeting. Activities include coordination to discuss the project, present the potential impacts of the project, propose impact avoidance and mitigation measures, and address potential permitting requirements. After coordinating with regulatory agencies, if any new

requirements arise, we will provide the Client with an updated permitting timeline based on the anticipated agency requirements.

Task 9.3 Prepare Regulatory Permit Application Packages (CDFW and RWQCB only)

Based on our understanding of resource agency jurisdiction, the project likely requires authorization from the RWQCB and CDFW. The project does not require authorization from the U.S. Army Corps of Engineers (USACE) since project activities are outside of creek channel and above the ordinary high water mark (OHWM). Both RWQCB and CDFW require authorization for any project within the bed, bank, or channel of a stream; and/or within associated riparian habitat. The RWQCB may also exert jurisdiction of areas within the 100-year flood plain, even if these areas are beyond the top of bank or riparian habitat. The proposed project includes activities within the bank of the creek and associated riparian habitat.

This scope of work assumes that MIG will prepare the appropriate permit application packages, including a Notice of Applicability (NOA) for enrollment under a General Waste Discharge Requirement Order (WDR) for the RWQCB and a Section 1600 Notification of Lake and Streambed Alteration for the CDFW.

Once the 60% design is available, MIG will prepare the appropriate permit application packages. Application packages will include the permit application form, engineering drawings, and the following information:

- Description of the overall project, including a site plan and other project plans. The agencies will require 60% design plans.
- Surface area in acres of waters of the U.S. and state, adjacent wetlands, and adjacent riparian vegetation that will be impacted by the proposed project.
- Describe the actions proposed within the jurisdiction of each agency.
- Method of vegetation clearing (if any) within the project area.
- Cross-section and lateral view of the project plan.
- A description of water diversion methods (if any).
- BMPs incorporated into the project to prevent impacts to water quality and biological resources.
- Biological Resources Assessment.
- Hydrology and Hydraulic study (if needed).
- Alternative Analysis (if applicable)
- Mitigation and Monitoring Plan
- Final CEQA documentation, including the Notice of Completion (NOC).
- Permit application fees. MIG will determine the cost of the permit fees, but the Client is responsible for the payment of all permit application fees.

We will coordinate with the City and team to provide the following information:

- Site plans.
- Volume of cut/fill and composition of materials removed/added during grading in jurisdictional areas.
- Cross-section drawing of the project design.
- A Stormwater Pollution Prevention Plan (SWPPP) and/or BMPs to prevent water pollution.
- Estimated project costs (to determine permit application fees).
- CEQA Notice of Completion (NOC).

Task 9.4 Permit Application Follow-up and Response

In MIG's experience, it is essential to provide consistent outreach and coordination with the regulatory agencies once the permit applications are submitted. Outreach efforts can help streamline permitting and avoid delays due to requests for additional information or to simply answer questions regarding the applications that the agencies may have instead of waiting for a written response to reply to. MIG will diligently negotiate permit conditions and coordinate with the regulatory agencies via phone or email in order to keep the permitting process on track. This scope of work assumes no more than 16 hours will be required to coordinate with the agencies and secure the permits.

Task 9.5 Project Management and Team Coordination

The MIG Team will continue Project Management and Team Coordination duties related to these tasks for the rough schedule noted on the accompanying fee spreadsheet.

Task 9 Deliverables:

- Appropriate permit application packages
- Notice of Applicability (NOA) for enrollment under a General Waste Discharge Requirement Order (WDR) for RWQCB
- Section 1600 Notification of Lake and Streambed Alteration for CDFW
- Monthly invoices

PHASE 10: CONSTRUCTION DOCUMENTS (CD)

The MIG Team will prepare design plans, construction documents, specifications and opinions of probable costs at the milestones noted below.

Task 10.1 60% CD Submittal

The MIG Team will prepare construction documents to a 60% 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 park'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 10.2 60% CD Opinion of Probable Costs

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

Task 10.3 60% CD City Coordination/Assistance (Allowance)

The MIG Team has a small allowance to allow for coordination for City reviews such as ADA review, stormwater, and the maintenance department. (Note: work related to regulatory permitting is included in Phase 7).

Task 10.4 City Review Meeting

The City will provide one set of consolidated review comments detailing the required changes to the 60% 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 95% CD package.

Task 10.5 95% CD Submittal

Based on the 60% CD's submittal and incorporating the City's direction from the 60% CD review meeting, the MIG Team will prepare construction documents to a 95% level of completion. The MIG Team will also provide CSI format technical specifications related to the scope of work. The City will be responsible for providing the Division I/front end/project manual specifications sections but an allowance has been made to assist the City with front end project description, bid schedule and minor edits to project manual. Design documentation, including specifications, will be consistent with required federal, state, and local codes and regulations.

Task 10.6 City Review Meeting

The City will provide one set of consolidated review comments detailing any required changes to the Design 95% CD package prior to submitting for City permits. These will be discussed and finalized in a two-hour (maximum) virtual meeting between the City and MIG prior to submitting the permit set.

Task 10.7 Project Management and Team Coordination

The MIG Team will continue Project Management and Team Coordination duties related to these tasks for the rough schedule noted on the accompanying fee spreadsheet.

TASK 10 DELIVERABLES

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

- 60% CD Submittal - Drawings and Spec TOC
- 60% CD Opinion of Probable Costs
- 95% CD Submittal - Drawings and Specs
- Monthly invoices

PHASE 11: CITY PERMITTING/100% CONSTRUCTION DOCUMENTS (CD)

The MIG Team will lead City permit applications.

Task 11.1 and 11.2 City Permit Application and 100% CD/Permit Set

The MIG Team will take the lead on City permit applications. First review submittal will include 95% documents with City review comments. It is assumed that all City 95% and permit first round of review comments will be resolved to permit satisfaction with the second round of documents for permit review and that those documents will be used for public bid. Based on the City's 95% review comments and permit first review comments, the MIG Team will create a permit review delta clouded set of drawings and specifications that will be used for public bid process. The MIG team assumes that multiple permit packages are not required and that 100% construction documents will 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).

Task 11.3 Project Management and Team Coordination

The MIG Team will continue Project Management and Team Coordination duties related to these tasks for the rough schedule noted on the accompanying fee spreadsheet.

TASK 11 DELIVERABLES

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

- City Permit Application
- 100% CD/Permit Drawing Set - Drawings and Specs
- Monthly invoices

TASK 12: BIDDING SUPPORT**Task 12.1 Pre-bid Meeting**

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

Task 12.2 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 12.3 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 12.4 Project Management and Team Coordination

The MIG Team will continue Project Management and Team Coordination duties related to these tasks for the rough schedule noted on the accompanying fee spreadsheet.

TASK 12 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 13: CONSTRUCTION ADMINISTRATION

Task 13.1 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 13.2 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 has made an allowance for assistance with these efforts and will keep the City apprised of efforts. As construction continues and additional assistance be needed and existing budget be expended, additional reviews or effort can be provided through additional services.

Task 13.3 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 13.4 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 13.5 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 13.6 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 13 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:

- Any public meetings including but not limited to community meetings or engagement, 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.
- Project Record Drawings

PROJECT SCOPE ASSUMPTIONS:

- CLIENT: 'The City' refers to the City of Cupertino's Lawrence Mitty project team.
- BUDGET: Scope and fee is based on a construction budget of \$3,900,000 (\$3,500,000 base budget with a 10% contingency). 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.
- VIRTUAL MEETINGS: Team meetings are assumed to be virtual with in-person meetings limited to noted

site visits.

- 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 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.
- ALLOWANCES: Allowances have been made for cost estimation and limited anticipated electrical and structural support; should additional support be needed as the design is refined, additional fees will be needed.
- CONTINGENCY: A design contingency has been included to address out of scope items or additional effort requests. Use of contingency will be coordinated and authorized by the City prior to related efforts.

A rough project schedule is noted in Exhibit B.

Estimated Project Costs are noted in Exhibit C.

NOTE: Our understanding is that the City typically keeps 10% of the construction budget as a contingency. Given the project is currently in CEQA review, regulatory permits will be needed, and that there are technical complexities with the site, we highly recommend that the City holds a 20% contingency based on construction budget to address potential additional project needs beyond the scope noted above.



Lawrence Mitty Park and Trail

Schedule

03.12.2024

The following is a high level schedule for the main tasks outlined in the Scope of Work. A more detailed schedule will be coordinated with City staff once CEQA review is completed, assumed to be June 2024.

Task 8: Design Development/30% CDs – (2 months) – July/August 2024

Task 9: Regulatory Permitting – (7 months) – September 2024 – March 2025

Task 10: Construction Documents – (6 months) – April – September 2025

Task 11: City Permitting – (2 months) – October/November 2025

Task 12: Bidding Support – (2.5 months) – December 2025-February 2026

Task 13: Construction Administration – (12 months) – March 2026-March 2027

Note: in the previously published document, this page was cut off. The full page is now included.



City of Cupertino | Lawrence Mitty Park and Trail
e s t i m a t e d p r o j e c t c o s t

		MIG, Inc.																Subconsultants						Direct Costs	Professional Fees Totals			
		Melissa Erikson <i>Principal-in-Charge</i>		Jan Eiesland <i>Project Manager</i>		David Gallagher <i>Permitting PM</i>		Casey Howard <i>Project Associate</i>		Dino Viale <i>Irrigation Designer</i>		Kalankar/Kempton <i>Senior Biologist</i>		Alex Broskoff <i>Biologist</i>		Staff <i>Support</i>		Lori Maness <i>Project Assistant</i>		MIG Totals	BKF (Civil)	Ninyo+ Moore (Geotech allowance)	Atium (Elect allowance)			KPFF (Struct allowance)	Sub Totals	
		Hrs@	\$210	Hrs@	\$180	Hrs@	\$205	Hrs@	\$120	Hrs@	\$145	Hrs@	\$180	Hrs@	\$120	Hrs@	\$110	Hrs@	\$80									
Task 8:	DESIGN DEVELOPMENT/30% CDS (2 MONTHS)																											
8.1	Opinion of Probable Cost	1	\$210	4	\$720	0	\$0	6	\$720	6	\$870		\$0		\$0		\$0		\$0	17	\$2,520					\$0	\$14,000	\$16,520
8.2	Costing City Check-in Meeting	2	\$420	4	\$720		\$0		\$0		\$0		\$0		\$0		\$0		\$0	6	\$1,140					\$0		\$1,140
8.3	Design Development/30% CD plans	24	\$5,040	80	\$14,400		\$0	120	\$14,400	28	\$4,060		\$0		\$0		\$0		\$0	252	\$37,900	\$25,000		\$3,000	\$2,000	\$30,000	\$5,000	\$72,900
8.4	Opinion of Probable Cost	1	\$210	4	\$720		\$0	6	\$720		\$0		\$0		\$0		\$0		\$0	11	\$1,650					\$0	\$14,000	\$15,650
8.5	Preliminary CD City Review Meeting	4	\$840	6	\$1,080		\$0	6	\$720		\$0		\$0		\$0		\$0		\$0	16	\$2,640					\$0		\$2,640
8.6	Project Management and Team Coordination (Assume 2 meeting calls, ~1 per month plus post CEQA coordination)	8	\$1,680	16	\$2,880		\$0	16	\$1,920		\$0		\$0		\$0		\$0	8	\$640	48	\$7,120					\$0		\$7,120
Subtotal		40	\$8,400	114	\$20,520	0	\$0	154	\$18,480	34	\$4,930	0	\$0	0	\$0	0	\$0	8	\$640	350	\$52,970	\$25,000	\$0	\$3,000	\$2,000	\$30,000	\$33,000	\$115,970
Task 9:	REGULATORY PERMITTING (7 months)																											
9.1	Project Design Review and Impact Evaluation		\$0	2	\$360	50	\$10,250		\$0		\$0	2	\$360	2	\$240	1	\$55		\$0	57	\$11,265					\$0		\$11,265
9.2	Pre-Application Regulatory Agency Consultation (CDFW and RWQCB only)		\$0	2	\$360	2	\$410	2	\$240		\$0	3	\$540	2	\$240	1	\$55		\$0	12	\$1,845					\$0		\$1,845
9.3	Prepare Regulatory Permit Application Packages (CDFW and RWQCB only)		\$0	4	\$720	10	\$2,050		\$0		\$0	50	\$9,000	20	\$2,400	1	\$110		\$0	85	\$14,280	\$2,000				\$2,000		\$16,280
9.4	Permit Application Follow-up and Response		\$0	4	\$720	4	\$820	10	\$1,200		\$0	12	\$2,160		\$0		\$0		\$0	30	\$4,900					\$0		\$4,900
9.5	Project Management and Team Coordination (Assume 4 meeting calls)	4	\$840	8	\$1,440	0	\$0	14	\$1,680		\$0		\$0		\$0		\$0	4	\$320	30	\$4,280					\$0		\$4,280
Subtotal		4	\$840	20	\$3,600	66	\$13,530	26	\$3,120	0	\$0	67	\$12,060	24	\$2,880	2	\$220	4	\$320	213	\$36,570	\$2,000	\$0	\$0	\$0	\$2,000	\$0	\$38,570
Task 10:	CONSTRUCTION DOCUMENTS (CDS) (6 months)																											
10.1	60% CD Submittal	8	\$1,680	80	\$14,400	0	\$0	120	\$14,400	28	\$4,060		\$0		\$0		\$0		\$0	236	\$34,540	\$22,000		\$3,000	\$2,500	\$27,500		\$62,040
10.2	60% CD Opinion of Probable Costs	2	\$420	4	\$720		\$0	8	\$960		\$0		\$0		\$0		\$0		\$0	14	\$2,100					\$0	\$12,000	\$14,100
10.3	60% CD City Coordination/Assistance	2	\$420	8	\$1,440		\$0	8	\$960		\$0		\$0		\$0		\$0		\$0	18	\$2,820					\$0		\$2,820
10.4	City Review Meeting	2	\$420	3	\$540		\$0	4	\$480		\$0		\$0		\$0		\$0		\$0	9	\$1,440					\$0		\$1,440
10.5	95% CD Submittal	8	\$1,680	60	\$10,800	12	\$2,460	120	\$14,400	28	\$4,060		\$0		\$0		\$0		\$0	228	\$33,400	\$22,000		\$4,000	\$3,000	\$29,000		\$62,400
10.6	City Review Meeting	2	\$420	4	\$720		\$0	8	\$960		\$0		\$0		\$0		\$0		\$0	14	\$2,100					\$0		\$2,100
10.7	Project Management and Team Coordination (Assume 6 meeting calls, ~1 per month)	6	\$1,260	12	\$2,160		\$0	12	\$1,440		\$0		\$0		\$0		\$0	6	\$480	36	\$5,340					\$0		\$5,340
Subtotal		30	\$6,300	171	\$30,780	12	\$2,460	280	\$33,600	56	\$8,120	0	\$0	0	\$0	0	\$0	6	\$480	555	\$81,740	\$44,000	\$0	\$7,000	\$5,500	\$56,500	\$12,000	\$150,240
Task 11:	CITY PERMITTING/100% CDS (2 months)																											
11.1	City Permit Application	24	\$5,040	60	\$10,800	0	\$0	60	\$7,200	16	\$2,320		\$0		\$0		\$0		\$0	160	\$25,360	\$2,000		\$2,000	\$1,000	\$5,000		\$30,360
11.2	100% CD/Permit Set	8	\$1,680	40	\$7,200	8	\$1,640	120	\$14,400	28	\$4,060		\$0		\$0		\$0		\$0	204	\$28,980	\$8,000	\$3,000	\$3,000	\$3,000	\$17,000		\$45,980
11.3	Project Management and Team Coordination (Assume 6 calls)	6	\$1,260	18	\$3,240		\$0	12	\$1,440		\$0		\$0		\$0		\$0	8	\$640	44	\$6,580					\$0		\$6,580
Subtotal		38	\$7,980	118	\$21,240	8	\$1,640	192	\$23,040	44	\$6,380	0	\$0	0	\$0	0	\$0	8	\$640	408	\$60,920	\$10,000	\$3,000	\$5,000	\$4,000	\$22,000	\$0	\$82,920
Task 12:	BIDDING SUPPORT (2.5 months)																											
12.1	Pre-bid Meeting		\$0	6	\$1,080		\$0	6	\$720	1	\$145		\$0		\$0		\$0		\$0	13	\$1,945					\$0	\$200	\$2,145
12.2	Bid Assistance Allowance (Bidder Question Response, Addenda)	1	\$210	6	\$1,080		\$0	6	\$720	1	\$145		\$0		\$0		\$0		\$0	14	\$2,155	\$2,500		\$1,000	\$1,000	\$4,500		\$6,655
12.3	Conformed Construction Set Submittal	1	\$210	8	\$1,440		\$0	32	\$3,840	12	\$1,740		\$0		\$0		\$0		\$0	53	\$7,230	\$2,500		\$1,000	\$1,000	\$4,500		\$11,730
12.4	Project Management and Team Coordination (Assume 3 meeting calls)	3	\$630	12	\$2,160		\$0	6	\$720		\$0		\$0		\$0		\$0	3	\$240	24	\$3,750					\$0		\$3,750
Subtotal		5	\$1,050	32	\$5,760	0	\$0	50	\$6,000	14	\$2,030	0	\$0	0	\$0	0	\$0	3	\$240	104	\$15,080	\$5,000	\$0	\$2,000	\$2,000	\$9,000	\$200	\$24,280
Task 13:	CONSTRUCTION ADMINISTRATION (12 months)																											
13.1	Preconstruction Meeting Participation		\$0	8	\$1,440		\$0		\$0		\$0		\$0		\$0		\$0		\$0	8	\$1,440					\$0		\$1,440
13.2	Responses to Contractor Submittals	4	\$840	100	\$18,000	0	\$0	60	\$7,200	16	\$2,320		\$0		\$0		\$0		\$0	180	\$28,360	\$10,000		\$2,000	\$2,000	\$14,000		\$42,360
13.3	Construction Meetings and Site visits (see scope qty)	16	\$3,360	100	\$18,000	0	\$0	12	\$1,440	20	\$2,900		\$0		\$0		\$0		\$0	148	\$25,700			\$1,000		\$1,000	\$1,500	\$28,200
13.4	Preliminary Punch List Site Visit and Preparation	1	\$210	10	\$1,800		\$0		\$0	10	\$1,450		\$0		\$0		\$0		\$0	21	\$3,460					\$0		\$3,460
13.5	Final Punch List Site Visit and Preparation	1	\$210	10	\$1,800		\$0		\$0	10	\$1,450		\$0		\$0		\$0		\$0	21	\$3,460					\$0		\$3,460
13.6	Project Management and Team Coordination (Assume 10 meeting calls, ~1 per month)	10	\$2,100	40	\$7,200		\$0		\$0		\$0		\$0		\$0		\$0	10	\$800	60	\$10,100					\$0	\$1,200	\$11,300
Subtotal		32	\$6,720	268	\$48,240	0	\$0	72	\$8,640	56	\$8,120	0	\$0	0	\$0	0	\$0	10	\$800	438	\$72,520	\$10,000	\$0	\$3,000	\$2,000	\$15,000	\$2,700	\$90,220
SUBTOTAL		149	\$31,290	723	\$130,140	86	\$17,630	774	\$92,880	204	\$29,580	67	\$12,060	24	\$2,880	2	\$220	39	\$3,120	2068	\$319,800	\$96,000	\$3,000	\$20,000	\$15,500	\$134,500	\$47,900	\$502,200
5% Markup (Direct Costs/Administrative)																										\$6,725	\$2,395	\$9,120
TOTAL PROJECT COSTS																												\$511,320

