



Regular Meeting Agenda
Parks and Recreation Commission

Bill Haskell - Commissioner
Craig van Keulen - Commissioner
LaRene Green - Commissioner
Mary Seehafer - Commissioner
Matt Wendt - Commissioner
Richard Scott - Commissioner
Ronald Locicero - Commissioner

Tuesday, July 18, 2017 7:00 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Members of the public are entitled to address the Commission concerning any item within the Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

COMMUNITY SERVICES DIRECTOR REPORT

ADOPTION OF THE AGENDA

BUSINESS:

1. APPROVE THE JUNE 20, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

2. INCLUSIVE PLAYGROUND PARTNERSHIP WITH THE MAGICAL BRIDGE FOUNDATION

Recommendation:

Make a recommendation to the City Council to move forward with an agreement with the Magical Bridge Foundation.

3. FRIENDLY INN CURRENT AND FUTURE USE REPORT

Recommendation:

1. Receive report on Friendly Inn Use;
2. Provide recommendation to City Council on proposed future use of Friendly Inn.

4. COMMISSION WORK PLAN UPDATES

Recommendation:

Discuss and provide updates on Work Plan items.

ANNOUNCEMENTS

FUTURE COMMISSION AGENDA ITEMS:

ADJOURNMENT

NOTICE

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act that are distributed to a majority of the legislative body less than 72 hours prior to an open session, will be made available for public inspection at the Office of the City Clerk at Morgan Hill City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 at the same time that the public records are distributed or made available to the legislative body. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the Commission concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Commission on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Commission Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Commission, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the Commission on any other item of interest to the public, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the Commission.

Persons interested in proposing an item for the Commission agenda should contact a member of the Commission who may plan an item on the agenda for a future Commission meeting. Should your comments require Commission action, your request may be placed on the next appropriate agenda. Commission discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the Commission, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of Commission Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.

DRAFT



Meeting Minutes Parks and Recreation Commission

Bill Haskell - Commissioner
Craig van Keulen - Commissioner
LaRene Green - Commissioner
Mary Seehafer - Commissioner
Matt Wendt - Commissioner
Richard Scott - Commissioner
Ronald Locicero - Commissioner

Tuesday, June 20, 2017 7:00 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

ROLL CALL ATTENDANCE

Attendee Name	Title	Status	Arrived
Bill Haskell	Commissioner	Present	
Craig van van Keulen	Commissioner	Present	
LaRene Green	Commissioner	Present	
Mary Seehafer	Commissioner	Absent	
Matt Wendt	Commissioner	Absent	
Richard Scott	Commissioner	Present	
Ronald Locicero	Commissioner	Present	

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

PLEDGE OF ALLEGIANCE

Minutes Acceptance: Minutes of Jun 20, 2017 7:00 PM (BUSINESS:)

PUBLIC COMMENT

None

COMMUNITY SERVICES DIRECTOR REPORT

Provided by Recreation Manager

ADOPTION OF THE AGENDA

Motion van Keulan, Second Scott, 5-0

BUSINESS:

1. APPROVE THE MAY 16, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	ACCEPTED [4 TO 0]
MOVER:	Craig van van Keulen, Commissioner
SECONDER:	Richard Scott, Commissioner
AYES:	van Keulen, Green, Scott, Locicero
ABSTAIN:	Haskell
ABSENT:	Seehafer, Wendt

2. GRANT UPDATE FOR PRC

Recommendation:

Receive grant update report.

Received Update

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	LaRene Green, Commissioner
SECONDER:	Mary Seehafer, Commissioner
AYES:	Haskell, van Keulen, Green, Seehafer, Wendt, Scott, Locicero

3. COMMUNITY SERVICES DEPARTMENT FACILITY RENTAL REPORT

Recommendation:

Receive report on facility rentals at recreation facilities

Recieved Report

Minutes Acceptance: Minutes of Jun 20, 2017 7:00 PM (BUSINESS:)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Bill Haskell, Commissioner
SECONDER: Craig van van Keulen, Commissioner
AYES: Haskell, van Keulen, Green, Seehafer, Wendt, Scott, Locicero

4. COMMISSION WORK PLAN UPDATES

Recommendation:

Discuss and provide updates on Work Plan items.

Discuss and provided updates on Work Plan items.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Bill Haskell, Commissioner
SECONDER: Craig van van Keulen, Commissioner
AYES: Haskell, van Keulen, Green, Seehafer, Wendt, Scott, Locicero

ANNOUNCEMENTS

FUTURE COMMISSION AGENDA ITEMS:

ADJOURNMENT

7:45pm



PARKS AND RECREATION COMMISSION STAFF REPORT

MEETING DATE: July 18, 2017

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: Chris Ghione, Community Services Director

INCLUSIVE PLAYGROUND PARTNERSHIP WITH THE MAGICAL BRIDGE FOUNDATION

RECOMMENDATION(S)

Make a recommendation to the City Council to move forward with an agreement with the Magical Bridge Foundation.

REPORT NARRATIVE:

Since early 2015, the City has been working with a group of volunteers to obtain funding for an Inclusive Playground in Morgan Hill. The Morgan Hill Inclusive Playground Committee, which was formed under the Morgan Hill Community Foundation, has raised over \$70,000 for this effort. An "inclusive playground" differs from an "accessible playground" in that it has the aim to make it not only accessible for those with mobility issues, but just as importantly, to encourage and enable all children to engage with one another while using the playground. Successful fundraising efforts for inclusive playgrounds have occurred in a number of nearby communities, including Salinas, Palo Alto, and San Jose.

In November 2015, the City Council authorized Verde Designs, Inc. to begin work on concept designs for the Morgan Hill Inclusive Playground. During the design process, the volunteers of the Morgan Hill Inclusive Playground Committee (Committee) worked with the team at Verde Designs to gather input from the community on the wants and needs for the playground. This included three sessions with students at different schools, one community meeting, and a design session with the volunteers of the Committee. Over the next several months, the Committee and Verde Designs worked to develop concept designs for the playground (Attachment 2).

The concept designs call for the new inclusive playground to replace the existing playground at Community Park. The design of the park pulls some elements from other inclusive playgrounds that have been found successful and integrates them with the ideas brought forward through the community outreach, to create a design that will be unique to the Morgan Hill playground. The City Council, after a recommendation from the Parks and Recreation Commission, approved the concept designs on May 18, 2016. It is currently believed that the cost to develop the playground is approximately \$5.2 million.

The Morgan Hill Inclusive Playground Committee continues to work on fundraising, but has not been successful in securing major donors to support the project. Current committed funding includes:

\$70,000 - Funds Raised with the Community Foundation

\$150,000 - Grant from the Santa Clara County Parks and Recreation Department

\$200,000 - Grant from the State of California (Housing Related Parks Grant)

\$20,000 - Grant from the State of California (Recycled Tire Grant)

The County of Santa Clara recently established funding for a grant program for inclusive playgrounds to be constructed. This funding is allocated at \$2 million per Supervisorial District, with a minimum award of \$500,000 and maximum award of \$2 million per City. Application guidelines for this grant are in development and the grant applications will be accepted this Fall/Winter. It is understood these grants will be matching in nature.

Earlier this year, staff members from the Magical Bridge Foundation reached out to City teammates and volunteers in relation to a potential partnership on Morgan Hill's Playground. The Foundation is a recently formed non-profit organization that desires to support the creation of "Magical Bridge" inclusive playgrounds throughout the Country. The founding members of the Foundation are the key volunteers that were involved in the fundraising and construction of the Magical Bridge Playground in Palo Alto. The Foundation is currently in contract with the City of Redwood City to support the fundraising, design, and marketing/promotion of the planned Magical Bridge of Redwood City Playground.

The proposed format of the agreement is structured in which the City would pay the Magical Bridge Foundation to support the fundraising, marketing/promotion, grant writing, and design expertise for Morgan Hill's playground. The key component of the agreement would be the fundraising aspect. The structure of agreement would provide for much of the payment to the Magical Bridge to be contingent upon them reaching milestones, including raising the necessary funds to build the park. However, \$200,000 would be guaranteed to Magical Bridge for the work performed for up to the next five years (the contract term).

