



# COUNCIL REPORT

**DATE:** June 27, 2023

**CATEGORY:** Consent

**DEPT.:** Public Works

**TITLE:** **Magical Bridge All-Inclusive Playground, Project 18-36, and Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48—Various Actions**

## **RECOMMENDATION**

1. Appropriate from Magical Bridge Foundation \$19,329, and any future related donations, to Magical Bridge All-Inclusive Playground, Project 18-36. (Five votes required)
2. Transfer and appropriate \$1,440,000 from the Park Land Dedication Fund to Magical Bridge All-Inclusive Playground, Project 18-36. (Five votes required)
3. Transfer and appropriate \$3,560,000 from the Park Land Dedication Fund to Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48. (Five votes required)
4. Award the construction contract for Magical Bridge All-Inclusive Playground, Project 18-36, and Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, to Robert A. Bothman, Inc., for \$11,229,982, including a \$1,020,908 construction contingency.
5. Authorize the City Manager or designee to execute a professional services agreement with Tanner Pacific, Inc., to provide construction engineering services for Magical Bridge All-Inclusive Playground, Project 18-36, and Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, in a not-to-exceed amount of \$750,000.
6. Authorize the City Manager or designee to amend the professional services agreement with Sandis Civil Engineers Surveyors Planners for Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, to add \$40,210 for a not-to-exceed amount of \$170,000.

7. Authorize the City Manager or designee to amend the agreement with Magical Bridge Foundation as follows, with all other terms and conditions unchanged:
  - a. Reduce the Community Donation’s Initial Target from \$1,990,000 to \$1,200,534; and
  - b. Require the Magical Bridge Foundation to continue to remit to the City on a biannual basis all Community Donations received for the project until the original initial target of \$1,990,000 is met, or one year after the park is opened to the public, whichever occurs first.

**BACKGROUND**

On [October 3, 2017](#), the City Council authorized a contract between the City and Magical Bridge Foundation (MBF) for professional and design services, authorized an application for a matching grant for up to \$2 million through the Santa Clara County All-Inclusive Playground Grant Program, and approved Rengstorff Park as the site for Magical Bridge All-Inclusive Playground, Project 18-36.

On [May 10, 2022](#), the City Council approved plans and specifications for Magical Bridge All-Inclusive Playground, Project 18-36, and Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, and authorized staff to advertise both projects for bid as a single construction package.

On [March 14, 2023](#), the City Council approved the removal and mitigation plans for seven additional Heritage trees. The staff report also updated Council on the project costs, bidding strategy, and advised that once bids were received, staff would return to Council with recommendations on the construction contract award, bid alternates, and funding.

**ANALYSIS**

The project was advertised for monetary bids on April 14, 2023, and one bid was received on May 24, 2023 (see Table 1).

**Table 1: Bid Results**

<b>Rank</b>	<b>Contractor</b>	<b>Base Bid Amount</b>	<b>Bid Alternates</b>	<b>Total</b>
	Engineer’s Estimate	\$6,287,000	\$1,533,000	\$7,820,000
1	Robert A. Bothman, Inc.	\$10,388,414	\$430,660	\$10,819,074

The total bid submitted of \$10,819,074 from Robert A. Bothman, Inc. (RAB), includes a \$610,000 construction contingency and all bid alternates for both projects.

The bid documents include seven bid alternates: five for Project 18-36 and two for Project 21-48, as shown in Table 2.

**Table 2: Bid Alternate Results**

**Magical Bridge All-Inclusive Playground, Project 18-36**

<b>No.</b>	<b>Description</b>	<b>Engineer's Estimate</b>	<b>Robert A. Bothman, Inc.</b>
1A	One-Story Playhouse	\$810,000	\$5,600
2A	Two-Story Playhouse	321,000	23,500
3A	Custom Entry Bridge to Park*	84,000	103,000
4A	Overhead Entry Sign	126,000	77,000
5A	Two additional retreat huts	87,000	160,000
<b>Bid Alternates—Project A Total:</b>		<b>\$1,428,000</b>	<b>\$369,100</b>

**Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48**

1B	12 Skylights on Building Roofs	60,000	\$28,560
2B	48" Coast Live Oak Tree	45,000	33,000
<b>Bid Alternates—Project B total:</b>		<b>\$105,000</b>	<b>\$61,560</b>

**Total All Bid Alternates: \$1,533,000 \$430,660**

**Bid Analysis**

Based on recent bid results for other Magical Bridge projects and the persistent general inflationary construction market conditions, staff anticipated cost increases and incorporated bid alternates to reduce the base bid costs. Even with these measures, the resulting solitary base bid exceeded the increased estimates. The base bid received is higher than the estimated costs for the project by approximately 65%, while the bid alternates came in almost 72% lower than

estimated. Staff considers the low bidder turnout as another factor in the increased costs, as the Engineer's Estimate assumes a minimum of three to four bidders. Furthermore, analysis of the bid alternate pricing suggests that the base bid contains significant costs for elements intended for the bid alternates. Lastly, the complexity of the combined construction projects themselves and the requirements to adhere to strict San Francisco Public Utilities Commission utility safety measures may have also contributed to the costs to a greater extent than anticipated.