NOTE: A 20% design contingency, higher than the City's standard 10%, is highly recommended based on on-going CEQA review, pending regulatory permits, and the technical complexity of the site.

EXHIBIT C-1: Hourly Rates and Reimbursable Expenses

Lawrence Mitty Park and Trail Plan, Cupertino, CA

March 2024

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
Irrigation Designer	\$145
Landscape Designer	\$120
CEQA/Environmental, Principal	\$220
CEQA/Environmental, Director	\$195
CEQA Project Manager	\$180
Permitting PM	\$205
Senior Biologist/Senior Analyst	\$180
Biologist/Noise Analyst/GIS	\$120
Project Support	\$120
Project Assistant	\$80

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%

FOURTH AMENDMENT TO AGREEMENT 402
BETWEEN THE CITY OF CUPERTINO AND MIG, INC
FOR LAWRENCE-MITTY PARK AND TRAIL
IMPLEMENTATION PLAN

This Fourth Amendment to Agreement 402 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 402 ("Agreement") was entered into by and between City and Contractor for Lawrence-Mitty Park and Trail Implementation Plan.
- B. The City and Contractor entered into a First Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("First Amendment") effective February 28, 2022.
- C. The City and Contractor entered into a Second Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("Second Amendment") effective August 25, 2022.
- D. The City and Contractor entered into a Third Amended Agreement for Lawrence-Mitty Park and Trail Implementation Plan ("Third Amendment") effective October 13, 2022.
- E. The Original Agreement, First Amendment, Second Amendment and Third Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- F. City and Contractor to continue Contractor's services to the City under the Agreement, and hereby affirm their intent that it remain in full force and effect as amended and reinstated by this Fourth Amendment.

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

By Pamela Wu
Title City Manager
Date Mar 27, 2024

MIG, INC

By Christopher J. Beyer
Title Vice President and Chief Development Officer
Date Mar 20, 2024

APPROVED AS TO FORM

Christopher D. Jensen
City Attorney

ATTEST:

Kristen Aguirre
City Clerk

Date Mar 27, 2024



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).

PRODUCER AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549		CONTACT NAME: Jo Lusk PHONE (A/C, No, Ext): 510-272-1465 E-MAIL ADDRESS: CertsDesignPro@AssuredPartners.com	
License#: 6003745 MIGINC0-01		INSURER(S) AFFORDING COVERAGE	
INSURED MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710		INSURER A: BERKLEY INSURANCE COMPANY INSURER B: Travelers Property Casualty Company of America INSURER C: The Travelers Indemnity Company of Connecticut INSURER D: The Travelers Indemnity Company INSURER E: INSURER F:	
		NAIC # 32603 25674 25682 25658	

COVERAGES**CERTIFICATE NUMBER:** 1537881182**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 <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 N	Y	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 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: Lawrence Mitty Park and Trail Master Plan. 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 Day Notice of Cancellation**

City of Cupertino
10300 Torre Avenue
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.

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

PROVISIONS

A. BROAD FORM NAMED INSURED

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

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

B. BLANKET ADDITIONAL INSURED

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

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

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

C. EMPLOYEE HIRED AUTO

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

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

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

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

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

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

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

D. EMPLOYEES AS INSURED

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

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

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

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

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

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

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

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

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

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

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

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

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

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

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

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

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

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

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

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

G. WAIVER OF DEDUCTIBLE – GLASS

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

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

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

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

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

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

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

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

J. PERSONAL PROPERTY

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

Personal Property

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

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

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

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

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

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

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

- 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.

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 _____

Countersigned by _____

The Travelers Indemnity Company

DATE OF ISSUE: 8/7/2023

Page 1 of 1

**THIRD AMENDMENT TO AGREEMENT 402 BETWEEN
THE CITY OF CUPERTINO AND MIG, INC., FOR
LAWRENCE-MITTY PARK AND TRAIL
IMPLEMENTATION PLAN**

This Third Amendment to Agreement 402 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 402 ("Agreement") was entered into by and between City and Contractor for Lawrence-Mitty Park and Trail Implementation Plan.
- B. 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 \$341,819.00 ("Contract Price"), erroneously stated in first amendment as a not to exceed \$343,784.00, 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, 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 \$48,035.00. 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 , 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

MIG, INC.

By Pamela Wei
Title City Manager
Date Oct 13, 2022

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

APPROVED AS TO FORM

Christopher D. Jensen

City Attorney

ATTEST:

Kristen Squarone

City Clerk

Date Oct 13, 2022

EXPENDITURE DISTRIBUTION

Item	PO Number	Amount
Original Agreement	2022-325	\$293,784.00
Amendment #1	Change in Scope, Change in Contract Amount	\$28,500.00
Amendment #2	Change in Scope	
Amendment #3	Change in Scope, Change in Contract Amount	\$19,535.00
Total Agreement		\$341,819.00

September 21, 2022

Matt Morley, Director of Public Works
 Susan Michael, CIP Manager, Public Works
 City of Cupertino - City Hall
 10300 Torre Ave.
 Cupertino, CA 95014

Re: Additional Services Lawrence-Mitty Park and Trail Master Plan (MIG proj. no. 30903)

Dear Matt and Susan,

As discussed with the Cupertino project manager, Lisa Cameli, and in meetings with you both, there have been several work efforts required for the Lawrence Mitty project that fall outside the original scope of work. The first three items were time-sensitive with verbal approval from the project manager to track time for these efforts and submit them together at one time as an add service. The last two items are also time-sensitive to stay on track with the upcoming events.

The following summarizes our 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 #2 (New Task 7) \$19,535

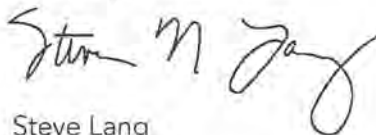
We will add a new task number for this additional scope, detailed below:

1. Added translation work for the visioning survey in May-June 2022 (12 hours, \$1,835)
2. Additional Meetings. and Additional Requested Staff in April-June 2022, requested by the City PM:
 - *ERC email correspondence and meeting on 4/20/22, (2 staff @ 2 hr. ea., \$720)*
 - *Site Tour – Extra Biology staff requested to be stationed at Creek (6 hr. – debrief, travel, attendance, \$900)*
 - *Environmental Planner/CEQA-Soils expert at Joint Commission Meeting on 6/13/22 (2 hr., \$390)*
3. Fast-tracked Separate Berm Removal Effort in June-Sept. 2022: review of berm work proposal by others, correspondence, several City meetings, and proposed process write-up to move forward (Principal, PM, Environmental Planner, Biologist, 22 hr., \$4,110)

4. Out of scope Community Engagement additions, as discussed, in Sept-Oct 2022 (40 hr., \$5,200):
 - *Video posting for Engage Cupertino to explain the 3 alternatives*
 - *Coordinate survey #2 questions for Engage Cupertino's posting*
 - *Synthesis of survey #2 results*
5. Out of scope preparation for CD level mapping and Interagency Review. The original ALTA survey was adequate for concept level work. It was discussed early on that a more complete topo survey would be needed in the CD phase – to capture the (moved) soil pile locations/volumes, to reach CD-level accuracy and to be able to share a georeferenced riparian corridor with the agencies (Multiple staff, 24 hr., \$6,380).
 - *Coordination/review of upcoming survey request (led by the City of Cupertino) for current soil piles/berms for use in Interagency meeting*
 - *Planned environmental team work in Jan. 2023 to review plans, coordinate, and prepare for/attend an Interagency review meeting in Feb. 2023*

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

Sincerely,



Steve Lang
Principal, MIG

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

Matt Morley, Director of Public Works
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).

PRODUCER AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549	CONTACT NAME: The Certificate Team	
	PHONE (A/C, No, Ext): FAX (A/C, No):	
	E-MAIL ADDRESS: CertsDesignPro@AssuredPartners.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Berkley Insurance Company	32603
	INSURER B: Travelers Property Casualty Company of America	25674
	INSURER C: The Travelers Indemnity Company of Connecticut	25682
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 724616870 **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 VVD	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"/> PROJECT <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/N	N/A	UB2L553909	8/31/2022	8/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER 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 type="checkbox"/> 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: Lawrence Mitty Park and Trail Master Plan 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 Avenue 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.

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

PROVISIONS

A. BROAD FORM NAMED INSURED

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

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

B. BLANKET ADDITIONAL INSURED

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

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

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

C. EMPLOYEE HIRED AUTO

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

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

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

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

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

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 _____

DATE OF ISSUE: 8/28/2022

Page 1 of 1

SECOND AMENDMENT TO AGREEMENT 402
BETWEEN THE CITY OF CUPERTINO AND MIG, INC.
FOR COMPLETION OF THE LAWRENCE-MITTY
PARK AND TRAIL MASTER PLAN

This Second Amendment to Agreement 402 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 May 17, 2022, City Council took action to rename this project from "Lawrence-Mitty Park and Trail Master Plan," to "Lawrence-Mitty Park and Trail Implementation Plan."
- B. On December 09, 2021 Agreement 402 ("Agreement") was entered into by and between City and Contractor for Completion of the Lawrence-Mitty Park and Trail Master Plan.
- C. City and the Contractor entered into a First Amendment for Lawrence-Mitty Master Plan effective February 28, 2022 with the term expiring on December 31, 2023; and
- D. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

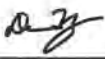
NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. **Paragraph 1 - PARTIES** of the Agreement is modified to read as follows: This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and MIG, Inc ("Consultant"), a Corporation for Design Services of the Lawrence-Mitty Park and Trail **Implementation Plan** ("Project"), and is effective on the last date signed below ("Effective Date").
2. Replace Exhibit A of the Agreement with **Exhibit A-2, Scope of Work**, attached hereto.
3. Exhibit A-1 remains in effect and is not changed by this contract amendment.
4. 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.

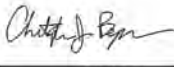
SIGNATURES CONTINUE ON THE FOLLOWING PAGE

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

CITY OF CUPERTINO

By 
Title Acting City Manager
Date Aug 23, 2022


MIG, INC.

By 
Title Chief Development Officer
Date Aug 18, 2022

APPROVED AS TO FORM

Christopher D. Jensen
City Attorney

ATTEST:


City Clerk

Date Aug 25, 2022

Lawrence Mitty Park and Trail Implementation Plan, Cupertino, CA

Scope of Work

November 17, 2021

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Lawrence Mitty Park and Trail Implementation Plan 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 project requirements stated in the City of Cupertino's ("the City") Lawrence Mitty Park and Trail Master Plan RFQ, dated August 12, 2021, and Addenda (now known as the Lawrence Mitty Park and Trail Implementation Plan). In the tasks listed below, meetings are expected to be virtual except when noted otherwise. Meeting notes allow for one set of revisions to incorporate City input per meeting notes.

Project Understanding

The City wishes to develop a Park and Trail Implementation Plan for the Lawrence-Mitty site ("Implementation Plan"), located on the east side of Cupertino between the Lawrence Expressway and Saratoga Creek, as shown in the RFQ. The purpose of the Implementation Plan is to determine how to best meet the future recreation, trail, and open space needs of citizens through enhancement of the site. Additionally, there is the intent to connect the Saratoga Creek Trail through the Lawrence-Mitty site to San Jose and Santa Clara to the North. The Implementation Plan process will initially result in a conceptual design for a premier park with recreation activities that will attract and accommodate all residents. The City envisions a destination that provides all ages, but especially children, with a memorable experience of outdoor play, exercise, and educational opportunities while providing much-needed open space to the east side of Cupertino, which is underserved in terms of park space and recreational opportunity. The resulting Implementation Plan will also provide an exciting and inviting space for all age groups through an extension of the Saratoga Creek walking and biking trail.

The comprehensive Implementation Plan will provide technical analysis of the site as described below, identify community values and needs, align with the City's 2020 Parks and Recreation System Master Plan and result in a ready-to-implement vision for the Lawrence Mitty Park site. The City Council-approved conceptual design and report will be used to guide future recreational and programmatic decisions and capital improvement planning for the site.

PHASE 1 – EXISTING CONDITIONS AND TECHNICAL ANALYSIS

1.1 Project Kick-Off Meeting and Work Plan

The project kick-off meeting will include City staff, MIG's Project Manager (PM), and key personnel within each designated specialty to discuss design objectives, issues, and a draft work

plan. Following the kick-off, MIG will develop a detailed work plan with roles, responsibilities, and schedule; prepare a data request; and coordinate a site visit.

Deliverables:

- Kick-off Agenda
- Kick-off Notes
- Draft Work Plan and Schedule
- Final Work Plan and Project Schedule (PDF)

1.2 Community Engagement Initial Planning

MIG will review existing input from the 2020 Park and Recreation System Master Plan and 2017 community site walk. We will collaborate with City staff to identify stakeholders and prepare for outreach.

Deliverables:

- Communications Plan including schedule (PDF, Draft and Final)

1.3 Evaluate Existing Conditions Information

The MIG Team will review existing conditions information and additional background documents noted in the RFQ. BKF will evaluate existing utilities and easements, hydrologic information, and adequate survey info, and alert the City if there is a need for any additional information.

Deliverables:

- Summary report of site-specific findings and jurisdictional regulations that may impact or influence the final conceptual design for the Implementation Plan including specific per the RFQ
- Summary of how the proposed conceptual plan conforms to Citywide Parks Goals and Regulations as requirements of other jurisdictions
- Summary of review of existing ATLA/NSPS Land Survey and verification of site improvement and topo accuracy or statement of inconsistencies with fee proposal for corrections
- Summary of the MIG Team's research and understanding of existing on-site and adjacent utilities, easements, and hydrologic information. Includes assessment of any potential impacts on site design concepts
-

1.4 Team Site Tour

In collaboration with City staff, the MIG Team will meet at the site to walk the park and trail, observing specific concerns and discussing questions.

Deliverables:

- Meeting notes for Site Tour

1.5 Transportation Study

Hexagon Transportation Consultants will prepare a short vehicle miles travelled (VMT) project screening memo to describe how the project would be screened out of a full VMT analysis under the City's criteria. Hexagon will also analyze the potential multi-modal/pedestrian safety impacts of the park and trail project.