The design component would be to support a landscape architect hired by the City in the development of the design with the interest in finding cost savings in the design and to ensure the playground is built to the Magical Bridge standards. It should be noted that the existing approved conceptual design of the park would require only minimal changes to meet Magical Bridge standards. It is important to note that the agreement would also require the park to be named the Magical Bridge of Morgan Hill.

Considering the upcoming County grant process and the stalled fundraising efforts, staff believes that partnering with the Magical Bridge Foundation is the best opportunity the City has to complete the Playground. The proposed agreement with the Magical Bridge Foundation is included as Attachment 1. The Morgan Hill Inclusive Playground Committee has had extensive discussions on the agreement with City staff and is supportive.

LINKS/ATTACHMENTS:

1. Magical Bridge Morgan Hill Playground Agreement Final
2. _Final-Concept-Graphic-11x17

CONSULTANT SERVICES AND LICENSE AGREEMENT

This Consultant Services and License Agreement (“**Agreement**”) is made and entered into as of _____, 20__ (the “**Effective Date**”) by and between City of Morgan Hill (“**City**”), a [California municipal corporation], and the Magical Bridge Foundation (“**Magical Bridge**”), a California 501(c)(3) corporation. Magical Bridge and City are individually referred to in this Agreement as a “**Party**” and collectively as “**Parties**.”

WHEREAS, Magical Bridge Foundation has created a design and community engagement process for developing inclusive playgrounds in which children of all abilities can play;

WHEREAS, Magical Bridge’s inclusive playgrounds are designed to promote well-being by increasing meaningful connections in the community, increasing inclusivity and empathy among children of all abilities, and creating a sense of ownership and engagement in the community that complements and strengthens existing programs and the investments communities are already making to provide therapies and services for children with special needs; and

WHEREAS, City desires to (i) use certain of Magical Bridge’s proprietary processes and designs to build such an inclusive playground (the “**Playground**”); (ii) retain Magical Bridge’s assistance throughout the design and construction process to create a hub for play in the community that increases the opportunities for and amount of play for all families, in particular for those with special needs who have fewer opportunities for play in community playgrounds (the “**Project**”); (iii) have Magical Bridge assist with fundraising for the Project; and (iv) have Magical Bridge advise City on designing and implementing a TV, print media, and social media campaign to co-market and build community support for the Project, including an opening event to commemorate the opening of the Playground (“**Opening Event**”);

WHEREAS, City has developed an initial design (“**Concept Design**”) for the Playground that will be used as the base for the all future design work.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the Parties agree as follows:

1. **Fundraising.** The Parties acknowledge and agree that:

1.1. **Total Funding Goal.** City will require an estimated five million two hundred thirty thousand dollars (\$5,230,000) to design and complete the Project;

1.2. **City Contribution.** City has or will allocate \$2,000,000, and, with the assistance of Magical Bridge, will apply for a matching funds grant of up to \$2,000,000 from the County of Santa Clara, for the Project for a total allocation of \$4,000,000 (collectively the “**City Contribution**”); and

1.3. **Community Donation.** City desires to partner with Magical Bridge to raise the remaining funds necessary to construct the Playground from significant entity and individual donors and grants (the “**Community Donation**”). For the avoidance of doubt,

donations to Magical Bridge will only be deemed to be Community Donations if they are designated by their donor for use in connection with the Project or, if they are not designated by their donor for any particular purpose, if Magical Bridge, in its sole discretion, designates such funds as Community Donations.

2. Magical Bridge Responsibilities. City retains Magical Bridge to perform, and Magical Bridge agrees to perform, the services described in Exhibit A1 (“**Services**”). In the event of a conflict between the provisions of Exhibit A and the terms of this Agreement, the terms of the Agreement shall prevail. City shall have the right to modify the Services to delete tasks in whole or in part, provided that such modifications do not affect the City’s payment obligations hereunder.

3. City Responsibilities. Magical Bridge’s performance of the Services is conditioned upon City’s timely assistance and performance of all other tasks which are reasonably necessary in connection with the Project, including, without limitation, those described in Exhibit A2 (“**City Responsibilities**”). Accordingly, notwithstanding anything to the contrary in this Agreement, in any circumstance in which Magical Bridge’s performance of the Services depends or is contingent upon activities or assistance of City, for example in obtaining permits for and developing the Project, as reasonably determined by Magical Bridge, if City fails to perform such activities or provide such assistance in a timely manner, Magical Bridge shall be excused for any delay in its performance of the Services for so long as City fails to perform such activities or provide such assistance, and such delay shall not constitute a breach of this Agreement by Magical Bridge.

4. Compensation.

4.1. Retainer. City will pay to Magical Bridge a one time retainer payment (the “**Retainer**”) of \$200,000 due upon the Effective Date of this Agreement to support the community engagement activities, fundraising, design work, licensing, and all other services provided by Magical Bridge.

4.2. Milestone Payments. City will pay to Magical Bridge a series of milestone completion payments (“**Milestone Payments**”), totaling an additional \$225,000; each Milestone Payment is due upon completion of the associated milestone as specified in Exhibit B. In the event that the Total Funding Goal increases or the City Contribution decreases, Magical Bridge shall be entitled to an additional Contingency Milestone Payment equal to 15% (up to \$175,000) of the resulting increase in the amount of the Community Donation, the Contingency Milestone Payment to be payable upon completion of the Fundraising and transfer of funds to the City. An amount sufficient to pay the additional Contingency Milestone Payment shall be included in the increased Funding Goal so that there is fiscal neutrality for the Project. Grants or funding received from government entities awarded directly to the City shall be deemed a City Contribution, and would not be deducted from the increased Community Donation and not be subject to the 15% Contingency Milestone Payment.

4.3. Donation Processing Fee. Magical Bridge agrees to waive any processing

fees associated with Community Donations.

4.4. Invoicing, Taxes. Magical Bridge shall submit to City a written invoice for each payment of the Retainer and each Milestone Payment as it becomes due, and City agrees to pay all invoiced amounts within thirty (30) days after the date of the applicable invoice. The Retainer and Milestone Payments are exclusive of, and City shall be responsible for paying, any applicable taxes which may be owed for or upon such payments, other than any taxes Magical Bridge may owe with respect to its net income notwithstanding Magical Bridge's non-profit status.

4.5. No Other Compensation. The Retainer and Milestone Payments shall be the full and complete compensation to which Magical Bridge is entitled for the completion of the Services (provided that the costs of actually constructing the Playground will be drawn from the City Donation and the Community Donation), which sum shall include all costs or expenses incurred by Magical Bridge, unless otherwise expressly set forth herein or agreed in writing by the Parties. Notwithstanding the foregoing, City is solely responsible for all costs and expenses associated with City Responsibilities, and for those associated with the Opening Event and any media campaigns associated with marketing and building community support for the Project.

4.6. Total Compensation. Total Compensation under this agreement including any Contingency Milestone Payment shall not exceed \$600,000.

5. Intellectual Property.

5.1. License to Designs and Equipment. Magical Bridge hereby grants to City a non-exclusive, fully paid up, non-transferrable license to use, reproduce, internally distribute, and create derivative works of any documents and materials depicting the design elements, equipment, and layout characteristic of a Magical Bridge playground (collectively "**Magical Bridge Designs**"), in whole or in part, to prepare a design for a playground incorporating those design elements that is tailored to the unique geographic features of the Playground site as well as the needs and budgetary constraints of City ("**Final Design**") and to build the Playground according to the Final Design. City shall be responsible for preparing the Final Design in consultation with its design team, architect, and Magical Bridge as needed. City shall retain final decision making authority on all aspects of the design of the Playground.