If Council approves staff's recommendation to award this contract, staff recommends including all of the add-alternates in the construction contract because the base bid already exceeds the project budget and the add-alternates will only add approximately 4% to the overall cost. The functional, aesthetic, and recreational value of the bid alternates is significantly greater than the costs included in the bid received. After the inclusion of the bid alternates, the total bid amount is approximately 38% over the Engineer's Estimate.

### **Rengstorff Park Maintenance and Tennis Building Replacement**

The Rengstorff Park Maintenance and Tennis Building Replacement project provides updated, Americans with Disabilities Act (ADA)-accessible restrooms and parking near the All-Inclusive playground, which are essential for the Magical Bridge project to be successful. These amenities will greatly improve access to and enjoyment of the new playground. To provide these amenities, the existing park maintenance building will be demolished, a new restroom/tennis building near the new playground will be constructed, and a second new restroom/replacement maintenance building will be constructed near the family barbecue parking lot off of Crisanto Avenue.

Staff evaluated removing this second restroom/maintenance building from the project to reduce costs in the near term, but this would require the entire project to be rebid. This option would incur additional staff and consultant costs and put at risk the \$1.7 million in Santa Clara County grant funding, which requires the project to expend the grant funds by March 2024. Additionally, there is a need for the second restroom/replacement maintenance building, which includes a storage facility for Rengstorff Park maintenance equipment, and delaying its construction may result in higher bid costs if it is bid as a stand-alone project at a later date.

### **Award Options**

The options for moving the project forward are to award the contract to the lowest responsive responsible bidder or reject all bids and rebid the project. If the project is rebid, State law would

not preclude RAB from submitting a bid on the project. Staff does not recommend rebidding the project for the following reasons:

1. The City obtained a County Grant of \$1,700,000 and would risk losing the grant funds for the All-Inclusive Playground project if the project does not expend the funds by March 2024.
2. Rebidding the project may result in higher bids due to continuing material price increases from inflation and ongoing supply chain disruptions.

Staff recommends awarding the contract to RAB, including all bid alternates, for a total contract of \$11,229,982, which includes the base bid construction contingency of \$610,000 and adds \$410,908 to provide a contingency near 10% of the total construction cost.

### **Construction Management Professional Services Agreement**

The Public Works Department utilizes consultants to support staff and provide construction engineering and inspection services as necessary to ensure the timely delivery of the City's construction projects and for projects requiring specialized construction expertise. Tanner Pacific, Inc. (TPI), has been providing the City with similar construction support services on previous and current facility projects, including the new Aquatics Center, and these projects give TPI a strong knowledge of the City's standards, processes, and procedures to perform the recommended services.

On May 10, 2022, Council authorized the City Manager to execute a professional services agreement with Tanner Pacific, Inc., to provide construction engineering services for Magical Bridge All-Inclusive Playground, Project 18-36, and Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, in a not-to-exceed amount of \$586,440. Since that time, TPI and City staff reevaluated the project documents and services needed and determined that due to the complexity of managing both projects, the scope will require a higher level of resources for a longer term than originally estimated. An agreement was not executed as staff reevaluated the scope of services. A revised proposal was requested, and TPI updated its proposal to include additional staff and a longer term. The scope of services includes construction management, inspections, and project close-out. The revised recommended total fee of \$750,000 for basic services and reimbursable expenses is within the range typically charged for such services, and staff considers the contract costs to be fair and reasonable for the scope of work required.

### **Design Professional Services Agreement Amendment**

Sandis Civil Engineers Surveyors Planners (Sandis) is the design and engineering consultant for Rengstorff Park Maintenance and Tennis Building Replacement, Project 21-48, and has an existing professional services agreement with the City for \$129,790. Through the design and bid process, the existing agreement fees have been nearly exhausted, and staff anticipates construction support services will still be needed. Therefore, staff recommends an additional \$28,410 for construction support services and reimbursable expenses, and \$11,800 for additional as-needed services, for a total amendment of \$40,210. The amendment results in a contract amount not to exceed \$170,000.

### **Magical Bridge Foundation Agreement Amendment**

The original agreement executed in September 2018 between the MBF and the City contained terms and conditions for City progress payments to MBF for services related to the design and development of Magical Bridge All-Inclusive Playground, Project 18-36. One condition stipulated that once MBF raised a minimum of \$1,990,000 (or “Initial Target”) in Community Donations, the City would release a \$50,000 progress payment for the “completion of fundraising” to compensate MBF for related services. As noted in the March 13, 2023 staff report, MBF had raised \$1,181,205 in Community Donations for the project as of May 2022, which the Council appropriated to the project on May 10, 2022. Since then, MBF has raised an additional \$19,329 for a total of \$1,200,534. MBF transferred these funds to the City in two payments: \$500,000 to the City in December 2021 and the balance of \$700,534 on May 26, 2023.