Deliverables:

- VMT screening and Multimodal/Pedestrian Safety Impacts Memo

1.6 Phase 1 ESA Update and Phase 2 Investigation

Cornerstone will prepare a Phase I Environmental Site Assessment (ESA) Update, a Phase II Soil Quality Evaluation, and a Health and Safety Plan for personnel conducting earthwork activities at the site prior to the initiation of the Phase II soil sampling. Meeting attendance will be charged on a time and materials basis.

Deliverables:

- Meeting Notes from meeting documenting approach and decisions for further environmental analysis
- Summary of full review of existing Environmental Reports for the site
- List of any proposed additional testing locations and purpose of sampling
- Draft and Final Phase II Environmental Site Assessment Report for City review and approval
- Completion of a Phase III ESA if requested by the City and recommended in the Phase II ESA (Scope and fee to be negotiated after Phase II ESA is complete)

1.7 Acoustical Assessment for Noise Reduction

MIG will prepare a technical noise report that summarizes the existing ambient noise environment at the project site (based on measurements and modeling results), the ambient environment that could exist under three different sound attenuation options at the site, and preliminary recommendations for recreation options based on reduced noise levels. MIG's approach to completing the noise (i.e., the protocol) will be summarized in a technical memorandum for City approval after MIG has discussed various modeling options with the City during a kick-off call. Noise reduction measures will be integrated into the final conceptual design and final Conceptual Plan report.

Deliverables:

- Technical noise memorandum for protocol for review and acceptance (within two weeks of kick-off call)
- Draft Noise Report (PDF, within five weeks of protocol approval)
- Final Noise Report

1.8 Biological Resources Report

MIG biologists will prepare a stand-alone Biological Resources Report that will include a Jurisdictional Delineation. These reports will be used to inform the project design and as supporting documentation for the CEQA analysis and any future resource agency permits that may be required for the project.

Deliverables:

- Biological Resources Report
- Jurisdictional Delineation

1.9 Tree Survey and Condition Assessment

SBCA Tree Consulting will perform an assessment of on-site trees including an evaluation of tree size and health, tree site location, identification of structural defects, pruning needs, and pests. Work will include one (1) pre-inventory meeting with the City Project Manager and Arborist.

Deliverables:

- Draft and final copy of proposed tree inventory methodology and attributes to be collected for City review and approval
- One (1) PDF copy and one (1) AutoCAD version 2019 or newer copy of tree survey overlaid onto the existing 2020 topographic survey within the project area at 1"= 20' scale
- One (1) PDF of Arborist Report on trees, potential construction impacts and recommendations to be integrated into the final Conceptual Plan Report

1.10 Site Environmental Summary Report

MIG, along with consultant expertise, will synthesize findings into an Environmental Summary Report (to include a brief summary of all of the above reports) and Opportunities and Challenges Diagrams for use in future community meetings.

Deliverables:

- Environmental Summary Report (PDF)
- Opportunities and Challenges Diagrams (PDF)

1.11 City Meeting: Review Phase 1 Findings

The City and MIG will meet to review technical analysis and findings. We will also discuss emerging site possibilities and the team's approach to community input moving forward.

1.12 Phase 1 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 2 – COMMUNITY VISION

2.1 Public Survey and Analysis

Initial planning for the survey will occur early in Phase 1. At that time the City and MIG will discuss the workplan and confirm if this survey may launch before the technical analysis is 100% complete. MIG will develop the public internet survey, along with graphics for print materials for use by the City to distribute by US Mail. MIG will also provide additional advice on outreach and publicity to reach nearby residents and will develop a poster or a street decal with a QR code to be posted in and around the project area. The City will assist with placing posters. MIG will compile results from the survey in an easy-to-digest analysis for the City. The City and MIG will meet to review findings and inform next outreach steps.

Deliverables:

- Updated Communications Plan including schedule
- Draft Community Survey for City staff comment
- Final Community Survey to be distributed to the public
- Development of poster or street decal with QR code to publicize survey
- Outreach advice on reaching neighbors regarding the survey
- Survey Analysis
- Meeting Notes highlighting key decisions and next steps

2.2 Develop Graphic and Outreach Tools

Using the knowledge gained from Phase 1 and the public survey, MIG will develop graphics and tools for community input. We will summarize important site information from Phase 1 for the community and elicit feedback in multiple ways. Methods will be determined in collaboration with the City and may include options such as interactive polling, shared Mural boards, and breakout groups, along with printed materials for in-person feedback.

Deliverables:

- Draft Graphics for Review (PDF)
- Final Graphics (PDF for one zoom meeting, large-size prints for one on-site open house)

2.3 Community Meetings (2)

MIG will organize and present at two (2) community meetings to solicit additional input on the community's interests, clarify community priorities, and to help guide development of the three design alternatives. To encourage more input and respond to both the pandemic and varying schedules, we propose one meeting via Zoom and one outdoor in-person casual open-house event/site tour starting at Sterling-Barnhart Park, to allow the community to walk the currently fenced site.

Deliverables:

- Two (2) Community Meeting Agendas & Presentations

2.4 Community Pop-up Events (2)

MIG will organize and present at two (2) community pop-up events to solicit additional input from key stakeholder groups identified earlier in Phase 1. Examples include a table at a Farmer's Market or School, joining a neighborhood block meeting, or similar style event. The intent of these events is to solicit input from additional park users, or future users, by going to them.

Deliverables:

- Printed materials for Two (2) Community Pop-Ups

2.5 Synthesize Community Vision Results

Community meeting results, along with survey input, will be compiled by MIG into a summary report for review by the City and for use in upcoming Commission/Council presentations. MIG and the City will meet to review results and inform next steps.

Deliverables:

- Analysis and Synthesis Report of public survey and meeting findings
- Meeting Notes highlighting key decisions and next steps

2.6 Commissions and City Council Presentations: Initial Meeting

MIG will prepare slideshows and present to the Parks and Recreation Commission, the Bicycle-Pedestrian Commission, Planning Commission, and City Council to receive feedback. The presentation will include a summary of input and priorities from the community meetings and survey responses.

Deliverables:

- Prepare draft slideshow presentation for City approval
- Parks and Recreation Commission Agenda, Presentation, and Report
- Planning Commission Agenda, Presentation, and Report
- Bicycle-Pedestrian Commission Agenda, Presentation, and Report
- City Council Study Session Presentation and Report

2.7 Develop Recommended Improvements and Programming

Incorporating community input and comments from the Commissions and Council, the MIG Team will develop a set of recommended improvements and programming for the Lawrence-Mitty site. The City and MIG will meet to review the recommendations and consider directions for the three alternatives.

Deliverables:

- Written Recommendations for Improvements and Programming
- Meeting Notes highlighting key decisions and next steps

2.8 Phase 2 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 3 – CONCEPTUAL DESIGN ALTERNATIVES

3.1 Development Concept Alternatives and Costs

The MIG Team will create three (3) rough draft alternatives for initial review by the City that utilize planning studies and reports and incorporate community input, feedback from the City, and comments from the commission/council reviews. MIG will incorporate the City's consolidated input to finalize three (3) final alternatives for presentation to the community and prepare a rough order of magnitude cost estimate for each. Each Conceptual Design Alternative will include a colored plan with callouts for program elements. Precedent images will be used to help the community envision the various program elements.

Deliverables:

- Conceptual Design Alternatives (PDF and 1 hard copy)
- Meeting Notes from Consultant and City staff design review of Draft Concepts
- 3 Conceptual Design Alternatives (PDF)
- Rough order of magnitude cost estimate for each alternative (PDF and Excel)

3.2 Develop Graphics and Outreach Tools

MIG will develop graphics and outreach tools to continue to engage the community, Commissions, and City Council for additional input as outlined in the RFQ.

Deliverables:

- Draft Graphics for Review (PDF)
- Final Graphics (PDF for one Zoom meeting, large-size prints for one on-site open house)
- Draft Mailer of 3 Conceptual Design Alternatives for City staff review (PDF)
- Final Postal Mailer of 3 Conceptual Design Alternatives to be sent to the public (PDF)

3.3 Community Meetings (2): Alternatives

MIG will organize and present the three community-driven design alternatives for public input with tools designed to help the community arrive at one final plan. Final planning will be confirmed with the City, but is currently assumed to be one Zoom meeting and one in-person casual open house similar to Phase 2.

Deliverables:

- Two (2) Meeting Agendas and Notes from Alternatives Community Presentation and Feedback Meetings

3.4 Community Pop-Up Events (2)

MIG will organize and present at two (2) community pop-up events to solicit additional input from key stakeholder groups identified earlier in Phase 1. Examples include a table at a Farmer's Market or School, joining a neighborhood block meeting, or similar style event. The intent of these events is to solicit input from additional park users, or future users, by going to them.

Deliverables:

- Printed materials for Two (2) Community Pop-Ups

3.5 Analysis of Community Input

Community meeting results will be compiled into a summary report for review by the City and for use in upcoming Commission/Council presentations. MIG and the City will meet to review results and direction prior to Commission/Council presentations.

Deliverables:

- Analysis and Synthesis Report of community input and meeting findings
- Meeting Notes highlighting key decisions and next steps

3.6 Commissions and City Council Presentations (3): Alternatives

MIG will prepare slideshows and present to the Parks and Recreation Commission, the Bicycle-Pedestrian Commission, and City Council to receive feedback. The presentation will include a summary of input and priorities from the community meetings.

Deliverables:

- Prepare draft slideshow presentation for City approval and final version
- Parks and Recreation Commission Meeting Agenda, Presentation, and Report
- Bicycle-Pedestrian Commission Meeting Agenda, Presentation, and Report
- City Council Study Session Presentation and Report

3.7 Develop Preferred Conceptual Design Plan

MIG and the City will meet to discuss community input and Commission/Council feedback, recommendations, and direction for a Preferred Concept. This may be one chosen alternative or a combination of alternatives. MIG will produce a single Draft Conceptual Design for the site for review with the City and incorporate feedback into the Final Conceptual Design.

Deliverables:

- Draft Conceptual Design Plan (PDF)
- Final Conceptual Design Plan (PDF)

3.8 Phase 3 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 4 – DRAFT AND FINAL CONCEPTUAL PLAN

4.1 Develop Draft Conceptual Plan Report

MIG will prepare a draft outline for the Lawrence-Mitty Park and Trail Conceptual Plan. The approach and specific sections will be confirmed with the City, followed by creation of the full draft for City review. The draft conceptual plan will be the culmination of key elements of design, input provided by the public, site study findings, and the physical and jurisdictional constraints of the site. MIG and the City will meet to discuss the City's consolidated review comments and determine final edits.

Deliverables:

- Draft Lawrence-Mitty Park and Trail Conceptual Plan (PDF)
- Meeting Notes from Draft Implementation Plan Review Meeting with City staff

4.2 Present Draft Conceptual Plan to Community

MIG recommends that the Draft Conceptual Plan be posted on the City's website for comments due to the difficulty of reviewing a lengthy document in a public meeting. This can be followed by a Zoom Open House, including a brief summary presentation and plenty of time for questions and answers. We will be happy to make adjustments to this plan if the City prefers a different format.

Deliverables:

- JPEGs of major maps and a PDF of the document for the City website
- Draft and Final slideshow
- Meeting Agenda and Notes from the Community Presentation/Meeting

4.3 Present Draft Conceptual Plan to Commissions and City Council (4)

MIG will present the Draft Conceptual Plan to the Park and Recreation Commission, Bicycle-Pedestrian Commission, Planning Commission and City Council for final input and consideration of minor edits.

Deliverables:

- Draft and Final slideshow
- Meeting Agenda and Notes from each of the four (4) Presentations/Meetings

4.4 Finalize Conceptual Plan

MIG will collect input from meeting reviews and incorporate edits from stakeholders as directed by the City. There will be one (1) Draft Conceptual Plan review meeting with City staff to ensure all design and study elements are incorporated prior to final Conceptual Plan submittal.

Deliverables:

- Lawrence-Mitty Park and Trail Master Plan (2 printed/bound copies; 1 unbound copy; PDF)

4.5 Develop Cost Estimate and Implementation/Phasing Timeline

MIG will provide to the City, in a document separate from the Conceptual Plan, a rough order of magnitude cost estimate for implementation of the final conceptual design, including the specifics noted in the RFQ. MIG will also submit a proposed implementation and phasing timeline for completion of the built infrastructure reflected in the adopted Master Plan.

Deliverables:

- Rough Order of Magnitude Cost Estimate for Conceptual Plan Implementation electronic (PDF and Excel)
- Proposed Conceptual Plan implementation and phasing timeline for site improvements with consideration of timeline for jurisdictional permits or permissions in MS Project format. (PDF)

4.6 Present Final Conceptual Plan to City Council for Acceptance

MIG will present the Conceptual Plan in collaboration with City staff to City Council for final approval, which is required for adoption as City policy.

Deliverables:

- One (1) Meeting Agenda and Notes from the final Acceptance Meeting

4.7 Phase 4 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 5 – CEQA

MIG assumes the project will qualify for an Initial Study/Mitigated Negative Declaration (IS/MND) under CEQA and will prepare an analysis of the project according to the CEQA Guidelines and City of Cupertino requirements. The final IS/MND will be presented to the City Council for adoption with the approval of the Conceptual Plan.

5.1 Prepare Administrative Draft Initial Study

MIG will prepare and electronically submit for the City's review an Administrative Draft Initial Study. The submittal will include copies of all technical studies.

Deliverables:

- Administrative Draft Initial Study
- Technical studies – Air quality/greenhouse gas emissions, biological resources, hazardous materials (Updated Phase I Environmental Site Assessment, limited soil testing), transportation (VMT project screening and multimodal/pedestrian safety impact analysis memo)

5.2 Prepare Public Draft Initial Study/Mitigated Negative Declaration

MIG will address any comments from the City on the Administrative Draft IS and then produce a Screen Check document for final City approval. Once the Screen Check document is approved, MIG will prepare the Public Draft IS/MND for public circulation and a PDF version for the City to post on the City's website.

Deliverables:

- Screen Check IS
- Public Draft IS/MND for public circulation
- PDF Version Public Draft IS/MND for posting on City's website

5.3 Prepare Final IS/MND, Mitigation Monitoring and Reporting Program, and Notice of Determination

Following conclusion of the 30-day public review period, MIG will prepare the Administrative Draft and Screen Check Response to Comments documents that will contain a summary of all comments received during the public comment period, responses to comments, and changes to the Draft IS text or errata as necessary. Concurrent with the preparation of the Response to Comments, MIG will finalize the Mitigation Monitoring and Reporting Program (MMRP) and prepare a Notice of Determination (NOD) for the City to finalize and submit to the County Clerk's office and the State Office of Planning and Research.

Deliverables:

- Administrative and Screen Check versions of Responses to Comments
- Final MMRP
- Draft NOD
- Prepare any required documents containing findings and resolution for certification, public notice, and/or filing of environmental documents as needed

5.4 Attend Public Meetings/Hearings

MIG's CEQA Director will attend one (1) remote community meeting held by the City (estimated at 2 hours) and two (2) remote public hearings. In addition to the public meetings and hearings,

the MIG CEQA Director and CEQA Project Manager will attend one (1) remote CEQA Kick-off meeting with City staff.

5.5 Phase 5 City Coordination and Project Management

MIG's CEQA Project Manager will be the primary point of contact for CEQA work and will keep the City apprised of project progress at key points. Weekly meetings are not anticipated in this phase.

Assumptions, Exclusions & Additional Services

The MIG team's assumptions for included scope and level of work effort are based on the scope of work outline in the RFQ. If a need arises in the Phase 1 analysis period for additional survey information or studies, beyond what is currently scoped, the City and MIG team will work together to determine the corresponding effort and fee to deliver these additional scope items. All meetings, except where noted, are assumed to be remote via screen share, which enables more team members to participate efficiently. A single round of consolidated comments for each City review item is assumed.

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:

- Use of Maptionnaire is noted as an Optional Task/Additional Service, and could supplement the public survey task
- 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.
- Development, Documentation and Implementation of Design Phases other than listed.
- Preparation of construction documents.
- Construction Administration services.
- 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
- 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.
- Design for areas outside of the limits noted in the RFQ.
- 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.

Project Scope Assumptions:

- *CLIENT*: 'The City' refers to the City of Cupertino's Lawrence Mitty project team.
- *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 where 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, if applicable.
- *OFFSITE UTILITIES/STREET/PARKING DESIGN*: Offsite utility or street/parking design beyond the identified park and trail area is not included in this proposal.
- *ENVIRONMENTAL WORK*: Floodplain, wetland, soil remediation or environmental work outside of what is noted is not included in this proposal.
- *CONSTRUCTION TESTING + INSPECTIONS*: Not included.