5.2. License to Magical Bridge Trademarks.

5.2.1. Initial License. Subject to City's compliance with the terms and conditions of this Agreement and Magical Bridge's trademark guidelines, the current version of which is attached hereto as Exhibit D and which are subject to revision by Magical Bridge from time to time in its sole discretion (the "**Trademark Guidelines**"), Magical Bridge hereby grants City the non-exclusive right to use Magical Bridge's name, trademarks, service marks, and trade names ("**Magical Bridge Marks**") solely to promote and solicit donations and funding for the Project,

provided that all such uses are subject to Magical Bridge's prior approval, which shall not be unreasonably withheld or delayed.

5.2.2. Final Design Certification. Upon completion of the Final Design, City shall transmit a copy of the Final Design to Magical Bridge. Magical Bridge shall, within thirty (30) days of receipt of the Final Design, review the Final Design to determine whether the Final Design meets the criteria of a Magical Bridge Playground, attached hereto as Exhibit C and incorporated herein by reference ("**Magical Bridge Standards**"). If Magical Bridge determines that the Final Design meets the Magical Bridge Standards, Magical Bridge shall provide a certification to City so stating ("**Final Design Certification**"). If, in its reasonable discretion, Magical Bridge determines that the Final Design does not meet the Magical Bridge Standards, Magical Bridge shall provide City with a written rationale for its decision, including specific recommendations for conforming to the Magical Bridge Standards. Magical Bridge shall then work in good faith with City to revise the Final Design to meet the Magical Bridge Standards.

5.2.3. Final License. Upon receipt of the Final Design Certification for the Playground, subject to City's compliance with the terms and conditions of this Agreement and the Trademark Guidelines, City shall have the non-exclusive right to refer to the Playground as a "Magical Bridge Playground" and, subject to Magical Bridge's prior approval, which shall not be unreasonably withheld or delayed, to use the Magical Bridge Marks in signage located at or directing visitors to the Playground and in advertising and promotional materials regarding the Playground. Without limiting the foregoing, City shall display and maintain at the Playground a sign, at City's expense, not less than ten (10) square feet in size, including Magical Bridge's name and at least one Magical Bridge Mark.

5.2.4. License Review. Magical Bridge reserves the right to periodically review the Playground's continued compliance with the Magical Bridge Standards and to revoke the foregoing license and all associated rights to designate such playground as a "Magical Bridge Playground" upon notice to City that the playground no longer conforms to the Magical Bridge Standards. Magical Bridge shall give City at least thirty (30) days' notice, and meet and confer in good faith with City, prior to revoking any such certification or the foregoing license.

5.2.5. Goodwill. City agrees that (a) as between the parties, all rights in and to Magical Bridge Marks and the goodwill associated therewith are owned by Magical Bridge, (b) City will do nothing inconsistent with such ownership, (c) all uses of Magical Bridge Marks shall inure to the sole benefit of and be on behalf of Magical Bridge, (d) City will not challenge or assist others in challenging the validity of such Magical Bridge Marks or attempt to register in any jurisdiction any confusingly similar marks, and (e) any use of the Magical Bridge Marks shall be in accordance with Magical Bridge's Trademark Guidelines.

5.2.6. Magical Bridge Playgrounds Only. City shall not display Magical

Bridge Marks on or in relation to any playgrounds that were not designed by Magical Bridge, or whose Final Design Certification or other certification of meeting the Magical Bridge Standards has been revoked by Magical Bridge as provided above, except that City may use Magical Bridge Marks in communications and materials, in any medium, involving both Magical Bridge Playgrounds and other playgrounds where the Magical Bridge Playgrounds are clearly identified as such.

5.3. **Ownership.** As between the Parties, the Magical Bridge Designs, the Final Design, the Magical Bridge Marks, any and all derivative works thereof, and the design, layout, and features of the Magical Bridge Playgrounds, including all intellectual property rights therein, are and shall remain the sole property of Magical Bridge. Each Party will retain all right, title, and interest in and to all marketing materials that it provides to the other Party under this Agreement. All rights not expressly granted in this Agreement are reserved by the Parties.

6. Termination.

6.1. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement for a period of five years. The City Manager is authorized to extend the term of the Agreement for a maximum of one year.

6.2. **Termination for Lack of Progress.** City may terminate this Agreement upon not less than thirty (30) days' written notice to the other Party pursuant to the notice provisions of this Agreement if (a) City decides to abandon or postpone the Project; (b) Magical Bridge fails to raise and transfer the Community Donation within twelve (12) months of the Effective Date, subject to extension at City's reasonable discretion; (c) City reasonably determines that there has been no substantial progress on the Project for at least twenty-four (24) months; or (d) Magical Bridge ceases to operate or otherwise loses its ability to perform the Services.

6.3. **Termination for Cause.** Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other if the other Party is in material breach of this Agreement and fails to cure such breach within such thirty (30) day period.

6.4. **Effects of Termination.**

6.4.1. Upon termination of this Agreement, Magical Bridge shall transfer to City all funds collected in support of the Community Donation still in Magical Bridge's possession ("**Remaining Funds**"). After Magical Bridge transfers the Remaining Funds to City, City will have sole and exclusive responsibility for management of the Remaining Funds. City shall use the Remaining Funds for the sole purpose of (a) maintaining or enhancing the Playground, if it has been built prior to termination; or, if the Playground has not been built prior to termination, (b) funding modifications to other playgrounds to increase inclusive play opportunities for children with disabilities, provided that Magical Bridge is permitted to participate in an oversight committee with respect to the use of such funds.

6.4.2. City shall remain obligated to pay Magical Bridge any payments owed prior to the effective date of termination, and all such payments shall become immediately due and payable.

7. Warranties; Disclaimer.

7.1. Warranty. Each Party represents and warrants that (i) it has the full power and authority to enter into and fulfill the terms of this Agreement (ii) it will perform its obligations under this Agreement in a professional and workmanlike manner and in compliance with all applicable laws; and (iii) it has not entered and will not enter into any agreements that interfere or conflict with the terms hereof.

7.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THIS AGREEMENT, THE MAGICAL BRIDGE DESIGNS, OR ITS SERVICES, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnification.

8.1. By Magical Bridge. Magical Bridge shall defend or at its option settle any third party claims brought against City, its officers, and employees to the extent that they allege: (a) any grossly negligent or intentionally wrongful act of Magical Bridge, its employees, contractors or agents in performance of the Services prior to the Opening Event or (b) any violation or claimed violation of a third party's intellectual property or proprietary rights resulting from the use by City of the Magical Bridge Designs or Magical Bridge Marks in accordance with this Agreement, except to the extent such claims are attributable to the negligence or willful misconduct of City, including their officers and employees, or third parties (collectively, "Magical Bridge Claims"). Subject to Section 9, Magical Bridge will indemnify City, its officers, and employees against any liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments (collectively "**Losses**") for Magical Bridge Claims, where such Losses are finally awarded by a court of competent jurisdiction to resolve, or agreed to by Magical Bridge in settlement of, such Magical Bridge claims. Notwithstanding the foregoing, Magical Bridge will have no liability for infringement claims to the extent arising from: (i) combination of the Magical Bridge Designs or Magical Bridge Marks with other materials or marks not provided by Magical Bridge, if the infringement would not have occurred if the Magical Bridge Designs or Magical Bridge marks had not been so combined; or (ii) the modification of the Magical Bridge Designs, in whole or in part, by anyone other than Magical Bridge, if the infringement would not have occurred but for such modification. THIS SECTION 8.1 STATES THE ENTIRE LIABILITY AND OBLIGATION OF MAGICAL BRIDGE, AND THE SOLE AND EXCLUSIVE REMEDY OF CITY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY

THE MAGICAL BRIDGE DESIGNS OR MAGICAL BRIDGE MARKS.

