

CONSULTANT SERVICES AND LICENSE AGREEMENT

This Consultant Services and License Agreement (“**Agreement**”) is made and entered into as of May 14, 2019 (the “**Effective Date**”) by and between City of Santa Clara (“**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 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 process in advising on the creation 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, in connection with the foregoing, City will engage Groundswell Design Landscape Architect (“**Groundswell**”) as a consultant for designing the Project;

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 four million seven hundred thousand dollars (\$4,700,000) to design and complete the Project;
 - 1.2. City Contribution. City has three million seven hundred thousand dollars (\$3,700,000) for the Project (\$3,700,000; “**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, estimated to be approximately one million dollars (\$1,000,000) (the “**Community Donation**”). Per section 4.3 Magical Bridge will retain 8% of 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 Magical Bridge’s 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 as reasonably determined by Magical Bridge, if City fails to reasonably 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. Intellectual Property.
 - 4.1. 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 use and enhance the Concept Design and to assist Groundswell in designing 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 (the “**Final Design**”) and in building the Playground according to the Final Design.
 - 4.2. License to Magical Bridge Trademarks.
 - 4.2.1. 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. City may sublicense the rights granted in this Section 5.2.1 to Groundswell in connection with the Project.

- 4.2.2. Final License. Upon approval of Final Designs provided by Magical Bridge and Groundswell to the City (“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 as specified in the Final Design.
- 4.2.3. License Review. Magical Bridge reserves the right to periodically review the Playground’s continued compliance with the Magical Bridge Standards as specified at the time of the Final Design Certification 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.
- 4.2.4. 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.
- 4.2.5. 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.

- 4.3. Ownership. As between the Parties, the Magical Bridge Designs, the Magical Bridge Marks, any and all derivative works thereof (other than the Final Design), 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. Subject to Magical Bridge's ownership of the Magical Bridge Designs, as between the Parties, the modifications made to the Magical Bridge Designs to create the Final Design, including all intellectual property rights therein, are and shall remain the sole property of City. 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.
- 4.4. License to Final Design. City hereby grants to Magical Bridge a non-exclusive, irrevocable, perpetual, royalty-free, transferable and fully sublicensable right and license to use, reproduce, modify and exploit the Final Design for any purpose.

5. Termination.

- 5.1. Termination for Lack of Progress. Either Party 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 eighteen (18) months of the Effective Date, subject to extension at City's reasonable discretion; or (c) Magical Bridge ceases to operate or otherwise loses its ability to perform the Services.
- 5.2. 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.
- 5.3. Effects of Termination.
- 5.3.1. Upon termination of this Agreement, Magical Bridge shall retain all funds collected in support of the Community Donation still in Magical Bridge's possession ("**Remaining Funds**"). Magical Bridge will have sole and exclusive responsibility for management of the Remaining Funds to increase inclusive play opportunities for children with disabilities in the City of Santa Clara.
- 5.3.2. Except for termination for cause based upon a breach by Magical Bridge, 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.

6. Warranties; Disclaimer.

- 6.1. 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.
- 6.2. 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.

7. Indemnification.

- 7.1. 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) 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.
- 7.2. 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, to the extent that 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 except where such Losses are deemed primarily caused by a defect in the designs developed by Magical Bridge.

7.3. 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.

8. Limitation on Liability. Except for the Parties' indemnification obligations under Section 7 and breaches of a Party's confidentiality obligations under Section 10, 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, whether for indemnification or otherwise, shall not exceed the lesser of (i) the fees actually paid to Magical Bridge under this Agreement or (ii) \$1,000,000.

9. Insurance for Magical Bridge.

9.1. Without limiting the Magical Bridge's indemnification of the City, and prior to commencing any of the Services required under this Agreement, Magical Bridge and subcontractors shall provide and maintain in full force and effect during the period of performance of the Agreement and for six (6) months following the Opening Event, at its sole cost and expense, the following insurance policies from insurance companies authorized to provide insurance to companies doing business in the State of California. These policies shall list the City of Santa Clara as an additional insured so as to provide coverage for those matters for which Magical Bridge is liable to the City under this Agreement. The minimum coverages, provisions and endorsements are as follows:

9.2. 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."