**FIRST AMENDMENT TO AGREEMENT 402 BETWEEN
THE CITY OF CUPERTINO AND MIG, INC. FOR
COMPLETION OF THE LAWRENCE-MITTY PARK
AND TRAIL MASTER PLAN**

This First Amendment to Agreement 402 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 402 ("Agreement") was entered into by and between City and Contractor for Completion of the Lawrence-Mitty Park and Trail Master Plan.
- B. 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 and undersigned parties as follows:

1. **Paragraph 4.1 Maximum Compensation** of the Agreement is modified to read as follows: Maximum Compensation: 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 \$343,784.00 ("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 authorize Additional Services up to an amount not to exceed \$28,500.00. 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.
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 Jim Throop
Title City Manager
Date Feb 28, 2022

MIG, INC.

By Christopher J. Byn
Title Vice President / Chief Development Officer
Date Feb 25, 2022

APPROVED AS TO FORM

Christopher D. Jensen
City Attorney

ATTEST:

Kristen Squarone
City Clerk
Date Feb 28, 2022

February 17, 2022

Lisa Cameli, Project Manager
City of Cupertino
City Hall
10300 Torre Ave.
Cupertino, CA 95014

Re: Additional Services Lawrence-Mitty Park and Trail Master Plan (MIG proj. no. 30903)

Dear Lisa,

As identified at our site visit and discussed in email follow up, there are several additional site study needs for the Lawrence Mitty project that will enable our team to prepare complete Phase 1 technical studies. The following summarizes our 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.

Following is a summary of our additional services request:

Site Survey Work (by BKF) \$20,000

BKF will survey the additional trees and catch basins not shown on the provided site survey by Alta. Work will be tracked on a time and materials basis and may not require full funds to complete. The amount listed is the maximum. Details:

- It will take about 5 days of work in the field to pick up all the trees based on the Arborist markup of the ALTA Survey area and onsite, inside the walls and fencing along Lawrence Expressway.
- The control for the tree survey will be linked to the Alta survey control on the same datum.
- The tree survey information will be converted to CAD and shown on an Exhibit showing the ALTA survey linework as well.
- The 2 outfall pipes visually located in the creek area will have their exiting inverts dipped.

Tree Assessment (by SBCA Tree Consulting) \$4,600

The arborist scope, per the RFQ, was based on assessing the quantity of trees shown on the provided Alta survey. There are now more trees, which require tagging and additional assessment time. Work is tracked on a Per Tree basis and this is the amount needed to complete the site work and final tree count. See attached modified proposal and rate sheet for additional detail.

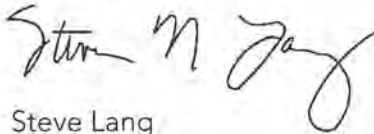
Noise Study (by MIG)..... \$3,900

This covers the additional labor for switching from the approved ambient noise survey with unattended long-term measurements to the current approach involving attended short-term measurements. See attached Noise Study Budget Memo for additional detail, along with the Noise Study Methods document, which outlines the protocol.

Total: \$ 28,500

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

Sincerely,



Steve Lang
Principal, MIG

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

Lisa Cameli, Project Manager
City of Cupertino

Date

SBCA Tree Consulting

1534 Rose St
Crockett, CA 94525
Phone # 510-787-3075
Fax # 510-787-3065
E-mail: steve@sbcatree.com
Web Site: www.sbcatree.com

Estimate

Date	Estimate #
9/9/2021	21-578

2/14/2022

Name / Address
MIG, Inc. 800 Hearst Avenue Berkeley, California 94710

Project
Lawrence-Mitty

Item	Description	Qty	Rate	Total
Tree Survey	Proposal to Provide Arborist Services - Lawrence-Mitty Park and Trails Survey all trees identified in the scope provided by MIG, Inc. Record data on: - Species - Common Name - DBH - Height - Spread - Flow line damage - Health and structural condition - Suitability for retention - Pruning or health mitigation recommendations - RPZ (Root Protection Zones) - Pertinent arborist notes Data will be submitted in Excel data sheets. Tree location map and summary report to be included.	150 364	30.00 \$25	4,500.00 \$9,100
Report	Prepare report to address System Master Plan and City objectives to create open spaces. Provide Tree Protection Specifications for trees where underground improvements will enroach into Root Protection Zones. Identify existing trees or plant materials on abutting properties that could influence site design or be impacted by the project.	1	5,000.00	5,000.00
Meeting	Attend (1) pre-inventory meeting with City Project Manager and Arborist. Two arborists.	2	250.00	500.00
Office	<u>Optional:</u> Report modifications based on City review and approval of arborist report. <u>Arborist will only charge for services rendered.</u> The amount of this invoice will not be exceeded without prior written approval of MIG and the City of Cupertino.	5	200.00	1,000.00
Sent Out		Total		
		\$11,000.00 \$15,600		

Difference of \$4,600

ARBORIST SCHEDULE OF RATES***SBCA TREE CONSULTING***

1534 Rose Street
 Crockett, CA 94525
 Phone (510) 787-3075
 Fax (510) 787-3065
 E-mail: steve@sbcacatree.com, molly@sbcacatree.com
 Website: www.sbcacatree.com

Stephen Batchelder, Consulting Arborist

WC ISA Certified Arborist #0228A
 CaUFC Certified Urban Forester #134
 State Contractor License (C-27) 533675
 FEDERAL TAX EIN # 32-0512307
 Insured: Liability, E&O and Workman's Comp.

Molly Batchelder, Consulting Arborist

WC ISA Certified Arborist #9613A
 Tree Risk Assessment Qualified (TRAQ)

Description of Services**Rates**

First Visit - (2 arborists)	\$250 per hr.
Standard Rate for Arborist Services:	\$200 per hr.
Travel Time: Time over 30 min from office.	\$150 per hr.
Arborist Reports:	\$200 per page
Tree Appraisal Reports:	\$250 for first tree, \$25 per each additional tree
Tree Surveys:	\$1200 or \$25 per tree
Legal: Depositions and Expert Witness	\$250 per hour
• Soil & Tissue Analysis:	\$100 per sample
◦ Samples are sent to a laboratory for analysis.	
• Plant Pathologist	\$100 per sample
◦ Culture and identification by plant pathologist	
Out of Town Daily Rate Consulting (10 hr.):	\$2000 + expenses
Rush fee:	\$500
City Rates are by Contract	
Payment: Due upon receipt of services and invoice.	



2055 JUNCTION AVE., SUITE 205
SAN JOSE, CA 95131
650.327.0429
WWW.MIGCOM.COM

Memorandum

To: Lisa Cameli, City of Cupertino
CC: Jan Eiesland, MIG
From: Chris Dugan
Re: Lawrence Mitty Park and Trail Master Plan Noise Study Budget Amendment
Date: February 1, 2022

MIG, Inc. (MIG) has prepared this memorandum at the request of the City of Cupertino (City). This memorandum briefly summarizes a budget amendment request for the Lawrence Mitty Park and Trail Master Plan Noise Study.

Budget Amendment Request

MIG's approved scope of work for the Master Plan included 10 hours of staff time and \$269 in expenses related to the ambient noise monitoring survey needed to prepare the Master Plan's Noise Study. This level of effort assumed

- An initial trip to the site to install two long-term (LT) noise meters and conduct four hours of short-term (ST) noise monitoring. The LT meters were assumed to run for 48 to 72 hours.
- A second trip to the site to breakdown and remove LT meters from the site.

Subsequent to the City's approval of MIG's scope, the City and MIG have determined that it is not feasible to leave noise monitoring equipment onsite overnight due to safety and security concerns. A subsequent plan to install an LT meter at a private residence to the west of the Master Plan area was evaluated and determined to be infeasible due to legal and scheduling concerns. Accordingly, MIG has modified its approach to conduct two short-term ambient noise surveys of the Master Plan area. This change results in more staff time at the site (from 6 to 24) hours to account for adequate monitoring of a variety of traffic conditions, as well as additional data download, qa/qc review, and processing time, but currently does not increase the number of trips to the site as only two ambient noise monitoring surveys are currently proposed by MIG. MIG's ambient noise monitoring survey methodology is described in a separate memo (MIG 2022).

The budget amendment request to support the current ambient noise monitoring survey methodology is summarized in the table below.

Lawrence Mitty Park and Trail Master Plan Noise Study Budget Amendment Request			
Task/Subtask	Labor Cost	Expenses	Total Budget
<u>APPROVED NOISE STUDY</u>			
1.7 Noise Study	\$11,430	\$537	\$11,967
<i>Ambient Noise Survey</i>	<i>\$2,100</i>	<i>\$537</i>	<i>\$2,637</i>
<u>REQUESTED NOISE STUDY</u>			
1.7 Noise Study	\$15,330	\$537	\$15,867
<i>Ambient Noise Survey</i>	<i>\$6,000</i>	<i>\$537</i>	<i>\$6,537</i>
<u>NET BUDGET AMENDMENT</u>			
1.7 Noise Study	+\$3,900	\$0	+\$3,900
<i>Ambient Noise Survey</i>	<i>+\$3,900</i>	<i>\$0</i>	<i>+\$3,900</i>

References

The following references were used to prepare this memorandum.

MIG 2022. *Draft Memorandum – Lawrence Mitty Park and Trail Master Plan – Noise Study Methodology*. February 1, 2022.



2055 JUNCTION AVE., SUITE 205
SAN JOSE, CA 95131
650.327.0429
WWW.MIGCOM.COM

DRAFT Memorandum

To: Lisa Cameli, City of Cupertino
CC: Jan Eiesland, MIG
From: Chris Dugan
Re: Lawrence Mitty Park and Trail Master Plan – Noise Study Methodology
Date: February 1, 2022

MIG, Inc. (MIG) has prepared this memorandum at the request of the City of Cupertino (City). This memorandum briefly summarizes the methodology that MIG will use to prepare the technical noise study for the proposed Lawrence Mitty Park and Trail Master Plan.

Study Background, Purpose, and Methodology

As identified by the City (2021), “The Lawrence-Mitty site is immediately adjacent to the Lawrence Expressway, an arterial roadway that has high volumes of traffic. This traffic causes consistent, high levels of noise. When the site was designated as a stockpiling area for the County and was not typically used by the public this was not problematic. Now that the site will be developed as a park more careful consideration of noise levels needs to be taken and there may be need for acoustical attenuation.”

The purposes of the technical noise study for the Master Plan are to:

- Document ambient noise levels in the Master Plan area; and
- Preliminarily evaluate the potential effectiveness of noise abatement measures for the Master Plan.

MIG will prepare the technical noise study consistent with the guidance and recommendations contained in the California Department of Transportation’s (Caltrans) Traffic Noise Protocol and Technical Noise Supplement to the Traffic Noise Protocol (Caltrans 2013, 2020). These documents generally outline Caltrans’ policies and procedures for collecting ambient noise measurements, evaluating traffic noise impacts, and determining the feasibility of noise barriers for highway projects. MIG notes the proposed Lawrence Mitty Park Project is not a highway project and, therefore, minor deviations from Caltrans’ guidance may occur during ambient noise monitoring, report preparation, etc.

MIG’s technical noise study will consist of three main parts:

- 1) An ambient noise monitoring survey to collect existing noise level data in the vicinity of the Master Plan area.
- 2) The generation of existing and future noise contour maps for the Master Plan area.
- 3) The preliminary evaluation of noise abatement measures for the Master Plan.

These tasks are described in more detail below.

Ambient Noise Monitoring Survey

MIG, Inc. will conduct ambient noise level survey in the vicinity of the Master Plan area. The ambient noise survey will:

- Provide direct observations of existing noise sources at and in the vicinity of the Master Plan area;
- Provide actual measurements of existing noise levels at and in the vicinity of the master Plan, including Lawrence Expressway traffic noise levels; and
- Identify if and how noise levels change throughout the Master Plan area.

MIG proposes to measure noise levels at up to 12 sites in the vicinity of the Master Plan area as follows:

- One (1) site location will provide a long-term (LT) record of ambient noise levels at the Project site for the duration of the noise monitoring survey, which is currently anticipated to last between a total of 14 to 16 non-consecutive hours (see schedule discussion below).
- 10 sites will consist of a series of short-term measurements (1- to 2-hours each) throughout the Master Plan area. These short-term sites will assess how noise levels vary from the LT site and across the Master Plan area in general.
- One (1) site will occur outside the Master Plan area, on Doyle Road (across Lawrence Expressway). This site will evaluate the performance and effectiveness of the noise barrier (based on actual conditions) on the east side of Lawrence Expressway that are considered representative of the primary park area of the Master Plan.

MIG's preliminary ambient noise survey sites are shown in Figures 1 to 3. MIG will collect up to three measurements simultaneously to allow MIG to compare noise levels in one part of the site to measurements in another area and to see how distance, ground cover, and topography may be influencing noise levels. All ambient noise levels will be digitally measured and logged using Larson Davis SoundTrack LxT sound level meters that meet American National Standards Institute requirements for a Type 1 integrating sound level meter. Each sound meter will be calibrated immediately before and after the monitoring period using a reference one-kilohertz (1kHz) check frequency and 114 dB sound pressure level; deviations in calibrated noise levels that exceed acceptability criteria will render measurements invalid (up to a 1dB difference is generally allowable in most cases). MIG will continuously collect noise levels in 1-minute intervals so that short-term noise events and increases in noise levels above typical background conditions may be captured. MIG will also document meteorological and other pertinent environmental factors that occurred during the noise monitoring (e.g., short-term traffic counts). All field data and records will be provided to the City in electronic format and as part of the technical noise study at the conclusion of the study.

Tentatively, to ensure the ambient noise monitoring effort captures representative daytime traffic conditions and associated noise levels, MIG proposes to conduct noise monitoring on one (1) weekday and one (1) weekend day. Scheduling options for the ambient noise monitoring include:

- Thursday, February 3rd, from approximately 7 AM to 7 PM, and Saturday, February 6th from approximately 7 AM to 5 PM; or
- Tuesday, February 15th, from approximately 7 AM to 7 PM, and Saturday, February 19th, from approximately 7 AM to 5 PM; or
- Tuesday, February 22nd, from approximately 7 AM to 7 PM, and Saturday, February 26th, from 7 AM to 5 PM.

Figure 1: Ambient Noise Monitoring Locations (Overview)

Figure 2: Ambient Noise Monitoring Locations (Northern)

Figure 3: Ambient Noise Monitoring Locations (Southern)

Generate Existing and Future Contour Maps

MIG will use the results of the ambient noise monitoring survey to calibrate traffic noise model predictions and generate existing and future noise contour maps for the Master Plan.

The collection of noise measurements adjacent to Lawrence Expressway, combined with the concurrent collection of vehicle count data, will provide direct measurement of noise levels resulting from specific traffic conditions on Lawrence Expressway. Traffic noise modeling will allow MIG to ascertain how traffic noise in the Master Plan area may change with different traffic conditions (e.g., peak hour conditions, typical free-flow conditions). MIG will use SoundPLAN to estimate existing and future typical and peak noise exposure levels on an hourly L_{eq} and a CNEL basis. SoundPLAN is a graphical noise modeling program that incorporates the Federal Highway Administration's Traffic Noise Model (TNM) algorithms for traffic noise predictions (also used by Caltrans). The ambient noise monitoring data will allow MIG to compare measured traffic noise levels against model-predicted traffic noise levels and calibrate and refine model predictions for traffic scenarios that are different than those which occurred at the time the ambient noise survey was conducted.

The ambient noise survey data, combined with accurate traffic noise model predictions, will be used to generate a noise contour map of noise levels in the park and trail area under existing and future typical and peak traffic conditions. This map will allow designers and decision makers to visually understand the magnitude and variability of noise levels in the Master Plan area.

Evaluate Preliminary Noise Abatement Measures

MIG will use the noise contour maps described above to identify, in coordination with the City, preliminary noise abatement considerations, including what, if any, noise exposure standard or guidelines are relevant to the project, and what, if any, feasible noise abatement measures may be available to reduce noise levels in the Master Plan area.

MIG will evaluate the noise reduction effectiveness of three (3) different noise barrier options. This may include a combination of different barrier locations, different barrier materials (e.g., solid wall or earthen berm), and/or different barrier design options (e.g., reflective barrier vs. adsorptive barrier).

MIG will build on the traffic noise modeling and noise contour maps described above and use SoundPLAN to model the effectiveness of potential barrier options. Using SoundPLAN, MIG will prepare updated noise contour maps showing the predicted effectiveness of each of the selected barrier options and the resulting noise levels in the Master Plan area with the noise abatement measure.

References

The following references were used to prepare this memorandum.

Caltrans 2013. *Technical Noise Supplement to the Traffic Noise Analysis Protocol*. September 2013.

_____. 2020. *Traffic Noise Analysis Protocol for New Highway Construction, Reconstruction, and Retrofit Barrier Projects*. April 2020.

City of Cupertino 2021. *Cupertino General Plan Community Vision 2015 – 2040*. December 2014.