8.2. By City. City shall defend or at its option settle any third party claims brought against Magical Bridge or its affiliates or their directors, officers, or employees, and, subject to Section 9, indemnify them against all Losses associated with such claims, where such claims arise from (i) any negligent or intentionally wrongful act or omission of City or City's employees, contractors or agents, (ii) any breach by City or its employees, contractors or agents of its agreements with third party contractors performing services related to the Playground, and (iii) any bodily injury, including death, or damage to real or tangible personal property caused or occurring at the Playground.

8.3. Process. The indemnitee will provide the indemnitor with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at the indemnitor's expense) to defend and/or settle such claim. The indemnitee may participate in the defense of a claim asserted hereunder after the indemnitor has assumed the defense or settlement, provided that the indemnitee will bear any legal fees and expenses or other costs it incurs in so participating.

9. Limitation on Liability. Except for the Parties' indemnification obligations under Section 8 and breaches of a Party's confidentiality obligations under Section 11, neither Party will be liable to the other for any consequential, incidental, special, or exemplary damages arising out of or related to this agreement, including but not limited to lost profits or loss of business, even if such Party is apprised of the likelihood of such damages occurring. Magical Bridge's aggregate liability in connection with this Agreement shall not exceed the value of all applicable, valid, and collectible insurance.

10. Insurance.

10.1. Generally. Magical Bridge shall obtain and maintain insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Magical Bridge or Magical Bridge's agents, representatives, and employees at all times during the performance of the Services. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-VII."

10.2. Coverages and Limits. Magical Bridge, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing.

10.2.1. Commercial General Liability Insurance. Magical Bridge shall maintain occurrence based commercial general liability coverage with limits not less than one million dollars (\$1,000,000) per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be at least twice the required per occurrence limit.

10.2.2. Business Automobile Liability Insurance. Magical Bridge shall

maintain business automobile liability coverage with limits not less than one million dollars (\$1,000,000) per each accident for owned, hired and non-owned automobiles.

10.2.3. Workers' Compensation Insurance. Magical Bridge shall maintain workers' compensation coverage to the extent required by the California Labor Code. The policy shall contain an endorsement stating that the insurer waives any right to subrogation against City, its officers, agents, employees and volunteers.

10.2.4. Employer's Liability Insurance. Magical Bridge shall maintain employer's liability coverage with limits not less than one million dollars (\$1,000,000) per each accident for bodily injury or disease.

10.3. Notice of Cancellation. This insurance coverage will be held at all times during the performance of the Services and will not be canceled during the Term without Magical Bridge providing thirty (30) days prior written notice to City sent pursuant to the Notice provisions of this Agreement.

10.4. Providing Certificates of Insurance and Endorsements. Within thirty (30) days of City's request therefor after the Effective Date, Magical Bridge shall provide to City certificates of insurance and above-referenced endorsements.

11. Confidentiality

11.1. Confidential Information. "**Confidential Information**" means any proprietary information, data, trade secrets, or know-how, including any information disclosed prior to the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects (including, without limitation, designs, research, product plans, products, services, equipment, customers, inventions, discoveries, ideas, processes, drawings, hardware, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, equipment, and the terms and existence of this Agreement), whether or not designated as "confidential" disclosed by one party ("**Discloser**") to the other ("**Recipient**") under this Agreement. Without limiting the foregoing, Confidential Information of Magical Bridge shall include (a) Magical Bridge's playground designs, plans, and know-how, including the Magical Bridge Designs and the Final Design, and including with respect to types of equipment, colors, zone setup, and slide designs, and (b) all donor names, preferred physical and/or electronic contact information, amounts of donations, and other donor information ("**Donor Information**"). Confidential Information does not include information which Recipient can demonstrate (i) is known to Recipient without a confidentiality obligation at the time of disclosure to Recipient by Discloser, (ii) has become publicly known and made generally available through no wrongful act of Recipient, or (iii) has been rightfully received by Recipient from a third party who is authorized to make such disclosure.

11.2. Use of Confidential Information. Recipient will not, during or subsequent to the Term of this Agreement, use the Discloser's Confidential Information for any purpose other than the performance of Recipient's obligations under this Agreement, or

disclose Discloser's Confidential Information to any third party. Without limiting the foregoing, City will hold all donor information in the strictest of confidence and in accordance with all laws applicable to personally identifiable information, and neither disclose such information to any third party nor use such information for any purpose other than internal analysis of the present fundraising progress and recognition of donors consistent with City policies thereon, subject to consent of the donors. As between the parties, it is understood that Confidential Information of Discloser shall remain the sole property of Discloser. Recipient further agrees to take all reasonable precautions to prevent any unauthorized disclosure of Discloser's Confidential Information including, but not limited to, having each employee or contractor of Recipient, if any, with access to any Discloser's Confidential Information, execute a nondisclosure agreement containing provisions at least as protective of Confidential Information as this Agreement.

11.3. Compelled Disclosure. If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice, if legally permissible, and will use its best efforts to assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

11.4. Return of Materials. Upon the termination of this Agreement, or upon Discloser's earlier request, Recipient will deliver to Discloser all of Discloser's Confidential Information that Recipient may have in Recipient's possession or control, and/or destroy such Confidential Information and provide written certification of such destruction.

11.5. California Public Records Act. Notwithstanding any other provision of this Section, the Parties acknowledge that if City is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"), then if Confidential Information is contained in documents submitted by Magical Bridge to City, and Magical Bridge expressly claims that such information falls within one or more CPRA exemptions, Magical Bridge must clearly mark such information "CONFIDENTIAL" or "PROPRIETARY". In the event of a request for such information, City will make reasonable efforts to provide notice to Magical Bridge prior to such disclosure, allowing enough time for Magical Bridge to seek a protective order, injunctive relief, or other appropriate remedy. If Magical Bridge contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it may at its own cost, liability, and expense seek to obtain a protective order, injunctive relief or other appropriate remedy from a court of law having jurisdiction over the matter before City's deadline to respond to the CPRA request. City shall provide Magical Bridge with all reasonable assistance, at Magical Bridge's expense, in obtaining such protections. If Magical Bridge fails to obtain such a remedy before the deadline for City's response to the CPRA request, City will disclose the requested information and shall not be liable or responsible for such disclosure.

11.6. Publicity. Any publicity or press releases with respect to the Project or Services shall be by mutual agreement of the Parties. Magical Bridge shall have the right, however, without City's further consent, to state that it is providing the Services to City in Magical Bridge's promotional and professional materials, and to communicate with persons or public bodies where necessary to perform under this Agreement.

12. Miscellaneous

12.1. Independent Contractors. The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either Party the power to act as an agent or direct or control the day-to-day activities of the other. Neither Party will make any federal or state tax withholdings on behalf of the other Party or its agents, employees or subcontractors. Neither Party will be required to pay any workers' compensation insurance or unemployment contributions on behalf of the other Party or its employees or subcontractors.

12.2. Audit. City shall have the right to examine, monitor and audit all records, documents, conditions and activities of Magical Bridge and its subcontractors related to services under this Agreement. Pursuant to Government Code section 8546.7, because this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement. Magical Bridge shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and ordinances related to services provided under this Agreement.

12.3. Assignment. Unless otherwise expressly provided in this Agreement, neither Party may assign, delegate or subcontract any right, obligation, or interest hereunder without the express written consent of the other Party. Any assignment in derogation of the foregoing shall be null and void. Notwithstanding the foregoing, Magical Bridge may assign or transfer this agreement in its entirety to an affiliate of Magical Bridge or in connection with a corporate reorganization, merger, acquisition, or other transfer of all or substantially all of the business or assets to which this Agreement relates.

12.4. Subcontractors. Magical Bridge shall be fully responsible for the acts and omissions of subcontractors or their employees hired or retained by Magical Bridge. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor of Magical Bridge and the City. Magical Bridge shall be solely responsible for payment of its subcontractors.

12.5. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement not resolved in accordance with Section 12.5 below shall only be brought in Santa Clara County.