- 9.3. Coverages and Limits for Magical Bridge. Magical Bridge, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing.
- 9.3.1. 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.
- 9.3.2. 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.
- 9.3.3. Workers' Compensation Insurance. Magical Bridge shall maintain workers' compensation coverage to the extent required by the California Labor Code.
- 9.3.4. 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.
- 9.4. 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.
- 9.5. Additional Insurance Related Provisions. Magical Bridge agrees to inquire into the insurance coverage held by any subcontractor who is brought onto or involved in the performance of the Services by Magical Bridge, and has a direct contract with Magical Bridge and not City, to determine whether such subcontractor has insurance that provides the same minimum insurance coverage required of Magical Bridge, except as with respect to limits. Magical Bridge agrees that upon request by City, all insurance compliance documents provided by such subcontractors will be submitted to City for review.
- 9.6. The City reserves the right to withhold payments from Magical Bridge in the event Magical Bridge materially breaches the insurance requirements set forth in this Agreement, and fails to cure such breach within sixty (60) days after notice thereof; provided that, in the event City elects to withhold payment, Magical Bridge may also withhold performance during such time.
- 9.7. Evidence of Compliance. 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.

- 9.8. Qualifying Insurers. All of the insurance companies providing insurance for Magical Bridge shall have, and provide written proof of, an A. M. Best rating of at least A minus 7 (A- VII) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

10. Confidentiality

- 10.1. 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 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.
- 10.2. 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 (unless a donor otherwise requests to make their identity public), 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.

- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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 in accordance with its past practices, and to

communicate with persons or public bodies where necessary to perform under this Agreement.

11. Miscellaneous

- 11.1. 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. Unless otherwise specified herein, as between the Parties, each Party will be solely responsible for all salary, benefits, and other compensation it is responsible for paying to its respective employees and subcontractors, as applicable. Without limiting the generality of the foregoing, to the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor will meet its obligations under the Act.
- 11.2. Fair Employment. Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
- 11.3. Compliance with Laws. Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"), to the extent applicable. In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=5899>).
- 11.4. Conflict of Interest. Contractor and City each certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Neither Party knows of any facts relating to this Agreement which would violate the provisions of California Government Code section 87100. Each Party will advise the other Party if a

conflict of interest, as described in the foregoing sentences, arises in connection with this Agreement.

- 11.5. 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.
- 11.6. Subcontractors. Each Party shall be fully responsible for the acts and omissions of subcontractors or their employees hired or retained by such Party. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor of one Party and the other Party. Each Party shall be solely responsible for payment of its subcontractors. For clarity, Groundswell will be considered a direct supplier to City and not a subcontractor of Magical Bridge hereunder.
- 11.7. 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 12.8 below shall only be brought in Santa Clara County.
- 11.8. 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, shall be settled by binding arbitration in San Francisco, California, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, by a single arbitrator to be appointed pursuant to such rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. 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.
- 11.9. 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.

- 11.10. Licenses, Permits and Fees. Magical Bridge shall obtain necessary permits and licenses, to the extent required by ordinances, codes, and regulations of the federal, state and local government applicable to the performance of this Agreement.
- 11.11. 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.
- 11.12. Severability. If any part of this Agreement is unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 11.13. 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.
- 11.14. 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.
- 11.15. 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.
- 11.16. 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.
- 11.17. 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.
- 11.18. 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 Santa Clara
Attention: City Managers Office, Manuel Pineda
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at mpineda@santaclaraca.gov, and
manager@santaclaraca.gov

For Magical Bridge:

Magical Bridge Foundation
Attention: Olenka Villarreal, Corporate Office
552 Waverley Street, Suite 200
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 OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

MAGICAL BRIDGE FOUNDATION:

By: _____
Name: _____
Title: _____
Address: _____

Email: _____
Phone: _____

EXHIBIT A1 – SCOPE OF SERVICES

1. DESIGN

Magical Bridge will support the City and provide comments on the conceptual design for the Playground and assist on the review of the plans and specifications

1.1. Preliminary Design Phase

Magical Bridge shall prepare a memorandum providing feedback on the conceptual design for the Playground

1.2. Design Development Phase

Magical Bridge shall coordinate with Groundswell to ensure that the Preliminary Concept plan and design process are consistent with the overall City project plan for the Playground site.

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 commercially reasonable 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 the Community Donation 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 less the Processing Fee (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, if any, less the Processing Fee ("**Excess Funds**"). For the avoidance of doubt, Magical Bridge will have no obligation to raise Excess Funds or otherwise continue fundraising activities after raising the Community Donation. 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 disabled parking spots, disability access ramps, and accessible 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 reports of all donations constituting the Community Donation, but City acknowledges that such reports may exclude the names and addresses of the donors unless such donors request recognition from the city for their donations.