Total Contract Amendments	\$	28,500.00
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Design Services - Revised Contract Amount \$ 322,284.00

Council Approval Needed? No

Design
Professional

Reviewed By: Stave Lang
Date: 2/22/2022

City Project
Manager

Reviewed By: Lisa Cameli
Date: 2/22/2022



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 Completion of the Lawrence-Mitty Park and Trail Master Plan ("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, 2023, 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 \$293,784.00 ("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 \$293,784.00 ("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 Lisa Cameli, 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 Steven Lang, 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:

To City of Cupertino: Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014 Attention: Lisa Cameli Email: LisaC@cupertino.org	To Consultant: MIG, Inc 2055 Junction Ave, Suite 205 San Jose, CA 95131 Attention: Steven Lang Email: SteveL@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*

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



Lawrence Mitty Park and Trail Master Plan, Cupertino, CA

Scope of Work

November 17, 2021

MIG has prepared the following Scope of Work to illustrate how we will facilitate successful completion of the Lawrence Mitty Park and Trail Master Plan 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 project requirements stated in the City of Cupertino's ("the City") Lawrence Mitty Park and Trail Master Plan RFQ, dated August 12, 2021, and Addenda. In the tasks listed below, meetings are expected to be virtual except when noted otherwise. Meeting notes allow for one set of revisions to incorporate City input per meeting notes.

Project Understanding

The City wishes to develop a Park and Trail Master Plan for the Lawrence-Mitty site ("Master Plan"), located on the east side of Cupertino between the Lawrence Expressway and Saratoga Creek, as shown in the RFQ. The purpose of the Master Plan is to determine how to best meet the future recreation, trail, and open space needs of citizens through enhancement of the site. Additionally, there is the intent to connect the Saratoga Creek Trail through the Lawrence-Mitty site to San Jose and Santa Clara to the North. The Master Plan process will result in a conceptual design for a premier park with recreation activities that will attract and accommodate all residents. The City envisions a destination that provides all ages, but especially children, with a memorable experience of outdoor play, exercise, and educational opportunities while providing much-needed open space to the east side of Cupertino, which is underserved in terms of park space and recreational opportunity. The resulting Master Plan will also provide an exciting and inviting space for all age groups through an extension of the Saratoga Creek walking and biking trail.

The comprehensive Master Plan will provide technical analysis of the site as described below, identify community values and needs, align with the City's 2020 Parks and Recreation System Master Plan and result in a ready-to-implement vision for the Lawrence Mitty park site. The City Council-approved conceptual design and report will be used to guide future recreational and programmatic decisions and capital improvement planning for the site.

PHASE 1 –EXISTING CONDITIONS AND TECHNICAL ANALYSIS

1.1 Project Kick-Off Meeting and Work Plan

The project kick-off meeting will include City staff, MIG's Project Manager (PM), and key personnel within each designated specialty to discuss design objectives, issues, and a draft work plan. Following the kick-off, MIG will develop a detailed work plan with roles, responsibilities, and schedule; prepare a data request; and coordinate a site visit.

Deliverables:

- Kick-off Agenda
- Kick-off Notes
- Draft Work Plan and Schedule
- Final Work Plan and Project Schedule (PDF)

1.2 Community Engagement Initial Planning

MIG will review existing input from the 2020 Parks and Recreation System Master Plan and 2017 community site walk. We will collaborate with City staff to identify stakeholders and prepare for outreach.

Deliverables:

- Communications Plan including schedule (PDF, Draft and Final)

1.3 Evaluate Existing Conditions Information

The MIG Team will review existing conditions information and additional background documents noted in the RFQ. BKF will evaluate existing utilities and easements, hydrologic information, and adequate survey info, and alert the City if there is a need for any additional information.

Deliverables:

- Summary report of site-specific findings and jurisdictional regulations that may impact or influence the final conceptual design for the Master Plan including specifics per the RFQ.
- Summary of how the proposed Master Plan conforms to Citywide Parks Goals and Regulations as well as requirements of other jurisdictions.
- Summary of review of existing ATLA/NSPS Land Survey and verification of site improvement and topo accuracy or statement of inconsistencies with fee proposal for corrections.
- Summary of the MIG Team's research and understanding of existing on-site and adjacent utilities, easements, and hydrologic information. Includes assessment of any potential impacts on site design concepts.

1.4 Team Site Tour

In collaboration with City staff, the MIG Team will meet at the site to walk the park and trail, observing specific concerns and discussing questions.

Deliverables:

- Meeting notes from Site Tour

1.5 Transportation Study

Hexagon Transportation Consultants will prepare a short vehicle miles travelled (VMT) project screening memo to describe how the project would be screened out of a full VMT analysis under the City's criteria. Hexagon will also analyze the potential multi-modal/pedestrian safety impacts of the park and trail project.

Deliverables:

- VMT Screening and Multimodal/Pedestrian Safety Impacts Memo

1.6 Phase I ESA Update and Phase II Investigation

Cornerstone will prepare a Phase I Environmental Site Assessment (ESA) Update, a Phase II Soil Quality Evaluation, and a Health and Safety Plan for personnel conducting earthwork activities at the site prior to the initiation of the Phase II soil sampling. Meeting attendance will be charged on a time and materials basis.

Deliverables:

- Meeting Notes from meeting documenting approach and decisions for further environmental analysis.
- Summary of full review of existing Environmental Reports for the site.
- List of any proposed additional testing locations and purpose of sampling
- Draft and Final Phase II Environmental Site Assessment Report for City review and approval
- Completion of a Phase III ESA if requested by the City and recommended in the Phase II ESA (Scope and fee to be negotiated after Phase II ESA is complete)

1.7 Acoustical Assessment for Noise Reduction

MIG will prepare a technical noise report that summarizes the existing ambient noise environment at the project site (based on measurements and modeling results), the ambient environment that could exist under three different sound attenuation options at the site, and preliminary recommendations for recreation options based on reduced noise levels. MIG's approach to completing the noise report (i.e., the protocol) will be summarized in a technical memorandum for City approval after MIG has discussed various modeling options with the City during a kick-off call. Noise reduction measures will be integrated into the final conceptual design and final Master Plan report.

Deliverables:

- Technical noise memorandum for protocol for review and acceptance (within two weeks of kick-off call)
- Draft Noise Report (PDF, within five weeks of protocol approval)
- Final Noise Report

1.8 Biological Resources Report

MIG biologists will prepare a stand-alone Biological Resources Report that will include a Jurisdictional Delineation. These reports will be used to inform the project design and as supporting documentation for the CEQA analysis and any future resource agency permits that may be required for the project.

Deliverables:

- Biological Resources Report
- Jurisdictional Delineation

1.9 Tree Survey and Condition Assessment

SBCA Tree Consulting will perform an assessment of on-site trees including an evaluation of tree size and health, tree site location, identification of structural defects, pruning needs, and pests. Work will include one (1) pre-inventory meeting with the City Project Manager and Arborist.

Deliverables:

- Draft and final copy of proposed tree inventory methodology and attributes to be collected for City review and approval.
- One (1) PDF copy and one (1) AutoCAD version 2019 or newer copy of tree survey overlaid onto the existing 2020 topographic survey within the project area at 1"= 20' scale.
- One (1) PDF of Arborist Report on trees, potential construction impacts and recommendations to be integrated into the final Master Plan Report.

1.10 Site Environmental Summary Report

MIG, along with consultant expertise, will synthesize findings into an Environmental Summary Report (to include a brief summary of all of the above reports) and Opportunities and Challenges Diagrams for use in future community meetings.

Deliverables:

- Environmental Summary Report (PDF)
- Opportunities and Challenges Diagrams (PDF)

1.11 City Meeting: Review Phase I Findings

The City and MIG will meet to review technical analysis and findings. We will also discuss emerging site possibilities and the team's approach to community input moving forward.

1.12 Phase 1 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 2 – COMMUNITY VISION**2.1 Public Survey and Analysis**

Initial planning for the survey will occur early in Phase 1. At that time the City and MIG will discuss the workplan and confirm if this survey may launch before the technical analysis is 100% complete. MIG will develop the public internet survey, along with graphics for print materials for use by the City to distribute by US Mail. MIG will also provide additional advice on outreach and publicity to reach nearby residents, and will develop a poster or a street decal with a QR code to be posted in and around the project area. The City will assist with placing posters. MIG will compile results from the survey in an easy-to-digest analysis for the City. The City and MIG will meet to review findings and inform next outreach steps.

Deliverables:

- Updated Communications Plan including schedule
- Draft Community Survey for City staff comment
- Final Community Survey to be distributed to the public
- Development of poster or street decal with QR code to publicize survey
- Outreach advice on reaching neighbors regarding the survey
- Survey Analysis
- Meeting Notes highlighting key decisions and next steps

2.2 Develop Graphics and Outreach Tools

Using the knowledge gained from Phase 1 and the public survey, MIG will develop graphics and tools for community input. We will summarize important site information from Phase 1 for the community and elicit feedback in multiple ways. Methods will be determined in collaboration with the City and may include options such as interactive polling, shared Mural boards, and breakout groups, along with printed materials for in-person feedback.

Deliverables:

- Draft Graphics for Review (PDF)
- Final Graphics (PDF for one zoom meeting, large-size prints for one on-site open house)

2.3 Community Meetings (2)

MIG will organize and present at two (2) community meetings to solicit additional input on the community's interests, clarify community priorities, and to help guide development of the three design alternatives. To encourage more input and respond to both the pandemic and varying schedules, we propose one meeting via Zoom and one outdoor in-person casual open-house event/site tour starting at Sterling-Barnhart Park, to allow the community to walk the currently fenced site.

Deliverables:

- Two (2) Community Meeting Agendas & Presentations

2.4 Community Pop-Up Events (2)

MIG will organize and present at two (2) community pop-up events to solicit additional input from key stakeholder groups identified earlier in Phase 1. Examples include a table at a Farmer's Market or School, joining a neighborhood block meeting, or similar style event. The intent of these events is to solicit input from additional park users, or future users, by going to them.

Deliverables:

- Printed materials for Two (2) Community Pop-Ups

2.5 Synthesize Community Vision Results

Community meeting results, along with survey input, will be compiled by MIG into a summary report for review by the City and for use in upcoming Commission/Council presentations. MIG and the City will meet to review results and inform next steps.

Deliverables:

- Analysis and Synthesis Report of public survey and meeting findings
- Meeting Notes highlighting key decisions and next steps

2.6 Commissions and City Council Presentations: Initial Meeting

MIG will prepare slideshows and present to the Parks and Recreation Commission, the Bicycle-Pedestrian Commission, Planning Commission, and City Council to receive feedback. The presentation will include a summary of input and priorities from the community meetings and survey responses.

Deliverables:

- Prepare draft slideshow presentation for City approval
- Parks and Recreation Commission Agenda, Presentation, and Report
- Planning Commission Agenda, Presentation, and Report
- Bicycle-Pedestrian Commission Agenda, Presentation, and Report
- City Council Study Session Presentation and Report

2.7 Develop Recommended Improvements and Programming

Incorporating community input and comments from the Commissions and Council, the MIG Team will develop a set of recommended improvements and programming for the Lawrence-Mitty site. The City and MIG will meet to review the recommendations and consider directions for the three alternatives.

Deliverables:

- Written Recommendations for Improvements and Programming
- Meeting Notes highlighting key decisions and next steps

2.8 Phase 2 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 3 – CONCEPTUAL DESIGN ALTERNATIVES**3.1 Develop Concept Alternatives and Costs**

The MIG Team will create three (3) rough draft alternatives for initial review by the City that utilize planning studies and reports and incorporate community input, feedback from the City, and comments from the commission/council reviews. MIG will incorporate the City's consolidated input to finalize three (3) final alternatives for presentation to the community and prepare a rough order of magnitude cost estimate for each. Each Conceptual Design Alternative will include a colored plan with callouts for program elements. Precedent images will be used to help the community envision the various program elements.

Deliverables:

- Conceptual Design Alternatives (PDF and 1 hard copy)
- Meeting Notes from Consultant and City staff design review of Draft Concepts
- 3 Conceptual Design Alternatives (PDF)
- Rough order of magnitude cost estimate for each alternative (PDF and Excel)

3.2 Develop Graphics and Outreach Tools

MIG will develop graphics and outreach tools to continue to engage the community, Commissions, and City Council for additional input as outlined in the RFQ.

Deliverables:

- Draft Graphics for Review (PDF)
- Final Graphics (PDF for one Zoom meeting, large-size prints for one on-site open house)
- Draft Mailer of 3 Conceptual Design Alternatives for City staff review (PDF)
- Final Postal Mailer of 3 Conceptual Design Alternatives to be sent to the public (PDF)

3.3 Community Meetings (2): Alternatives

MIG will organize and present the three community-driven design alternatives for public input with tools designed to help the community arrive at one final plan. Final planning will be confirmed with the City, but is currently assumed to be one Zoom meeting and one in-person casual open house similar to Phase 2.

Deliverables:

- Two (2) Meeting Agendas and Notes from Alternatives Community Presentation and Feedback Meetings

3.4 Community Pop-Up Events (2)

MIG will organize and present at two (2) community pop-up events to solicit additional input from key stakeholder groups identified earlier in Phase 1. Examples include a table at a Farmer's Market or School, joining a neighborhood block meeting, or similar style event. The intent of these events is to solicit input from additional park users, or future users, by going to them.

Deliverables:

- Printed materials for Two (2) Community Pop-Ups

3.5 Analysis of Community Input

Community meeting results will be compiled into a summary report for review by the City and for use in upcoming Commission/Council presentations. MIG and the City will meet to review results and direction prior to Commission/Council presentations.

Deliverables:

- Analysis and Synthesis Report of community input and meeting findings
- Meeting Notes highlighting key decisions and next steps

3.6 Commissions and City Council Presentations (3): Alternatives

MIG will prepare slideshows and present to the Parks and Recreation Commission, the Bicycle-Pedestrian Commission, and City Council to receive feedback. The presentation will include a summary of input and priorities from the community meetings.

Deliverables:

- Prepare draft slideshow presentation for City approval and final version

- Parks and Recreation Commission Meeting Agenda, Presentation, and Report
- Bicycle-Pedestrian Commission Meeting Agenda, Presentation, and Report
- City Council Study Session Presentation and Report

3.7 Develop Preferred Conceptual Design Plan

MIG and the City will meet to discuss community input and Commission/Council feedback, recommendations, and direction for a Preferred Concept. This may be one chosen alternative or a combination of alternatives. MIG will produce a single Draft Conceptual Design for the site for review with the City and incorporate feedback into the Final Conceptual Design.

Deliverables:

- Draft Conceptual Design Plan (PDF)
- Final Conceptual Design Plan (PDF)

3.8 Phase 3 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 4 – DRAFT AND FINAL MASTER PLAN

4.1 Develop Draft Master Plan Report

MIG will prepare a draft outline for the Lawrence-Mitty Park and Trail Master Plan. The approach and specific sections will be confirmed with the City, followed by creation of the full draft for City review. The draft master plan will be the culmination of key elements of design, input provided by the public, site study findings, and the physical and jurisdictional constraints of the site. MIG and the City will meet to discuss the City's consolidated review comments and determine final edits.

Deliverables:

- Draft Lawrence-Mitty Park and Trail Master Plan (PDF)
- Meeting Notes from Draft Master Plan Review Meeting with City staff

4.2 Present Draft Master Plan to Community

MIG recommends that the Draft Master Plan be posted on the City's website for comments due to the difficulty of reviewing a lengthy document in a public meeting. This can be followed by a Zoom Open House, including a brief summary presentation and plenty of time for questions and answers. We will be happy to make adjustments to this plan if the City prefers a different format.

Deliverables:

- JPEGs of major maps and a PDF of the document for the City website
- Draft and Final slideshow
- Meeting Agenda and Notes from the Community Presentation/Meeting

4.3 Present Draft Master Plan to Commissions and City Council (4)

MIG will present the Draft Master Plan to the Park and Recreation Commission, Bicycle-Pedestrian Commission, Planning Commission and City Council for final input and consideration of minor edits.

Deliverables:

- Draft and Final slideshow
- Meeting Agenda and Notes from each of the four (4) Presentations/Meetings

4.4 Finalize Master Plan

MIG will collect input from meeting reviews and incorporate edits from stakeholders as directed by the City. There will be one (1) Draft Master Plan review meeting with City staff to ensure all design and study elements are incorporated prior to final Master Plan submittal.

Deliverables:

- Lawrence-Mitty Park and Trail Master Plan (2 printed/bound copies; 1 unbound copy; PDF)

4.5 Develop Cost Estimate and Implementation/Phasing Timeline

MIG will provide to the City, in a document separate from the Master Plan, a rough order of magnitude cost estimate for implementation of the final conceptual design, including the specifics noted in the RFQ. MIG will also submit a proposed implementation and phasing timeline for completion of the built infrastructure reflected in the adopted Master Plan.

Deliverables

- Rough Order of Magnitude Cost Estimate for Master Plan Implementation electronic (PDF and Excel)
- Proposed Master Plan implementation and phasing timeline for site improvements with consideration of timeline for jurisdictional permits or permissions in MS Project format. (PDF)

4.6 Present Final Master Plan to City Council for Acceptance

MIG will present the Master Plan in collaboration with City staff to City Council for final approval, which is required for adoption as City policy.