12.6. Dispute Resolution; Jurisdiction, Venue. If there is a dispute between the Parties arising out of or otherwise relating to this Agreement, the Parties agree to promptly meet in good faith to try to resolve such dispute. If such dispute is not resolved by the Parties within thirty (30) days following the date on which either Party provided written notice of such dispute to the other Party, the dispute shall be escalated to the senior management of each Party for resolution. If the dispute is not resolved in accordance with such procedures, then the Parties agree that any dispute arising out of or relating to this Agreement, or the breach thereof, may be settled by mediation or non-binding arbitration in Santa Clara County, California, administered by a mutually agreeable mediator or arbitrator, respectively. Notwithstanding the foregoing, the Parties agree that nothing in this Agreement will be deemed to waive, preclude, or otherwise limit either Party's rights to: (i) seek injunctive relief in a court of law; or (ii) file suit in a court of law to address intellectual property infringement claims.

12.7. Paragraph Headings. Paragraph headings as used herein are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning thereof.

12.8. Waiver. The waiver by either Party of any breach of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation under this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

12.9. Severability. If any part of this Agreement is unenforceable, the remaining portions of this Agreement will remain in full force and effect.

12.10. Force Majeure. Nonperformance of Magical Bridge will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, or any other reason where failure to perform is beyond the reasonable control of Magical Bridge.

12.11. Execution in Counterparts. The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute the same instrument.

12.12. Original Signatures. The parties hereby agree that electronic signatures, whether transmitted by telephonic facsimile machine or computer transmitted files will be considered original signatures for all purposes including, but not limited to, authentication of this document (or any amendment prepared and executed in accordance with the terms of this document) in any legal proceeding.

12.13. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede any other attachment or exhibit. Neither this

Agreement nor any of its provisions may be amended, modified, waived, or discharged except in writing signed by both Parties.

12.14. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Magical Bridge and City each represent and warrant that they have the legal power, right and actual authority to bind Magical Bridge and City respectively to the terms and conditions of this Agreement.

12.15. Notices. Any notice to be given hereunder shall be addressed to City or Magical Bridge at the address shown below or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

For City:

City of Morgan Hill
Attention: City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

For Magical Bridge:

Magical Bridge Foundation
Corporate Office
654 Gilman Street
Palo Alto, CA 94301

[Signatures on Following Page]

IN WITNESS WHEREOF, City and Magical Bridge have executed this Agreement as of the Effective Date.

CITY:

City of Morgan Hill

By:

Steve Rymer, City Manager

ATTEST:

By:

Michelle Wilson, Deputy City Clerk

MAGICAL BRIDGE:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A1 – SCOPE OF SERVICES

1. DESIGN

1.1. Design Consulting. The “**Magical Bridge Team**,” defined individually and collectively as the individuals listed in Exhibit E, shall participate in meetings with City’s designated team and consultants to advise on all aspects of playground design, including but not limited to equipment selection, site preparation meetings, criteria for quality control, and methods for making the Playground more inclusive of children with disabilities. Magical Bridge reserves the right to modify the list of individuals and subcontractors in Exhibit E in its reasonable discretion, in accordance with changes to Magical Bridge’s staffing.

1.2. Construction Consulting. The Magical Bridge Team shall advise City throughout the development of the Playground on an as needed basis. City shall retain final decision making authority on all matters relating to the construction, including but not limited to selecting construction contractors, obtaining permits, and overseeing construction.

1.3. Access to Playground. City shall provide Magical Bridge, its employees and agents, with reasonable access to the Playground for the purpose of fulfilling its responsibilities under this Agreement.

2. FUNDRAISING

2.1. Fundraising Goal. Magical Bridge will use commercially reasonable efforts to solicit a total amount of donations to support the Project not less than the amount of the Community Donation.

2.1.1. Magical Bridge, with the guidance and recommendation of City and affiliated community groups, shall have full discretion in identifying, soliciting, and accepting donations for Project from individuals, foundations, businesses, and other organizations.

2.1.2. For potential funders who require applications directly from the City, Magical Bridge will, at the request of City, prepare grant application materials and supporting documentation, attend meetings, and respond to requests for information in the support of applications by the City for matching grants or other funding opportunities from potential funders. Any resulting funds which are provided directly to City by funder will not be subject to the Processing Fee.

2.1.3. If the successful bid for the construction contract for the Project exceeds the original amount of the Community Donation, Magical Bridge will use its best efforts to obtain additional donations to meet the shortfall, which additional donations shall be added to and increase the amount of the Community Donation.

2.2. Collection and Holding of Community Donation.

2.2.1. Magical Bridge will maintain its tax exempt 501(c)(3) status.

2.2.2. Magical Bridge will accept and hold donations made towards the Project, including donations solicited by City, until no later than fifteen (15) days after the Opening Event.

2.2.3. Magical Bridge will not use any donated funds for any purpose, except to cover the Processing Fee, without express written consent of City.

2.3. Transfer of Funds to City.

2.3.1. Within ten (10) days of receiving the full amount of the Community Donation, Magical Bridge shall submit a request for donation pursuant to City's donation policy ("**Request for Donation**") for an amount equal to the Community Donation (the "**Playground Funds**"). Upon approval of the Request for Donation by City, Magical Bridge shall promptly transfer the Playground Funds to City. After Magical Bridge transfers the Playground Funds to City, City shall have sole and exclusive responsibility for management of the Playground Funds.

2.3.2. Within ten (10) days of the Opening Event, Magical Bridge shall submit an amount equal to all donations to the Project Magical Bridge has collected since the transfer of the Playground Funds to City ("**Excess Funds**"). Upon approval of the Request for Donation by City, Magical Bridge shall promptly transfer the Excess Funds to City. After Magical Bridge transfers the Excess Funds to City, City shall have sole and exclusive responsibility for management of the Excess Funds.

2.3.3. The Playground Funds and the Excess Funds shall be restricted donations. City shall use the Playground Funds and Excess Funds solely to pay for costs relating to the planning, designing, constructing, launching, operating, promoting, and maintaining the Playground, including amounts owed to third party contractors for performing environmental and other assessments, and designing and building the Playground, and amounts owed in connection with the Opening Event, except that the Excess Funds may also be used to fund other projects related to accessibility or to the Playground, including but not limited to handicap parking spots, disability access ramps, and bathrooms. City shall have sole and exclusive responsibility for payment of all costs related to the construction and maintenance of the Playground.

2.4. Donor Information and Acknowledgements.

2.4.1. Magical Bridge shall maintain a list of all donors to the Project that shall include the Donor Information for each donor, and whether the donor would like to be publicly recognized.

2.4.2. Magical Bridge shall send acknowledgements to each donor to the Project according to City's donation policy.

2.4.3. Upon transfer of the Playground Funds and the Excess Funds, Magical Bridge shall transfer to City the names and any other necessary information of donors for whom recognition under City's donation policy requires City action, subject to the donors' consent to such transfer.

3. Community Engagement

3.1. Communications Strategy and Marketing Materials. Within thirty (30) days after the Effective Date, Magical Bridge shall provide City with the following:

3.1.1. A draft communications strategy that includes (i) a public relations and marketing plan for the Playground; and (ii) a TV, print media, and social media campaign to engage and educate the public in relation to the Project ("**Communications Strategy**").

3.1.2. Copies of all applicable Magical Bridge Marks in electronic form.

3.1.3. Marketing collateral relating to the launch and promotion of Magical Bridge playgrounds, including template press releases, fundraising emails, fundraising kits for community members, and talking points for briefings with key officials

3.2. Communications Consulting. At City's request, the Magical Bridge Team shall advise City on revising and executing the Communications Strategy, including developing marketing material specific to the Playground and planning the Opening Event. City shall conduct the activities specified in the Communications Strategy, including selection of the date for the Opening Event in its sole discretion.

3.3. Community Engagement Activities. The Magical Bridge Team shall conduct community engagement activities, including but not limited to hosting community input meetings, school visits, and community events, for the purpose of promoting the Playground and raising awareness about inclusive play.