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. City will be responsible for paying for any signage for the Playground. In the event that City requests that Magical Bridge print or distribute marketing materials for the Playground or Opening Event, City will reimburse Magical Bridge for its reasonable costs of printing and distributing such materials, if such costs exceed five thousand dollars (\$5,000) in the aggregate.
- 3.3. Community Engagement Activities. The Magical Bridge Team shall conduct at least three 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. Upon City's request, but not more than once per month, Magical Bridge shall provide City with reports 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 provided that Magical Bridge supplies the necessary documentation to support the application for Building Permits;
 - 1.3. Using its best efforts, provide reasonable assistance and cooperation to Magical Bridge, to solicit and procure Community Donations for the Playground including preparing and submitting applications for grants or other funding opportunities that may be available to City;
 - 1.4. Allowing for reasonable access to the Site by Magical Bridge or Groundswell employees and agents;
 - 1.5. Facilitating meetings and discussions between Magical Bridge and various stakeholders in order to ensure community support for the Playground;
 - 1.6. Providing all reasonable assistance to Magical Bridge or Groundswell in arranging a meeting with a custom playhouse designer to develop the theme, colors, and unique features of the Playground;
 - 1.7. Entering into and performing all obligations under all agreements with third party contractors performing services related to the Playground, including Groundswell;
 - 1.8. 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;
 - 1.9. Advising community groups in relation to on-going programs and activities at the Playground; and
 - 1.10. 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

Compensation.

1. City will pay to Magical Bridge a total payment to support the community engagement activities, fundraising, design work, licensing, and all other services provided by Magical Bridge of five hundred thousand dollars (\$500,000). \$100,000 will be due upon the Effective Date of this Agreement. Additional payments will be made per this Exhibit B
 2. City will pay to Magical Bridge a series of milestone completion payments (“**Milestone Payments**”), Additional payments are due upon completion of the associated milestone as per this Exhibit B.
 3. Donation Processing Fee. In addition to the Retainer and Milestone Payments, Magical Bridge will retain eight percent (8%) of the Community Donations (excluding direct grants to the City as further described in Exhibit A1) (the “**Processing Fee**”) to help cover costs and expenses, including the transaction processing fees, associated with accepting and holding these funds.
- 11.19. 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.
- 11.20. No Other Compensation. The payments as described below and Processing Fee shall be the full and complete compensation to which Magical Bridge is entitled for the completion of the Services, 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.

<u>Task</u>	<u>Milestone</u>	<u>Payment Amount</u>
Retainer Includes retaining Magical Bridge for life of project: design fundraising, and licensing	Effective Date of Agreement	\$100,000
Community engagement/outreach	Start of community engagement	\$50,000
Fundraising	Start of fundraising	\$50,000
Community Engagement	Completion of community engagement	\$50,000
Design completion	Completion of design development	\$100,000
Fundraising	City's receipt of the Community Donation from Magical Bridge	\$100,000
Completion and Opening	The latter of (i) the date of the Opening Event; or (ii) the last transfer of the Excess Funds to City	\$50,000
Total Compensation		\$500,000

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 paving surface 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**, Founder 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 in various leadership and management capacities with companies including Siemens Communication amongst other roles in 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.
- **Barbara Butler** Owner and 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.

- **Peter Jensen** - Lead Designer, Landscape Architect and Certified Arborist
 - Peter Jense is the key architect behind the Magical Bridge Playground design and instrumental in developing the original design philosophy of Magical Bridge's innovative mindfully-designed play space. A founder and principal of Groundswell Design, Peter has been the lead manager for both private and public projects for over 20 years. In addition to the completion of Magical Bridge playground in Palo Alto in 2015, a sample of his public projects include: Northwest Park in Las Vegas (2004), Jefferson Elementary School in Santa Monica (2008), Eleanor Pardee Park in Palo Alto (2011) and Bowden Park in Palo Alto (2016). Peter holds a B.S. degree in Landscape Architecture from California Polytechnic University in Pomona.
- **Marid Hassid**, Operations Director
 - A long time veteran with the nonprofit sector, Maria's experiences range from her many years as Program Director for Alternative Ventures at At-Risk Youth, to being running varying programs to at-risk populations around the state of California. Before working in youth development, she was an award-winning public radio producer, trained at This American Life and wrote a book with her father about their 300-mile trek across Spain. Maria received her B.A in developmental psychology from Smith College, and received an MBA from US Davis where she was proud to be valedictorian.