Deliverables:

- One (1) Meeting Agenda and Notes from the final Acceptance Meeting

4.7 Phase 4 City Coordination and Project Management

MIG's PM and the City will hold weekly update calls with additional project team members attending periodically.

Deliverables:

- Meeting Notes highlighting key decisions

PHASE 5 – CEQA

MIG assumes the project will qualify for an Initial Study/Mitigated Negative Declaration (IS/MND) under CEQA and will prepare an analysis of the project according to the CEQA Guidelines and City of Cupertino requirements. The final IS/MND will be presented to the City Council for adoption with the approval of the Master Plan.

5.1 Prepare Administrative Draft Initial Study

MIG will prepare and electronically submit for the City's review an Administrative Draft Initial Study. The submittal will include copies of all technical studies.

Deliverables:

- Administrative Draft Initial Study
- Technical studies – Air quality/greenhouse gas emissions, biological resources, hazardous materials (Updated Phase I Environmental Site Assessment, limited soil testing), transportation (VMT project screening and multimodal/pedestrian safety impact analysis memo)

5.2 Prepare Public Draft Initial Study/Mitigated Negative Declaration

MIG will address any comments from the City on the Administrative Draft IS and then produce a Screen Check document for final City approval. Once the Screen Check document is approved, MIG will prepare the Public Draft IS/MND for public circulation and a PDF version for the City to post on the City's website.

Deliverables:

- Screen Check IS
- Public Draft IS/MND for public circulation
- PDF Version Public Draft IS/MND for posting on City's website

5.3 Prepare Final IS/MND, Mitigation Monitoring and Reporting Program, and Notice of Determination

Following conclusion of the 30-day public review period, MIG will prepare the Administrative Draft and Screen Check Response to Comments documents that will contain a summary of all comments received during the public comment period, responses to comments, and changes to the Draft IS text or errata as necessary. Concurrent with the preparation of the Response to Comments, MIG will finalize the Mitigation Monitoring and Reporting Program (MMRP) and prepare a Notice of Determination (NOD) for the City to finalize and submit to the County Clerk's office and the State Office of Planning and Research.

Deliverables:

- Administrative and Screen Check versions of Responses to Comments
- Final MMRP
- Draft NOD
- Prepare any required documents containing findings and resolution for certification, public notice, and/or filing of environmental documents as needed.

5.4 Attend Public Meetings/Hearings

MIG's CEQA Director will attend one (1) remote community meeting held by the City (estimated at 2 hours) and two (2) remote public hearings. In addition to the public meetings and hearings, the MIG CEQA Director and CEQA Project Manager will attend one (1) remote CEQA Kick-off meeting with City staff.

5.5 Phase 5 City Coordination and Project Management

MIG's CEQA Project Manager will be the primary point of contact for CEQA work and will keep the City apprised of project progress at key points. Weekly meetings are not anticipated in this phase.

Assumptions, Exclusions & Additional Services

The MIG team's assumptions for included scope and level of work effort are based on the scope of work outline in the RFQ. If a need arises in the Phase 1 analysis period for additional survey information or studies, beyond what is currently scoped, the City and MIG team will work together to determine the corresponding effort and fee to deliver these additional scope items. All meetings, except where noted, are assumed to be remote via screen share, which enables more team members to participate efficiently. A single round of consolidated comments for each City review item is assumed.

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:

- Use of Maptionnaire is noted as an Optional Task/Additional Service, and could supplement the public survey task
- 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 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
- 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.
- Design for areas outside of the limits noted in the RFQ.
- 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.

Project Scope Assumptions:

- *CLIENT*: 'The City' refers to the City of Cupertino's Lawrence Mitty project team.
- *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 where 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, if applicable.
- *OFFSITE UTILITIES/STREET/PARKING DESIGN*: Offsite utility or street/parking design beyond the identified park and trail area is not included in this proposal.
- *ENVIRONMENTAL WORK*: Floodplain, wetland, soil remediation or environmental work outside of what is noted is not included in this proposal.
- *CONSTRUCTION TESTING + INSPECTIONS*: Not included.

Note: in the previously published document, this page was cut off. The full page is now included.



City of Cupertino | Lawrence Mitty Master Plan & Trail
e s t i m a t e d p r o j e c t c o s t

Phase and Tasks		MIG, Inc.														Subconsultants						Direct Costs		Professional Fees Totals									
		Steve Lang Principal-in-Charge/ Landscape Architect		Jan Eiesland Project Manager/ Landscape Architect		Cindy Mendoza Planner/ Master Plan Advisor		Myrna Ortiz Community Outreach Specialist		Landscape Designer Project Associate		GRAPHICS (Master Plan Report)		BIOLOGY Report		NOISE Assessment		CEQA TEAM		MIG Totals						BKF Civil Engineer/ Surveyor	SBCA Arborist	CORNER STONE Ph I+II ESA Work		HEXAGON Transportation Engineer		Sub Totals	
		Hrs@	\$225	Hrs@	\$165	Hrs@	\$165	Hrs@	\$125	Hrs@	\$110	(Simplified for clarity, hourly assumptions available)																					
PHASE 1: Existing Conditions & Technical Analysis																																	
1.1	Project Kick-Off Meeting	3	\$675	3	\$495	2	\$330	2	\$250		\$0		\$0		\$690		\$780		\$680		\$3,900	\$450					\$450		\$4,350				
	Work Plan & Schedule	2	\$450	8	\$1,320	2	\$330	2	\$250		\$0		\$0		\$0		\$0		\$0		\$2,350						\$0		\$2,350				
1.2	Community Engagement Initial Planning	2	\$450	4	\$660	3	\$495	16	\$2,000	8	\$880		\$0		\$0		\$0		\$0		\$4,485						\$0		\$4,485				
1.3	Evaluate Existing Conditions Information	3	\$675	16	\$2,640		\$0	2	\$250	10	\$1,100		\$0		\$2,120		\$0		\$0		\$6,785	\$4,000				\$4,000		\$10,785					
1.4	Team Site Tour		\$0	6	\$990		\$0	6	\$750	6	\$660		\$0		\$1,060		\$0		\$0		\$3,460	\$400				\$400		\$3,860					
1.5	Prelim. Transportation Study		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0				\$1,500	\$1,500		\$1,500					
1.6	Phase I ESA Update and Phase II Investigation		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0			\$17,275		\$17,275		\$17,275					
1.7	Acoustical Assessment for Noise Reduction	1	\$225		\$0		\$0		\$0		\$0		\$0		\$0		\$11,205		\$0		\$11,430					\$0	\$537	\$11,967					
1.8	Biological Resources Report	1	\$225	1	\$165		\$0		\$0		\$0		\$0		\$18,070		\$0		\$0		\$18,460					\$0		\$18,460					
1.9	Tree Survey & Condition Assessment		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0				\$11,000	\$11,000		\$11,000					
1.10	Site Environmental Summary Report	1	\$225	8	\$1,320		\$0		\$0		\$0		\$0		\$0		\$0		\$390		\$1,935	\$1,000				\$1,000		\$2,935					
1.11	City Meeting: Review Phase 1 Findings	1	\$225	3	\$495	1	\$165	1	\$125		\$0		\$0		\$690		\$0		\$195		\$1,895	\$400				\$400		\$2,295					
1.12	Phase 1 City Coordination & Project Management		\$0	24	\$3,960		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$3,960					\$0	\$1,000	\$4,960					
	Subtotal	14	\$3,150	73	\$12,045	8	\$1,320	29	\$3,625	24	\$2,640		\$0		\$22,630		\$11,985		\$1,265		\$58,660	\$6,250	\$11,000	\$17,275	\$1,500	\$36,025	\$1,537	\$96,222					
PHASE 2: Community Vision																																	
2.1	Public Survey	1	\$225	4	\$660	2	\$330	16	\$2,000	20	\$2,200		\$0		\$0		\$0		\$0		\$5,415					\$0		\$5,415					
	Analysis of Survey Results	1	\$225	2	\$330		\$0	6	\$750		\$0		\$0		\$0		\$0		\$0		\$1,305					\$0		\$1,305					
2.2	Develop Graphics & Outreach Tools		\$0	2	\$330		\$0	16	\$2,000	16	\$1,760		\$0		\$0		\$0		\$0		\$4,090					\$0		\$4,090					
2.3	Community Meetings (2)	4	\$900	16	\$2,640		\$0	16	\$2,000		\$0		\$0		\$0		\$0		\$0		\$5,540					\$0	\$800	\$6,340					
2.4	Pop-ups (2)		\$0	18	\$2,970		\$0	18	\$2,250	8	\$880		\$0		\$0		\$0		\$0		\$6,100					\$0	\$800	\$6,900					
2.5	Synthesize Community Vision Results	2	\$450	2	\$330		\$0	4	\$500	4	\$440		\$0		\$0		\$0		\$0		\$1,720					\$0		\$1,720					
2.6	Commissions & Council - Prepare Materials	2	\$450	2	\$330		\$0		\$0	8	\$880		\$0		\$0		\$0		\$0		\$1,660					\$0		\$1,660					
	Commissions & Council (4) - Present at Meetings	8	\$1,800	10	\$1,650		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$3,450					\$0		\$3,450					
2.7	Develop Recommended Improvements and Programming	1	\$225	8	\$1,320	2	\$330	1	\$125		\$0		\$0		\$0		\$0		\$0		\$2,000					\$0		\$2,000					
2.8	Phase 2 City Coordination & Project Management		\$0	30	\$4,950		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$4,950					\$0	\$500	\$5,450					
	Subtotal	19	\$4,275	94	\$15,510	4	\$660	77	\$9,625	56	\$6,160		\$0		\$0		\$0		\$0		\$36,230	\$0	\$0	\$0	\$0	\$0	\$2,100	\$38,330					
PHASE 3: Conceptual Design Alternatives																																	
3.1	Develop Three Concept Alternatives & Costs	6	\$1,350	12	\$1,980		\$0		\$0	36	\$3,960		\$0		\$0		\$0		\$0		\$7,290	\$3,000				\$3,000		\$10,290					
3.2	Develop Graphics & Outreach Tools	1	\$225	2	\$330		\$0	16	\$2,000	16	\$1,760		\$0		\$0		\$0		\$0		\$4,315					\$0		\$4,315					
3.3	Community Meetings (2): Alternatives	2	\$450	16	\$2,640		\$0	16	\$2,000		\$0		\$0		\$0		\$0		\$0		\$5,090					\$0	\$800	\$5,890					
3.4	Pop-ups (2)		\$0	18	\$2,970		\$0	18	\$2,250	8	\$880		\$0		\$0		\$0		\$0		\$6,100					\$0	\$800	\$6,900					
3.5	Analysis of Community Input	1	\$225	2	\$330		\$0	6	\$750	12	\$1,320		\$0		\$0		\$0		\$0		\$2,625					\$0		\$2,625					
3.6	Commissions & City Council - Prepare Materials	2	\$450	2	\$330		\$0		\$0	8	\$880		\$0		\$0		\$0		\$0		\$1,660					\$0		\$1,660					
	Commissions & Council (3) - Present at Meetings	6	\$1,350	8	\$1,320		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$2,670					\$0		\$2,670					
3.7	Develop Preferred Conceptual Design Plan	2	\$450	6	\$990		\$0		\$0	16	\$1,760		\$0		\$0		\$0		\$0		\$3,200	\$1,000				\$1,000		\$4,200					
3.8	Phase 3 City Coordination & Project Management		\$0	30	\$4,950		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$4,950					\$0	\$500	\$5,450					
	Subtotal	20	\$4,500	96	\$15,840	0	\$0	56	\$7,000	96	\$10,560		\$0		\$0		\$0		\$0		\$37,900	\$4,000	\$0	\$0	\$0	\$4,000	\$2,100	\$44,000					
PHASE 4: Draft & Final Master Plan																																	
4.1	Develop Draft Master Plan Report	4	\$900	24	\$3,960	6	\$990		\$0	24	\$2,640		\$4,000		\$0		\$0		\$0		\$12,490	\$800				\$800		\$13,290					
4.2	Develop Graphics for Community & Commissions		\$0	2	\$330		\$0	4	\$500	16	\$1,760		\$0		\$0		\$0		\$0		\$2,590					\$0		\$2,590					
	Community Meeting(1) : Draft Master Plan		\$0	4	\$660		\$0	4	\$500	4	\$440		\$0		\$0		\$0		\$0		\$1,600					\$0		\$1,600					
4.3	Commissions & City Council (4): Draft Master Plan	8	\$1,800	10	\$1,650		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$3,450					\$0		\$3,450					
4.4	Finalize Master Plan	4	\$900	24	\$3,960	6	\$990		\$0	24	\$2,640		\$1,000		\$0		\$0		\$0		\$9,490				\$0	\$800		\$10,290					
4.5	Cost Estimate & Implementation/Phasing Timeline	2	\$450	8	\$1,320		\$0		\$0	8	\$880		\$0		\$0		\$0		\$0		\$2,650	\$600				\$600		\$3,250					
4.6	Present Final Master Plan to City Council for Acceptance	4	\$900		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$900					\$0		\$900					
4.7	Phase 4 City Coordination & Project Management		\$0	30	\$4,950		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$4,950					\$0	\$500	\$5,450					
	Subtotal	22	\$4,950	102	\$16,830	12	\$1,980	8	\$1,000	76	\$8,360		\$5,000		\$0		\$0		\$0		\$38,120	\$1,400	\$0	\$0	\$0	\$1,400	\$1,300	\$40,820					

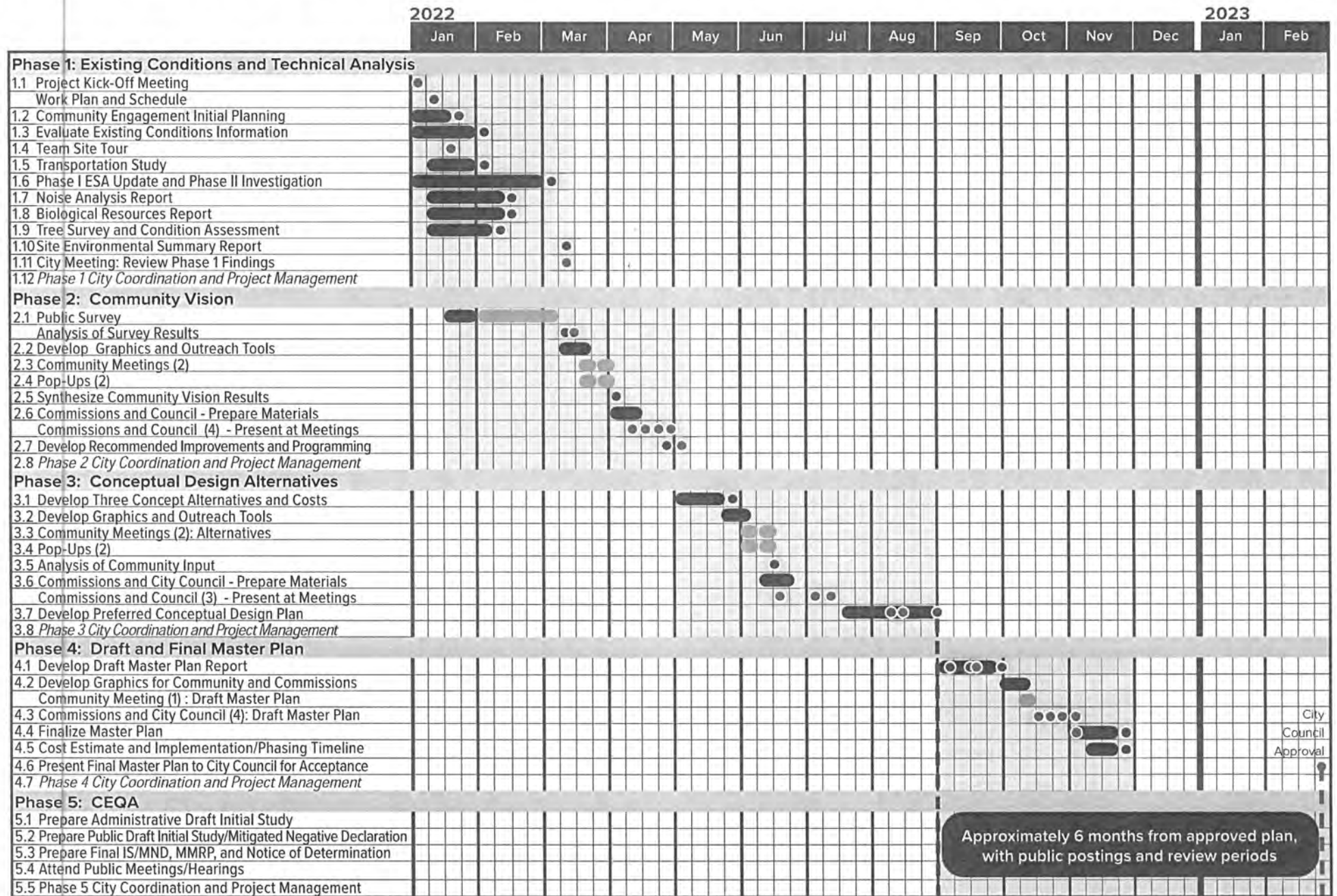
City of Cupertino | Lawrence Mitty Master Plan & Trail
e s t i m a t e d p r o j e c t c o s t

Note: in the previously published document, this page was cut off. The full page is now included.