3.4. Participation in City Events. Prior to and including the Opening Event, the Magical Bridge Team shall appear at up to [5] City sponsored events related to the Project at City's request and upon reasonable notice.

3.5. Recruiting and Training Volunteers. Prior to the Opening Event, the Magical Bridge Team shall recruit and train no fewer than five (5) volunteers to conduct educational programming about inclusive play at the Playground.

4. REPORTING

4.1. Magical Bridge shall provide City with monthly reports, due on the 30th day of each month after the Effective Date, or as otherwise agreed by City, that shall include the amount of funds raised to date, and a summary of Magical Bridge fundraising activities and community engagement activities conducted over the previous month.

EXHIBIT A2 – CITY RESPONSIBILITIES

1. CITY RESPONSIBILITIES. City is responsible for the following activities:

- | | |
|-------|--|
| 1.1. | Identifying a location (at least one (1) acre in size) for the development of the Playground (the “Site”); |
| 1.2. | Obtaining all required licenses, permits, and approvals for development of the Playground, including any required approvals from the City; |
| 1.3. | Performing a timely planning review of the Playground designs and providing responses from all essential City departments regarding any and all concerns to be addressed in the Playground designs; |
| 1.4. | Raising the City Donation within [six (6)] months after the Effective Date and designating those funds solely for the purpose of building the Playground; |
| 1.5. | Using its best efforts, with reasonable assistance and cooperation from Magical Bridge, to solicit and procure Community Donations for the Playground; |
| 1.6. | Allowing for reasonable access to the Site by Magical Bridge employees and agents, including but not limited to the Magical Bridge landscape architect; |
| 1.7. | Facilitating meetings and discussions between Magical Bridge and various stakeholders in order to ensure community support for the Playground; |
| 1.8. | Providing all reasonable assistance to Magical Bridge in arranging a meeting with a custom playhouse designer to develop the theme, colors, and unique features of the Playground; |
| 1.9. | Entering into and performing all obligations under all agreements with third party contractors performing services related to the Playground; |
| 1.10. | Maintaining the Playground in good order, condition, and repair during and following the expiry or termination of this Agreement for the useful life of the Playground (useful life shall be solely determined by the City and a minimum of 10 years) and removing the Playground and/or the Magical Bridge branding associated with the Playground after the expiration of the useful life of the Playground; |
| 1.11. | Advising community groups in relation to on-going programs and activities at the Playground; and |
| 1.12. | Procuring and maintaining general liability insurance in respect of the |

Playground in an amount no less than the industry standard, equivalent to other City parks and playgrounds, including bodily injury, property damage, and personal injury liability coverage

.

EXHIBIT B – MILESTONE PAYMENTS

City shall pay Milestone Payments to Magical Bridge, referenced in Section 4.2 of the Agreement, according to the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Payment Amount</u>
Retainer: Includes retaining Magical Bridge for life of project: design, community engagement, fundraising, and licensing	Effective Date of Agreement	\$200,000
Final Design Certification	City's receipt of the Final Design certification based on Magical Bridge input in design process and review of Final Design	\$75,000
Fundraising	City's receipt of the Community Donation in full from Magical Bridge	\$75,000
Completion and Opening	The latter of (i) the date of the Opening Event; or (ii) the last transfer of the Excess Funds to City	\$75,000
Contingency Milestone Payment	City's receipt of the additional Community Donation in excess of the original target of \$1,230,000	15% of the amount of the Community Donation over \$1,230,000.

EXHIBIT C – MAGICAL BRIDGE STANDARDS

Branding.

- Branded with the Magical Bridge Playground and/or Magical Bridge Foundation logo at the entry points of the playground.
- Playground signage, donor wall, playhouse, woodwork and artwork is unified with a consistent color palette as defined by the Magical Bridge style guide. Color palette may vary by location.

Layout.

- Distinct play zones based on types of play or motion, such as swinging, sliding, and spinning.
- The zones are distinguished by signage at each zone entrance that explains the benefits of that particular mode of play.
- Includes a smaller scale Tot Zone mimics the equipment in other areas of the Playground.

Accessibility.

- Seamless ground turf for easy navigation
- Accessible equipment with manageable transfer points
- Group play opportunities
- Ramps and walkways that enable wheelchair users to access all areas of the playground, including the top of the slide mound and second story of the playhouse.
- Play zone entry signs feature Braille for those visually-impaired.
- At least one slide contains a patent-pending extension bench on the end of the slide giving people who need more time a place to wait without blocking others from using the slide.

Kindness.

- Feature a Kindness Corner for individual and group reflection and educational programs

Innovation.

- Features interactive play experiences utilizing technology, art, music and design to stimulate the full array of human senses.

Imagination.

- Custom designed, handcrafted, two-story Playhouse with play stage
- Audience style seating in front of the Playhouse

Community.

- A Magical Bridge Playground includes shaded group gathering areas.
- Tables are designed for wheelchair access.

Stewardship.

A Magical Bridge Playground is open to the public, clean, and well-maintained.

EXHIBIT D – MAGICAL BRIDGE TRADEMARK GUIDELINES

1. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS IN AN APPROVED FORM.

Our trademarks should always be presented in the styles in which they were delivered to you by the Magical Bridge Foundation (including all font faces and styles, all caps, upper and lower case, or a combination of large and small caps). Changes, distortions, or alterations in the trademarks are not generally allowed. Any variation must be cleared through the Magical Bridge Foundation.

2. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS IN A MANNER CLEARLY INDICATING THAT THEY ARE TRADEMARKS OWNED BY MAGICAL BRIDGE FOUNDATION.

Our trademarks should be properly marked to give notice that they are, in fact, trademarks of the Magical Bridge Foundation. Registered trademarks should always be used with the federal registration symbol “®”, while marks that have not been registered (including marks that are the subject of “pending” applications) should be used with the symbol “™” where the mark initially appears. Use of the registration symbol or “™” must appear with the first usage of the trademark in a document; subsequent occurrences do not require the symbols. When used in a printed document, the symbols should be half the point size of the word and then superscripted half the point size of the word.

A footnote reference to ownership of the trademarks must be used on all Magical Bridge playgrounds and all marketing, fundraising, and promotional materials in the following format: “_____ are trademarks of the Magical Bridge Foundation.” Where appropriate, a subset of this attribution may be used.

The list of registered and unregistered marks will change periodically as pending applications mature to registration, and as such, it is important to determine status of the marks before using either symbol.

Our trademarks should not be joined with other terms (by a hyphen, for instance) nor used with unapproved logos, graphics, photos, slogans, numbers, design features or symbols. Our trademarks should never be “made plural,” never be mixed with other trademarks, and a trademark's spelling should never be altered.

3. ALWAYS USE MAGICAL BRIDGE FOUNDATION TRADEMARKS AS ADJECTIVES, NEVER NOUNS, AND THE MARKS SHOULD BE FOLLOWED BY THE APPROPRIATE GENERIC TERMINOLOGY.

Trademarks are meant to signify the brand or source of a product and should not be used in a manner which suggests that the trademark is the name of the product. Companies that allow their trademarks to be used as nouns risk losing their rights in those trademarks. Classic examples of words that began as trademarks but were lost due to misuse include “aspirin,” “escalator” and “cellophane.” Because the public came to see these terms as the product names instead of the brand names, trademark rights were forfeited. The most common mistake is to use the trademark as a noun instead of as an adjective followed by the generic term.

4. DO NOT IMPLY OR SUGGEST THAT A PLAYGROUND BASED ON MAGICAL BRIDGE FOUNDATION'S DESIGNS OR TECHNOLOGY IS A MAGICAL BRIDGE PLAYGROUND OR THAT THE MAGICAL BRIDGE FOUNDATION SPONSORS THE PLAYGROUND.

While the Magical Bridge Foundation understands and appreciates your need to accurately describe the designs and technology incorporated into your playgrounds, your playgrounds and promotional or fundraising materials cannot wrongly imply that your playgrounds are Magical Bridge playgrounds, explicitly or implicitly. Care must be taken to clearly distinguish the Magical Bridge Foundation’s playgrounds (and trademarks) from your other playgrounds and marks, as discussed more specifically in these guidelines.