While MBF expects community donations to continue as the project commences construction and, thereafter, MBF has requested the milestone payment for completion of fundraising. Given the City has identified sufficient funds to award the contract and commence construction, staff recommends that the agreement with MBF be amended to revise the “Initial Target” in the agreement to \$1,200,534 so that the progress payment can be processed. A condition of the proposed amendment will be that all donations for Magical Bridge All-Inclusive Playground, Project 18-36, will be forwarded to the City on a biannual basis until such time as the original “Initial target” of \$1,990,000 is met, or one year after the park is opened to the public, whichever occurs first. With Council approval of this recommendation, the City Manager or designee will negotiate and execute Amendment No. 2 to the MBF agreement to make these limited changes to the agreement.

**Project Schedule**

Should Council approve staff’s recommendations, construction is anticipated to begin by September 2023 and be completed by summer 2024, with the \$1.7 million in County grant funds expended before March 2024.

**FISCAL IMPACT**

The current funding sources for both projects are shown in Table 3, and the estimated costs for both projects are shown in Table 4.

**Table 3: Funding Sources**

	<b>Playground Project 18-36</b>	<b>Buildings Project 21-48</b>
Park Land Dedication Fund	\$1,826,100	\$3,440,000
County Grant	1,700,000	
CA State Parks Bond Per Capita Grant	228,911	
Google Landings Community Benefit	900,000	
MBF Contribution*	1,200,534	
<b>Total</b>	<b>\$5,855,545</b>	<b>\$3,440,000</b>

\* Total donations collected to date.

**Table 4: Total Design and Construction Project Cost**

	<b>Playground Project 18-36</b>	<b>Buildings Project 21-48</b>
Construction with contingency	\$5,754,680	\$5,475,302
Consultant Services	575,000	250,000
City Project Management	280,000	304,000
Construction Management, Inspection, and Testing	450,000	400,000
Public Art	—	46,200
Fixtures, Furnishing, and Equipment (FFE)	—	45,000
Permits and Miscellaneous	75,000	30,000
Project Contingency	48,865	22,498
Subtotal	\$7,183,545	\$6,573,000
City Administration	112,000	427,000
<b>TOTAL PROJECT COST ESTIMATE</b>	<b>\$7,295,545</b>	<b>\$7,000,000</b>
CURRENT APPROVED BUDGET	\$5,836,216	\$3,440,000
ADDITIONAL MBF CONTRIBUTIONS	19,329	-0-
<b>BUDGET SHORTFALL</b>	<b>\$1,440,000</b>	<b>\$3,560,000</b>

Staff recommends appropriating \$5 million of Park Land Dedication Funds to cover the budget shortfalls as follows: \$1,440,000 to Project 18-36 and \$3,560,000 to Project 21-48 (Attachment 1). Rengstorff Park is over five acres in size and is, therefore, classified as a community park according to City Code, Chapter 41, Park Land Dedication or Fees In Lieu Thereof. In addition, the Magical Bridge All-Inclusive Playground is a one-of-a-kind playground in the City designed to serve the entire City and the associated Rengstorff Park Maintenance and Tennis Building improvements (including new restrooms) are necessary to prepare the location for the playground and generally support Rengstorff Park users. Therefore, these two projects may use park in-lieu fees from any Park and Open Space area in the City. Staff recommends using park in-lieu fees from various park and open space areas in the City that were collected over three years ago for which no there are no other upcoming planned uses as well as the funds currently placed in the Citywide category to ensure these fees are used within five years of being received.

## **CONCLUSION**

Higher-than-expected bid prices were received primarily due to the low number of bids received, project complexity, and overall inflationary construction market conditions. Rebidding the project is not recommended primarily due to the risk of losing \$1.7 million in Santa Clara County grant funds. The recommended appropriations will provide the funding needed to award the construction contract and execute the professional services agreements to support the completion of the projects. In addition, approval of the amendment to the MBF agreement will allow a milestone payment to MBF for the completion of fundraising, while ensuring that future donations to the project will continue to be submitted to the City to offset the increased costs. Council's approval of staff recommendations will allow the projects to move forward into construction.

## **ALTERNATIVES**

1. Do not approve the recommended funding actions and do not award the contract to the low bidder, reject all bids, and direct staff to rebid the project.
2. Award the construction contract without any bid-alternate items or award the construction contract with a variation of bid alternate items.
3. Do not approve the recommended agreement/amendments with TPI, Sandis, and/or MBF.
4. Provide other direction.

**PUBLIC NOTICING**—Agenda posting.

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Attachment: 1. Park Land Dedication Fund

cc: APWD—Arango, PPM, ACE—Hoang, SPM—Rodriguez, SMA—Doan, F/c (18-36, 21-48)

Approved by:

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