Phase and Tasks		MIG, Inc.															Subconsultants					Direct Costs	Professional Fees Totals					
		Steve Lang Principal-in-Charge/ Landscape Architect		Jan Eiesland Project Manager/ Landscape Architect		Cindy Mendoza Planner/ Master Plan Advisor		Myrna Ortiz Community Outreach Specialist		Landscape Designer Project Associate		GRAPHICS (Master Plan Report)	BIOLOGY Report	NOISE Assessment	CEQA TEAM	MIG Totals	BKF Civil Engineer/ Surveyor	SBCA Arborist	CORNER STONE Ph I+II ESA Work	HEXAGON Transportation Engineer	Sub Totals							
		Hrs@	\$225	Hrs@	\$165	Hrs@	\$165	Hrs@	\$125	Hrs@	\$110	(Simplified for clarity, hourly assumptions available)																
PHASE 5: CEQA																												
5.1	Prepare Administrative Draft Initial Study	1	\$225		\$0		\$0		\$0		\$0		\$0		\$0		\$31,015		\$31,240				\$5,000	\$5,000	\$700	\$36,940		
5.2	Prepare Public Draft Initial Study/Mitigated Negative Declaration	2	\$450		\$0		\$0		\$0		\$0		\$0		\$0		\$6,525		\$6,975					\$0		\$6,975		
5.3	Prepare Final IS/MND, MMRP, and Notice of Determination	1	\$225		\$0		\$0		\$0		\$0		\$0		\$0		\$8,020		\$8,245					\$0	\$1,742	\$9,987		
5.4	Attend Public Meetings/Hearings		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$6,390		\$6,390					\$0		\$6,390		
5.5	Phase 5 City Coordination & Project Management		\$0		\$0		\$0		\$0		\$0		\$0		\$0		\$10,800		\$10,800					\$0	\$500	\$11,300		
Subtotal		4	\$900	0	\$0	0	\$0	0	\$0	0	\$0		\$0		\$0		\$62,750		\$63,650		\$0	\$0	\$0	\$5,000	\$5,000	\$2,942	\$71,592	
SUBTOTAL		79	\$17,775	365	\$60,225	24	\$3,960	170	\$21,250	252	\$27,720		\$5,000		\$22,630		\$11,985		\$64,015		\$234,560	\$11,650	\$11,000	\$17,275	\$6,500	\$46,425	\$9,979	\$290,964
5% Markup (Direct Costs/Administrative)																						\$2,321	\$499					
TOTAL PROJECT COSTS																									\$293,784			

Optional Tasks	
Use of Maptionnaire for Survey	\$3,980
Site Survey by BKF (if need arises, Cost TBD by scope)	TBD
Additional Environmental Expertise (if need arises, Cost TBD by scope)	TBD
Optional Tasks Subtotal	TBD

Project Schedule - Exhibit B



*For clarity, only Significant Review Meetings are Shown



EXHIBIT C: Hourly Rates and Reimbursable Expenses

Lawrence Mitty Park and Trail Master Plan, Cupertino, CA

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	\$225
Project Manager	\$165
Landscape Designer	\$110
Community Outreach Specialist	\$125
Project Assistant	\$80
Planner/Master Plan Advisor	\$165
CEQA/Environmental, Principal	\$220
CEQA/Environmental, Director	\$195
CEQA Project Manager	\$145
Senior Biologist/Senior Analyst	\$150
Biologist/Noise Analyst/GIS	\$115
Env. Project Associate	\$195

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).

PRODUCER AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549		CONTACT NAME: The Certificate Team PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: CertsDesignPro@AssuredPartners.com ADDRESS:	
License#: 6003745 MIGINC0-01		INSURER(S) AFFORDING COVERAGE	
INSURED MIG, Inc. Moore Iacofano Goltsman, Inc. 800 Hearst Ave Berkeley CA 94710		INSURER A: Berkley Insurance Company INSURER B: Travelers Property Casualty Company of America INSURER C: The Travelers Indemnity Company of Connecticut INSURER D: INSURER E: INSURER F:	
		NAIC # 32603 25674 25682	

COVERAGES

CERTIFICATE NUMBER: 1383047023

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"/> 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 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	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	8/31/2021	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	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	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: Lawrence Mitty Park and Trail Master Plan

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 Avenue
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 _____

DATE OF ISSUE: 11/22/2021

Page 1 of 1










SIGNED_MIG for Completion of the Lawrence-Mitty Park and Trail Master Plan

Final Audit Report

2021-12-10


Created:	2021-12-09
By:	Julia Kinst (juliak@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAR6Xfzh4HEGO82rG31HaD5pFnh_jwo4_5

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-  Document created by Julia Kinst (juliak@cupertino.org)
2021-12-09 - 6:44:20 PM GMT - IP address: 64.165.34.3
-  Document approved by Julia Kinst (juliak@cupertino.org)
Approval Date: 2021-12-09 - 6:46:26 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Document emailed to Araceli Alejandre (aracelia@cupertino.org) for approval
2021-12-09 - 6:46:37 PM GMT
-  Document approved by Araceli Alejandre (aracelia@cupertino.org)
Approval Date: 2021-12-09 - 11:46:38 PM GMT - Time Source: server- IP address: 64.165.34.3
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2021-12-09 - 11:46:40 PM GMT
-  Email viewed by Christopher D. Jensen (christopherj@cupertino.org)
2021-12-10 - 0:10:03 AM GMT - IP address: 172.225.89.120
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)
Signature Date: 2021-12-10 - 1:44:16 AM GMT - Time Source: server- IP address: 136.24.42.212
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2021-12-10 - 1:44:19 AM GMT
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2021-12-10 - 3:22:41 AM GMT - IP address: 104.28.123.182
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2021-12-10 - 4:33:36 AM GMT- IP address: 104.28.124.182

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Signature Date: 2021-12-10 - 4:33:47 AM GMT - Time Source: server- IP address: 69.110.137.176

 Agreement completed.

2021-12-10 - 4:33:47 AM GMT



Draft 5th Amendment MIG for Lawrence Mitty Park and Trail

Final Audit Report

2024-04-04

Created:	2024-04-03
By:	Jindy Gonzalez (jindyg@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAy9prq2TQosGcc5195Ov1ZUnaep4ytGQq

"Draft 5th Amendment MIG for Lawrence Mitty Park and Trail" History

-  Document created by Jindy Gonzalez (jindyg@cupertino.org)
2024-04-03 - 11:23:15 PM GMT
-  Document emailed to Chris Beynon (chrisb@migcom.com) for signature
2024-04-03 - 11:26:15 PM GMT
-  Email viewed by Chris Beynon (chrisb@migcom.com)
2024-04-03 - 11:54:41 PM GMT
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CC 04-16-2024

#11

Service Level Reductions

Desk Item



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

DESK ITEM

Meeting: April 16, 2024

Agenda Item #11

Subject

Potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Recommended Action

Provide confirmation on potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: Elimination of these Work Program items - \$75,000

- Enhance the Block Leader Program (grants to Block Leaders for community events):
- Diversified Retail to enhance revenue and service
- License Plate Readers projects
- Reduction in engagement with community.
- Reduction in retail diversity.
- Reduction in support for law enforcement to locate vehicles and suspects associated with criminal activity.

The answers in the supplement report state:

Elimination of Work Program items - \$75,000

- Enhance the Block Leader Program (grants to Block Leaders for community events) - \$10,000 => continued to FY24-25
- Regulate Diversified Retail - \$5,000

- License Plate Readers - \$60,000 > continued to FY24-25

These two items are not mentioned in the April 16 staff report.

I thought the presumption is that they are cut? But they are not?

Are there other items like these two, not mentioned in the staff report, but they are kept? Perhaps we should have an updated table from the 1/17 table to avoid confusion? Otherwise, it would not be clear what services are cut or not (**Council member Chao**)

Staff Response: The budget breakdown for the above items was provided as a response to the January 17th Council meeting. At that meeting, Council motioned to keep funding for the above items as they are items that will benefit the community. These items are unrelated to the SLR's being presented at the April 16th meeting because they are unchanged. Staff will be summarizing all reductions in the FY 2024 Proposed Budget to provide City Council and the residents with one cohesive list.

Q2: The total of the three items listed above is \$75,000.

Does that mean the other items have ZERO cost and they are not cut?

Such as these two items?

- Reduction in engagement with community.
- Reduction in support for law enforcement to locate vehicles and suspects associated with criminal activity.

The footnote in the supplemental report states: "The Chamber agreement has since been executed, so this is no longer a service-level reduction"

So, the \$60,000 is not cut? But it is not mentioned in the staff report?

So, shouldn't the total reduction be adjusted to reflect these items which are not cut?
(**Council member Chao**)

Staff Response: These are not individual items. They are connected to the following City Work Program items:

- *Block Leader Enhancements: Elimination of this program would result in a reduction in engagement with community.*
- *License Plate Readers: Elimination of this program would result in a reduction in support for law enforcement to locate vehicles and suspects associated with criminal activity.*

These items were not eliminated. As stated in question 1 above, staff will be summarizing all reductions in the FY 2024 Proposed Budget to provide City Council and the residents with one cohesive list.

Attachments Provided with Original Staff Report:

A – Public Works Sidewalk and Trees Follow-up

CC 04-16-2024

11

Service-Level Reductions

Supplemental Report



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1 Meeting: April 16, 2024

Agenda Item #11

Subject

Potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Recommended Action

Provide confirmation on potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: "The following table shows changes to the proposed service-level reductions since they were first introduced on January 17, 2024. Any service-level reductions not listed are assumed to move forward unless Council provides additional direction."

Any service-level reduction not listed in the table would assume to "move forward" so the service would be retained or not retained? I assume that it is the later that those services NOT LISTED anywhere in this agenda item would be removed.

I see that the attachments for Item 11 does not include the table of all of the service level reductions proposed from the 1/17 meeting.

Since those service level reductions NOT LISTED, anywhere in this agenda item, would presume to be removed and this is a study session to have a second look and receive Council direction on ALL service level reductions. It is important to include the table with ALL of the proposed service level reductions for transparency and clarify. Don't you think so?

Could you please add the 1/17 attachment with all of the proposed service reduction to this agenda item? (**Council member Chao**)

Staff Response:

A link to the January 17, 2024 agenda item was included in Background section of the staff report. Additionally, these materials are attached to this supplemental for your reference.

The overall process is as follows:

- 1. In January, staff provided a list of service level reductions. Council provided direction on those at that meeting – including direction to include some of the items in the upcoming proposed budget; to not include some of the items in the upcoming budget; to look for alternative funding for some; and to provide further information on some.*
- 2. On April 16, staff will respond to the last of those Council directions – to provide further information on some of the items.*
- 3. Staff will utilize the feedback from both meetings to craft the proposed budget, which we will present for Council discussion in May.*
- 4. Following the presentation of the proposed budget, staff will make adjustments as directed by Council and present the final budget for adoption in June.*

This process aligns with staff's commitment to bring multiple budget discussions forward with the public and the Council.

Q2: There was a long list of proposed service cuts on 1/17 and the time is limited so it was not possible to get information and discuss all of the items. I hope to get the breakdown of the costs for these items that are lumped together so that they could be considered separately.

- Elimination of these Work Program items - \$75,000
 - Enhance the Block Leader Program (grants to Block Leaders for community events):
 - Diversified Retail to enhance revenue and service
 - License Plate Readers projects
 - Reduction in engagement with community.
 - Reduction in retail diversity.
 - Reduction in support for law enforcement to locate vehicles and suspects associated with criminal activity.
- Reduction in City events and outreach including - \$63,166
 - the Community Academy,
 - Public Safety Forum,
 - State of the City, and CREST Award.
- Reduce Funding for Partnerships \$69,307
 - Reduction in funding for partnerships including Chamber and
 - Sister Cities.

- Reduction in cross cultural exchange and economic development opportunities.

Staff response:

The costs for the proposed Service Level Reductions from January 17 are provided below:

- *Elimination of Work Program items - \$75,000*
 - *Enhance the Block Leader Program (grants to Block Leaders for community events) - \$10,000¹*
 - *Regulate Diversified Retail - \$5,000*
 - *License Plate Readers - \$60,000²*
- *Reduction in City events and outreach including - \$63,166*
 - *Community Academy - \$10,600*
 - *Public Safety Forum - \$5,800*
 - *State of the City and CREST Award - \$13,600*
 - *City-Branded Swag - \$4,000*
 - *Block Leader - \$6,290*
 - *Staff and Community Engagement/Preparedness - \$2,876*
 - *Econ Dev Strategy Outreach - \$20,000*
- *Reduce Funding for Partnerships \$69,307*
 - *Reduction in funding for partnership with Chamber - \$60,000³*
 - *Reduction in funding for Sister Cities - \$8,293*
 - *Reduction in memberships - \$1,014*

Attachments Provided with Original Staff Report:

A – Public Works Sidewalk and Trees Follow-up

Attachments Provided with this Supplemental Report:

B – Service-Level Reductions Staff Report – 1.17.2024

C – Potential Service-Level Reductions Summary – 1.17.2024

¹ Enhance the Block Leader Program was continued into the FY 2024-25 City Work Program on April 3, 2024. The project was originally funded in FY 2023-24, so no additional funding is required for FY 2024-25.

² License Plate Readers was continued as part of the FY 2024-25 City Work Program on April 3, 2024. The project was originally funded in FY 2023-24, so no additional funding is required for FY 2024-25.

³ The Chamber agreement has since been executed, so this is no longer a service-level reduction.



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 17, 2024

Subject

Provide input to staff on potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Recommended Action

Provide input to staff on potential service-level reductions for the FY 2024-25 Proposed and Final Budgets

Executive Summary

As the Fiscal Year (FY) 2024-25 budget process approaches, this study session aims to provide an update on the City's budget forecast and gather City Council input on priority areas for a balanced budget.

Multiple strategies for addressing the structural deficit are under consideration. These strategies aim to strike a balance between expense reductions and revenue generation to ensure the continuity of core city services. They fall into three strategic categories:

- Revenue-generating opportunities
- Service-level reductions
- Fee increases

On December 5, the Council provided direction to staff on revenue-generating opportunities. That work is ongoing, and staff will provide an update in February.

This study session is meant to explore the second element: service-level reductions.

A comprehensive study of the City's fees and charges is in the final stages. This will allow for the comparison of current city fees to cost recovery rates and to market rates (for example, in Parks and Recreation fees). The results and recommendations of that study will be provided to Council in February as well.

After Council discussions, these sources of revenue generation or expense reductions will be refined and consolidated into one package for Council consideration during the comprehensive discussion of the next fiscal year's budget, beginning in May. This approach allows the Council and the public to consider each strategy individually, followed by the combined budget discussion where tradeoffs between approaches will lead to a balanced budget.

Reasons for Recommendation

Background

In May 2022, a California Department of Tax and Fee Administration (CDTFA) audit of a taxpayer was highlighted to the Council, raising concerns about potential budget impacts.

Information associated the audit, including financial figures, decisions impacting other jurisdictions statewide that may indicate future outcomes for Cupertino, and discussions with stakeholders such as the CDTFA, shaped an evolving forecast. Staff remains committed to providing ongoing updates to ensure that budgeting decisions are based on the most current forecast.

Following discussions with the affected taxpayer and the CDTFA, an updated forecast was presented to the Council on April 13, 2023. The impact was estimated to be a 73% decline in sales tax revenue, equating to an ongoing \$30 million decrease. This shifted the City's financial outlook from a surplus to a structural deficit, where ongoing expenses exceed revenue.

Council Actions

The Council and staff have demonstrated proactive fiscal stewardship in response to the evolving financial landscape. The FY 2023-24 Adopted Budget, which Council adopted on June 6, 2023, incorporated significant expenditure reductions of more than \$15 million dollars, including:

- Eliminating 14 vacant positions (\$2.6 million)
- Decreasing materials, contract services, special projects, capital outlays, and contingency expenditures (\$5.9 million)
- Decreasing transfers from the General Fund to other funds (\$5.5 million)
- Using the City's Section 115 Trust to fund OPEB (Other Post-Employment Benefits) costs (\$1.4 million)

Additionally, on October 10, 2023, the Council established a committed Sales Tax Repayment Reserve with an initial allocation of \$56.5 million. This reserve was designed to address a potential adverse CDTFA decision and the uncertain outcome of the anticipated legal challenge. Funding came from Unassigned fund balance, the Capital Projects Reserve, and the Economic Uncertainty Reserve.