5. NEVER USE A MAGICAL BRIDGE FOUNDATION TRADEMARK AS PART OF YOUR NAME OR TRADEMARK.

Magical Bridge Foundation trademarks may not be used as part of another entity’s mark or name. While the Magical Bridge Foundation’s marks can be used in explanatory fashion, the mark cannot be used as part of another entity or product name.

Also, you may not personify Magical Bridge Foundation trademarks or create characters that represent the trademarks. However, the trademarks may be used in taglines in accordance with the guidelines listed above.

Magical Bridge Foundation Portfolio & Team

The core Magical Bridge design team includes key leaders of the inclusive play movement who came together to envision the original Magical Bridge Playground in Palo Alto and worked tirelessly together to overcome the many barriers and challenges to build that playground and show the world that it was possible to build a truly inviting play space that welcomed individuals of all ages and all abilities. Together this core team of staff and key partners is deeply committed to making every Magical Bridge Playground an overwhelming success and has the depth and breadth of skills necessary to engage the community, create an effective design, and see each project through to completion. Collectively this team has participated in the creation of dozens if not hundreds of playground projects and lead managed several projects, including those listed below. Note that in addition to the core team listed below, there are a large number of individuals and organizations that volunteer with, advise, and support the Magical Bridge Foundation projects. We are grateful for the support of all those individuals and, most especially, the members of each community we serve who volunteer their time, effort, and knowledge to create each Magical Bridge Playgrounds and make them great experience for all visitors.

Magical Bridge Design Team

Olenka Villarreal Chairperson, Founder, Visionary and Executive Director

- 2014 Winner of the Jefferson Award for Community Service and 2015 Winner of the Palo Alto Tall Tree award
- Founder of the Magical Bridge Playground in Palo Alto and Vice President of the Friend of the Palo Alto Parks, Olenka has a rare ability to view the design and equipment of play spaces from a child's point of view. She is co-inventor of several new technologies that enhance the play experience for individuals with special needs.
- Prior to leading development of the Magical Bridge Playgrounds, Olenka has served as the Director of Marketing for TotalPass, Inc. and Siemens Communication amongst other roles for Silicon Valley companies. She has a degree in Economics / Public Policy and an MBA in Marketing.

Jill Asher co-Founder, Public Relations and Development

- In addition to leading the Public Relations and Digital Media strategy

for the Magical Bridge projects, Jill has served as Director of Public Relations for Appcelerator, Co-Founder and General Partner of SVMoms group, Vice President of Human Resources for Bessemer Ventures and Gloss.com and played similar roles for a number of other Silicon Valley companies. She holds degrees in Economics and English.

Kris Loew co-Founder, Marketing, branding, visual design

- Kris led the effort to create the inviting color scheme and visual appeal for Magical Bridge spaces that helps fosters a sense of well being and calm amongst visitors, especially for individuals who may be highly sensitive to their visual surroundings. She runs her own Graphic Design firm, is Co-Founder of Poketti, LLC, and previously served as Director of Marketing Communication for Brio Technologies.

Greg Wolff board member, Founder of the UnaMesa Association

- As Executive Director of the non profit UnaMesa Association, Greg helped the original Magical Bridge team establish the Magical Bridge Foundation as an independent non profit with the processes and resources necessary to partner with cities to create additional Magical Bridge Playgrounds that build upon and improve the original design. Greg founded the UnaMesa Association to support community based innovations in health, education, and social services. Prior to that, Greg served as a Vice President for Ricoh Innovations and has been a lead inventor and research scientist spanning the fields of information technology, machine learning, and professional services.

Barbara Butler Owner & Lead Designer, Barbara Butler Artist-BUILDER, Inc

- Barbara is one of the nation's premier architects and builders of custom treehouses and playgrounds. Over the past 30 years, she has constructed hundreds or thousands of imaginative play spaces for both public and private spaces. projects that involve tough terrains, unusual sites, special circumstances or special requests,

such as matching existing architectural elements. Her projects have long exceeded ADA accessibility standards and ASTM compliant, and use all natural and sustainable materials.

Jay Beckwith Playground apparatus designer

- Since the 1970, Jay has been a leading voice in the design and development of play experiences that align with and support the critical needs of both children and adults for physical activity that enhances their growth and well being. Jay's design for a "Post and Deck" system can be seen in almost every modern playground.
- Jay has written several books on designing and building children's play equipment. He has also been involved with safety commissions, is a Certified Playground Safety Inspector, and has written publications and developed programs for playground safety. He has consulted with several playground manufacturers in their design processes and pushed towards new directions in play environments.
- Jay has led many organizations that have designed and built playspaces and equipment. He holds a lifetime achievement from Gymboree Play and Music for making this world a better place to play. For Jay, his work to help create the Magical Bridge Playgrounds is truly the realization of a long held dream to create a place where truly everyone plays.

Groundswell Design Landscape architects

Peter Jensen is been the key architect behind the Magical Bridge Playground designs. A founder and principal at Groundswell Design, Peter has been the Lead Manager for both private and public projects, including these public projects:

- Northwest Park – Las Vegas (2004)
- Jefferson Elementary School Playground – Santa Monica (2008)
- Eleanor Pardee Park Playground – Palo Alto (2011)
- Magical Bridge Playground – Palo Alto (2012)
- Bowden Park Playground – Palo Alto (2016)



Inclusive Playground
Final Concept - Natural Stones, Trees And Animals
Morgan Hill Community Park
Morgan Hill, CA



LANDSCAPE ARCHITECTURE
CIVIL ENGINEERING
SPORT PLANNING & DESIGN
2455 The Alameda, Ste. 200
Santa Clara, CA 95050
tel: 408.985.7200
fax: 408.985.7260
www.verdedesigninc.com



PARKS AND RECREATION COMMISSION STAFF REPORT

MEETING DATE: July 18, 2017

PREPARED BY: Jennie Tucker, Community Services Supervisor
 APPROVED BY: Chris Ghione, Community Services Director

FRIENDLY INN CURRENT AND FUTURE USE REPORT

RECOMMENDATION(S)

1. Receive report on Friendly Inn Use;
2. Provide recommendation to City Council on proposed future use of Friendly Inn.

REPORT NARRATIVE:

Background:

In 2007, the Morgan Hill City Council established a policy regarding the City-owned Friendly Inn building at 17666 Crest Avenue - "The purpose of the Friendly Inn is to enhance the quality of community life. It is the City's intent to provide subsidized space at the facility for grassroots, non-profit organizations that strive to meet an identifiable, social service, community need."

The Friendly Inn firmly embodies the policy of providing space for non-profit organizations to serve the Morgan Hill community and continues the legacy that began in the 1930's with the first Friendly Inn, located at the corner of Monterey Road and Main Street, as a "friendly place" for the community to gather.

The current multi-tenant non-profit center provides Morgan Hill residents with an opportunity to visit compatible service organizations in one location and provides tenant non-profits with the opportunity to lease subsidized office space in Morgan Hill and work with other service providers.

Eligible tenants must be non-profit or government organizations who meet the criteria of providing an identifiable, social service, and/or community need. The tenants must also meet the City Council goal of bettering the community through their work.

Current Use:

Currently the Friendly Inn has seven tenants. The tenants pay \$1/year for space at the Center and cover the cost of operating the facility, including all interior utility costs and custodial services. The tenants also agree to manage the facility through collaboration and City staff has minimal responsibility for the operation of the Center. The City is responsible for all capital improvements and expenses.

The seven tenants who currently occupy the Friendly Inn are listed below.

Agency Name	Services Provided
-------------	-------------------

Advent Ministries		Advent is a non-profit organization with a diverse array of services. Although they provide traditional mental health services, a recovery home for sexually trafficked girls, and a recovery home for mothers in jeopardy of losing custody of their children due - the heart of their organization is adolescent substance abuse treatment in the form out outpatient and residential care. They have proudly and faithfully been serving Santa Clara County since the 1980's and genuinely hope to continue doing so long into the future.
American Red Cross	Red	The American Red Cross prevents and alleviates human suffering in the face of emergencies by mobilizing the power of volunteers and the generosity of donors. The American Red Cross, through its strong network of volunteers, donors and partners, is always there in times of need.
Healthier Foundation of Santa Clara County	Kids of Clara	Healthier Kids Foundation of Santa Clara County offers assistance in applying for free or low-cost health care coverage for children and pregnant women. They also offer free parenting classes on nutrition.
Narcotics Anonymous		Narcotics Anonymous is a twelve-step program, gratefully adapted from the Twelve Steps of Alcoholics Anonymous. NA was formed in the summer of 1953 by a group of addicts who broadened the perspective of those Twelve Steps. NA believes that addiction is all-inclusive—it doesn't matter what drug or specific substance people used.
South County Fellowship of Alcoholics Anonymous (SCFAA)	County of	SCFAA is a Fellowship of Alcoholics Anonymous (AA) servicing the Morgan Hill and surrounding areas. Alcoholics Anonymous is a Fellowship of men and women who share a common problem of alcoholism. The only requirement for membership is the desire to stop drinking.
TeenForce		TeenForce is a social enterprise helping solve the foster youth employment crisis by meeting the hiring needs of business. Their self-sustaining staffing agency model offers businesses a convenient and cost-effective platform to employ enthusiastic and well prepared young workers.
work2future/EDD		The Employment Development Department's Workforce Services Branch (WSB) provides a comprehensive range of employment and training services in partnership with state and local agencies and organizations through the America's Job Center of CaliforniaSM (AJCC). The services offered benefit all job seekers including youth, veterans, people with disabilities, adults, and dislocated workers. Employers can also find an array of services

	available at no cost to assist them in finding qualified and skilled workers.
Institute on Aging	Institute on Aging works to enhance the quality of life for adults as they age by enabling them to maintain their health, well-being, independence and participation in the community. They serve a diverse population of older adults and disabled adults by providing innovative, community-based programs that enable their clients to live at home for as long as possible. They serve as an essential partner in the continuum of care by providing health services, social and emotional support, and education and advocacy.

Future Use:

The Bikeways, Trails, Parks and Recreation Master Plan Update has been in progress for the last two years and will be brought to City Council for approval at the July 19, 2017 meeting. There is one significant area of the Master Plan that was updated by Council in February that staff is requesting additional direction on. This area is the future use of the Friendly Inn. Based on Council direction, the Master Plan has been updated to include a policy specifically relating to use of the Friendly Inn:

“Support the Boys & Girls Club of Silicon Valley’s future use of the Friendly Inn Community Center, including evaluating the feasibility of a facility exchange or relocation for the community service organizations currently using utilizing the Friendly Inn.”

Following the Council action in February, staff have met with the Boys & Girls Club, who are hoping to move into the facility in the near future. While a swap of sites (non-profits move to the El Toro Youth Center Site and Boys & Girls Club to the Friendly Inn) may be an option, there are several considerations that City staff is reviewing and must be taken into consideration.

- Several tenants have made investments in the office space and technology at the Friendly Inn. Should support be provided for their relocation?
- The El Toro Youth Center has limitations that would impact tenant use including:
 - o Limited parking that could impact the users that typically use the Friendly Inn for meetings
 - o The relocation of office partitions would be necessary and office space may not be a fit, which could limit the number of tenants that could use the site
- There may be opportunities for some tenants with compatible uses to stay at the Friendly Inn with the Boys and Girls Club

There are still many unanswered questions, however, current circumstances are likely conducive to moving forward quickly. Work2Future, the largest tenant at the Friendly Inn, recently gave notice that it will be vacating its space in August. Given the future direction for the site it will be difficult to recruit a tenant to replace them. Without another

large tenant to fill the gap, remaining tenants will likely struggle to cover facility expenses. Per the Friendly Inn cost sharing model currently in place, costs previously billed to Work2Future will be shared by the remaining tenants, causing their expenses to rise significantly. Staff is currently working to identify ways to reduce monthly operational costs, however, since most costs are relatively fixed, these reductions will likely not be significant.

City staff has also been approached by an organization that is interested in potentially purchasing the El Toro Youth Center site from the City. Additional research is needed to ensure the City could sell the site, but this could prove to be another option for the City.

To continue to move forward on this transition, City staff is recommending that the following next steps be taken over the next three months:

1. Development of an agreement with the Boys & Girls Club for use of the Friendly Inn beginning in August 2018.
2. Work with the Friendly Inn tenants to develop a relocation plan for current Friendly Inn tenants to utilize the El Toro Youth Center as the future non-profit center.
3. Development of an alternate plan for relocation of current tenants to locations other than the El Toro Youth Center.

Staff would like to ask the Parks and Recreation Commission for recommendations on the future of the Friendly Inn to bring forward to the City Council at the July 19 meeting.

PRIOR BOARD ACTIONS:

In April 2007 - City Council established a policy that would provide subsidized space at the Friendly Inn site for nonprofit organizations.

On May 7, 2008 - City Council approved the renovation of the Friendly Inn.

January 17, 2017 - The Parks and Recreation Commission provided formal recommendations for the City Council on the draft Master Plan.

LINKS/ATTACHMENTS:



PARKS AND RECREATION COMMISSION STAFF REPORT

MEETING DATE: July 18, 2017

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: Chris Ghione, Community Services Director

COMMISSION WORK PLAN UPDATES

RECOMMENDATION(S)

Discuss and provide updates on Work Plan items.

REPORT NARRATIVE:

The Parks and Recreation Commission finalized its Work Plan on May 16. The City Council approved the Work Plan on June 21, 2017. Commissioners may use this item to discuss and provide progress on Work Plan items.

The 2017/18 Fiscal Year Work Plan is attached.

LINKS/ATTACHMENTS:

1. PRC Workplan 1718 Final

Parks & Recreation Commission

FY 2017-18 Work Plan – Final – Approved by Council June 21, 2017

Project (Commissioner Responsible)	City Council Priority Supported	Start Date	Com- pletion Date	Staff Resources Required	Desired Outcome
1. Develop a Plan to Get Youth More Active in Parks and Recreation (Locicero)	Support Youth, Seniors and Entire Community	7/17	6/18	Recreation Manager (Minimal)	Plan for youth involvement.
2. Support Bicycle and Trails Coordination Effort (Haskell, Green)	Support Youth, Seniors and Entire Community	7/17	6/18	CS Director (Minimal)	Support the VTA Bicycle and Pedestrian Advisory Committee. Coordinate sub-committee working with community members on bicycle and trails issues with volunteer Bicycle and Pedestrian Advocacy Group.
3. Support efforts to create an inclusive playground (Locicero, Wendt, Scott)	Support Youth, Seniors and Entire Community	7/17	6/18	CS Director (Significant) CS Coordinator (Moderate)	Support the group that has formed for the creation of an inclusive playground in Morgan Hill. Support in the planning and fundraising efforts.
4. Support planning for updated operations at the Outdoor Sports Center (van Keulen, Haskell)	Support Youth, Seniors and Entire Community Maintaining Fiscal Responsibility	7/17	6/18	CS Director (Significant)	Support development of RFP for OSC operator. Provide recommendations on capital improvement projects.
5. Support the Planning for the CRC Health and Wellness Expansion Project (van Keulen/Seehaffer/Green)	Support Youth, Seniors and Entire Community	7/17	6/18	Recreation Manager (Significant)	Support planning for future health and wellness needs. Provide recommendations on proposals and designs.

Staff Resources Required: 0-50 hours = Minimal 51-100 hours = Moderate 100+ hours = Significant

Attachment: PRC Workplan 1718 Final (1329 : PRC Workplan Updates)