On November 21, 2023, as part of the FY 2023-24 First Quarter Financial Report, staff sought Council direction on several potential FY 2024-25 budget reductions. These required earlier discussion as the planning and implementation of these items required advance commitments. The Council approved the defunding of \$138,000 of the \$145,000 budgeted for the 4th of July event in FY 2024-25, with \$7,000 retained for morning events. The Council further directed staff to explore funding options and return to Council with recommendations. The Council also voted to cap the Community Grant Funding Program at \$32,500 (saving up to \$57,500) and defund the Weed Abatement subsidy (saving approximately \$8,000).

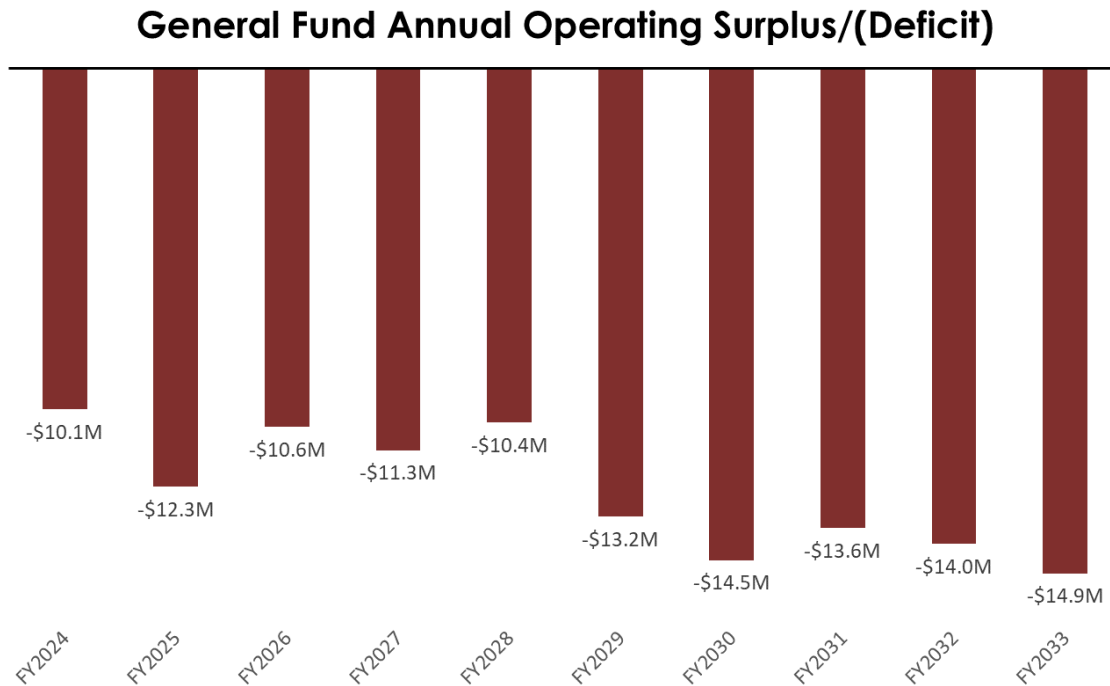
Moreover, on December 5, 2023, staff sought Council direction to explore the feasibility of potential revenue tax measures through opinion research. Urban Futures, Inc. (UFI), a consultant, presented various revenue tax measure options, highlighting the advantages, disadvantages, comparisons with neighboring cities, and projected revenue impacts of each option. The Council decided to revisit the issue in early 2024 after staff had the opportunity to engage the business community regarding potential measures.

Budget Forecast

Annually, staff constructs a financial forecast to guide budget decisions. The forecast is not a rigid plan, but rather a dynamic model dependent on assumptions that are continually updated as new information emerges.

This forecast assumes the complete repayment of facility debt by FY 2029-30, \$2 million in annual funding for capital projects, and \$1 million in annual funding for Special Projects and City Work Program projects. Salaries and benefits reflect the cost-of-living adjustments approved by the Council on November 7, 2023. Salaries are expected to increase by the CalPERS payroll growth rate in subsequent years.

Additionally, the forecast anticipates periods of economic downturn, reflecting no revenue growth in FY 2024-25 and FY 2028-29. The ongoing impacts of new development projects are not factored in until the developments are entitled and permitted. HdL, the City's retained consultant, provides the sales tax and property tax forecasts. Sales tax revenues account for an ongoing decrease due to the CDTFA audit.



Even with the implemented expenditure reductions, a \$15 million structural deficit persists due to the significant loss in sales tax revenue. Although the City's conservative budgeting has allowed the City to accumulate fund balance in previous years, use of this fund balance is only a short-term measure. It gives the City a window to explore and gradually implement revenue-generation and expenditure-reduction strategies, but is not an ongoing solution to the fiscal challenge.

Potential Service-Level Reductions

Staff requests the Council's input on potential service-level reductions. Staff will use this input to develop the proposed budget, which is scheduled for a study session in May and adoption in June.

In October, departments conducted an extensive review of their budgets, evaluating all line items to identify areas for potential reductions. This thorough review aimed to uncover opportunities to help address the City's \$15 million structural deficit.

In evaluating these potential service-level reductions, staff conducted a thorough assessment based on multiple criteria. The criteria encompass financial impacts, service implications, operational efficiencies, and community impacts. Each proposed reduction was scrutinized for its financial ramifications and its impact on community services. Additionally, consideration was given to potential implications on our workforce, including any necessary adjustments or reassignments, as well as potential community feedback. This detailed evaluation aims to provide the Council with a comprehensive understanding of the implications associated with the proposed reductions, facilitating

informed decision-making aligned with the City's long-term objectives and community priorities.

Recognizing the significant role of community feedback in decision-making, the approach involves engaging the community through multiple avenues. Interactive town hall meetings in February and April will encourage open dialogue between Council members, city staff, and the public, allowing for direct input and discussion on financial matters affecting the community. In addition, surveys and focus groups will gather diverse perspectives from residents, businesses, and other stakeholders. This feedback will be integrated into the recommendations, ensuring that the voices and concerns of the community are actively considered in the decision-making process. The goal is to nurture transparency, responsiveness, and a collaborative environment where the community's input helps shape the City's direction and service priorities.

The potential service-level reductions include various operational adjustments and realignment of responsibilities. If approved, the reductions marked with a footnote would take place over time. Staffing reductions will occur through attrition as positions become vacant. Attachment A describes each reduction.

The reductions fall into two categories: Service-Level Reductions (\$8.0 million) and Fiscal Accountability (\$2.6 million). Service-Level Reductions (SLR) aim to lower expenses or modify how services are provided, while Fiscal Accountability measures focus on aligning budgets with actual costs and streamlining expenses. These strategies blend cost reduction with service adjustment, reflecting an effort to manage financial constraints, optimize resource allocation, and consider potential impacts on community services.

Next Steps

Regular reports on the City's budget will be provided to the Council. This study session, in addition to a Council check-in in April and the mid-year budget update in February, will provide opportunities to communicate progress on the CDTFA audit and strategy to balance the budget.

To encourage community involvement, interactive town hall meetings in February and April will engage residents, businesses, and stakeholders. These sessions aim to enhance transparency and collaboration, fostering inclusive decision-making processes.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Proposed service-level reductions are estimated to reduce ongoing expenditures by approximately \$10.5 million annually. Implementing these reductions would significantly help reduce the \$15 million structural deficit.

California Environmental Quality Act

Not applicable.

Prepared by: Thomas Leung, Budget Manager

Reviewed by: Kristina Alfaro, Director of Administrative Services

Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Potential Service-Level Reductions Summary

Potential Service-Level Reductions (SLR) Summary

Attachment C

Category	Department	Service-Level Reductions	Fiscal Impact	Full-Time Staffing Impact (FTE)	Service Level Impact Narrative
Fiscal Accountability	Law Enforcement	Align Law Enforcement Budget with Actuals	\$ 1,000,000	None	Over the last year and a half, the Sheriff's Office has provided significantly less service than allowed under the budget with no apparent impact to crime. This reduction aligns the budget with the actual hours provided.
Fiscal Accountability	Innovation & Technology	Reduce Budget for IT	\$ 779,187	None	Reduced applications utilized by City staff; Cancelled ERP Implementation; Prolonged tech refresh cycles; Significantly reduced replacement parts and supplies, Reduced outside expert technical support. This reduction would reduce efficiencies from some technology uses where the city has historically been comparatively advanced.
Fiscal Accountability	Public Works	Utility True-up	\$ 398,407	None	Reduction aligns budget with actuals
Fiscal Accountability	City Attorney's Office	Align City Attorney's Office Contract Services and Materials with Actuals	\$ 226,561	None	Reduction aligns budget with FY 2023-24 Actuals. Specialized outside counsel and legal services are necessary to cover specialized legal representation and services.
Fiscal Accountability	Parks & Recreation	Consolidate Learn to Swim Program	\$ 87,118	None	Consolidate the Learn to Swim program into 100-63-612 under BBF, due to the program now being run from the BBF Pool and fully integrated into those operations. Consolidated part-time staff and program supplies and expenses into that program.
Fiscal Accountability	Administrative Services	Reduce Unemployment Insurance	\$ 64,148	None	New costs are reflective of post-COVID estimates
SLR	Capital Improvement Program	Reduce General Fund Transfers to the Capital Improvement Fund	\$ 2,000,000	2	City will initiate and complete CIP projects with the current Capital Reserve fund. The City will initiate only critical health and safety projects, or projects that will create revenue or savings to the City budget. A reduction in capital renewal will lead to a longterm aging of infrastructure impacting the attractiveness of this infrastructure to the public.
SLR	Public Works	Reduce Public Works Materials and Contract Services and Part-Time Positions	\$ 1,768,539	None	Some contracts for general services, such as park tree maintenance (\$168,880), will move in-house, extending maintenance timelines; reduction in Public Works Part-time Positions (\$352,136).
SLR	Public Works	Shift Sidewalk Maintenance to Property Owners ¹	\$ 1,000,000	1.4	The California Streets and Highway Code sections 5610-5618 assigns responsibility for sidewalks to the adjacent property owner. Cupertino has historically assumed the costs of this work. This proposal will eliminate this service and shift sidewalk maintenance responsibilities to adjacent property owners. This practice is fairly standard across the region.
SLR	Public Works	Shift School District Grounds Maintenance to School District ¹	\$ 737,394	4.2	This reduction would end the field maintenance agreement with the Cupertino Unified School District. The school districts would need to take on the maintenance responsibilities. The City would forego revenue (approximately \$57K) from field rentals and the school district could potentially add revenue.
SLR	Public Works	Shift Street Tree Maintenance to Property Owners ¹	\$ 455,008	3	Similar to sidewalk maintenance, street tree maintenance responsibility could shift to adjacent property owners. This practice is fairly standard across the region.

Potential Service-Level Reductions (SLR) Summary

Attachment A

Category	Department	Service-Level Reductions	Fiscal Impact	Full-Time Staffing Impact (FTE)	Service Level Impact Narrative
SLR	Various	Shift Credit Card Fees to Customers	\$ 432,668	None	Customers would pay a credit card transaction fee for any payments made using a credit card. Currently, the City does not charge credit card fees to customers. Many jurisdictions charge customers a credit card transaction fee for any payments made using a credit card.
SLR	City Manager's Office/Community Development	Reduce Part-Time Staffing, Reclassify Positions and Reduce Recruitment Advertising	\$ 286,348	None	The CMO reclassified the Communications Manager to a lower level position. This will result in decreased capacity in the Communications Division. Reduction of part-time positions in CMO and CDD. This could result in reduced administrative and communications support in CMO. This could cause a delay and decrease in the operations of the permit counter and the ability to provide historic levels of customer service to resident and community members on all matters related to the Community Development Department.
SLR	Public Works	Defer Vehicle and Equipment Replacement	\$ 180,000	None	Defer vehicle and equipment replacements until future years. This may increase cost and staff time to repair assets that were deferred for replacements.
SLR	Parks & Recreation	Reduce Funding for Library Extra Hours	\$ 160,000	None	The City has historically budgeted for increased library hours. This reduction will have no immediate impact to current operational hours, since Santa Clara County Library District has historically received funds from the state to cover these costs and has not been charging the City for 12 additional operating hours per week. If state funds are discontinued, this will become a true service level reduction.
SLR	Parks & Recreation/Public Works	Reduce 4th of July Funding	\$ 138,000	None	Elimination of 4th of July evening fireworks due to the significant cost of the event, including the fireworks, sheriff cost, and rental of equipment needed, as well as staff time needed.
SLR	Public Works	Reduce Impec Janitorial Contract	\$ 100,000	None	Further reductions in cleaning frequency for City facilities. Reduced cleaning has a direct impact on user experience and leads to quicker degradation of facility infrastructure.
SLR	City Manager's Office	Reduce Scene from 10 months to quarterly	\$ 92,400	None	Reduction results in less promotion of City services and less community outreach opportunities.
SLR	City Manager's Office	Eliminate Select City Work Program Projects	\$ 75,000	None	Elimination of the CWP Enhance the Block Leader Program (grants to Block Leaders for community events), CWP Regulate Diversified Retail, and CWP License Plate Readers projects. Reduction in engagement with community. Reduction in retail diversity. Reduction in support for law enforcement to locate vehicles and suspects associated with criminal activity.
SLR	Administrative Services	Reduce Budget for Internal Audit	\$ 70,000	None	Reduction in the number of internal audit projects. Audits would occur on a less frequent basis.
SLR	Council	Reduce Funding for Partnerships	\$ 69,307	None	Reduction in funding for partnerships including Chamber and Sister Cities. Reduction in cross cultural exchange and economic development opportunities.
SLR	City Manager's Office	Reduce City Events/Outreach	\$ 63,166	None	Reduction in City events and outreach including the Community Academy, Public Safety Forum, State of the City, and CREST. Reduction could limit community outreach about public safety, law enforcement, Council goals and initiatives.

Potential Service-Level Reductions (SLR) Summary

Attachment A

Category	Department	Service-Level Reductions	Fiscal Impact	Full-Time Staffing Impact (FTE)	Service Level Impact Narrative
SLR	Public Works	Reduce Crossing Guard Services	\$ 50,000	None	Reduction in the number of intersections served by crossing guards. The City currently receives \$20K from FUHSD and \$20K from CUSD. High schools could be eliminated from the crossing guard contract, resulting in a reduction of approximately \$70K, but could lose the \$20K from FUHSD (\$50K savings). Enhancing cost sharing could result in reducing expenditures.
SLR	Parks & Recreation	Reduce Budget for Paid Events	\$ 38,675	None	Reduction in part-time staffing scheduled for these events and program (e.g., Spelling Bee and Hack Cupertino). Will continue to offer current programs, but support with more volunteers and full-time staff.
SLR	Parks & Recreation	Shift Sheriff Fees for Festivals to Festival Organizers	\$ 34,992	None	Sheriff expenses for festivals will no longer be covered by the City and will be charged directly to festival organizers starting in FY 2024-25.
SLR	Parks & Recreation	Reduce Parks & Recreation Expenses	\$ 33,619	None	Elimination of the Poet Laureate Program and Helping Hands Program. Reduce part-time staff for the preschool program, with a shift in focus to a more robust Tiny Tots (3 year old) program.
SLR	Parks & Recreation	Reduce Park Ranger Services	\$ 31,155	None	Reduction in hours planned for part-time rangers at the Stevens Creek Corridor and McClellan Ranch Preserve, resulting in a reduced ranger presence at the Environmental Education Center and for some of the nature based programs and events.
SLR	Parks & Recreation	Reduce Budget for Concerts and Movies	\$ 25,424	None	Consolidation of the Neighborhood Events program to reduce part-time staffing expenses and the reallocation of some events such as movies and band performances to Memorial Park.
SLR	City Manager's Office	Eliminate Minimum Wage Mailers	\$ 23,202	None	The City currently prints and mails minimum wage information to businesses. This reduction would result in emailed forms, requiring businesses to print on their own.
SLR	Parks & Recreation	Reduce Senior Center Part-Time Staffing and Supplies	\$ 21,748	None	Reduction in hours planned for part-time staff at the Senior Center resulting in longer wait times for customers at the counter, reduced rental support, and reduced amenities in programs and events.
SLR	Public Works	Eliminate Earth Day Festival	\$ 19,126	None	Direct impact to quality of life through community events. Less opportunity for the City to advance goals, especially community outreach, around the Climate Action Plan.
SLR	Administrative Services/Community Development	Reduce Conferences and Training	\$ 11,046	None	The decrease in conference attendance and training opportunities for staff might result in staff being less updated on current changes, new developments, and best practices within their field. The reduction could potentially lead to higher staff turnover rates.
Total			\$ 10,472,238	10.6	

¹ Reduction will take place over time. Staffing reduction will be through attrition as positions become vacant