

SERVICES AND LICENSE AGREEMENT

This Services and License Agreement (“**Agreement**”) is made and entered into as of _____, 20____ (the “**Effective Date**”) by and between _____ (“**City**”), a [California municipal corporation], and the UnaMesa Association, a California 501(c)(3) corporation, on behalf of the Magical Bridge Foundation (“**Magical Bridge**”). 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**”);

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 three million three hundred thousand dollars (\$3,300,000) to design and complete the Project (the “**Total Funding Goal**”);
- 1.2. City Contribution. City has allocated \$[#,###,###], and secured a pledge of \$[#,###,###] from _____, for the Project for a total allocation/pledge of \$[#,###,###] (collectively the “**City Contribution**”); and
- 1.3. Community Donation. City desires to partner with Magical Bridge to raise the remaining \$[#,###,###] necessary to reach the Total Funding Goal from significant entity and individual donors (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**”).
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 quarterly retainer payment (the “**Retainer**”) of \$20,000, due upon the Effective Date of this Agreement and quarterly in advance thereafter during the Term, to support ongoing community engagement activities until the Playground is completed and help cover the costs of design reviews.
 - 4.2. Milestone Payments. City will pay to Magical Bridge a series of milestone completion payments (“**Milestone Payments**”), totaling \$[###,###]; each Milestone Payment is due upon completion of the associated milestone as specified in Exhibit B.
 - 4.3. Donation Processing Fee. In addition to the Retainer and Milestone Payments, Magical Bridge will retain eight percent (8%) (the “**Processing Fee**”) of the Community Donations to help cover costs and expenses, including the transaction processing fees, associated with accepting and holding these funds.
 - 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, Milestone Payments, 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.

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 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. Magical Bridge reserves the right periodically review the Playground’s continued compliance with the Magical Bridge Standards and to revoke the Final Design Certification, 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 Final Design Certification or the foregoing license.

5.2.4. 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.

5.2.5. Magical Bridge Playgrounds Only. City shall not display Magical Bridge Marks on or in relation to any playgrounds that do not have a Final Design Certification, or whose Final Design Certification 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 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. 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 twelve (12)

months of the Effective Date, subject to extension at City's reasonable discretion; (c) City fails to secure an anchor donor for the Project within six (6) months of the Effective Date, subject to extension at Magical Bridge's reasonable discretion; (d) either Party reasonably determines that there has been no substantial progress on the Project for at least twenty-four (24) months; or (e) Magical Bridge ceases to operate or otherwise loses its ability to perform the Services.

6.2. 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.

6.3. Effects of Termination.

6.3.1. 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, less the Processing Fee applicable to such funds ("**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.

6.3.2. 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. 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**"), where such Losses are finally awarded by a court of competent jurisdiction to resolve, or agreed to by Magical Bridge in settlement of, such 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 7.1 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 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 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 shall not exceed the lesser of (i) the fees actually paid to Magical Bridge under this Agreement or (ii) the amount of all valid, applicable, and collectable insurance coverage for the claim.

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 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 progress toward the Total Funding Goal 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. 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.
13. 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.

14. 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.
15. Choice of Law. This Agreement shall be governed by the laws of the State of California, excluding its conflict of law rules.
16. 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.
17. 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.
18. 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.
19. Severability. If any part of this Agreement is unenforceable, the remaining portions of this Agreement will remain in full force and effect.
20. 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.

21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

25.1. For City:

[City address for notice]

25.2. For Magical Bridge:

Magical Bridge Foundation
Attention: Jill Asher
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 Name]

By: _____
[Name], [Title]

ATTEST:

By: _____
[City Attester]

MAGICAL BRIDGE:

UNAMESA ASSOCIATION, a California
501(c)(3) corporation, on behalf of Magical Bridge
Foundation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A1 – SCOPE OF SERVICES

1. DESIGN

- 1.1. Design Consulting. At City's request, the “**Magical Bridge Team**,” defined individually and collectively as the individuals listed in Exhibit E, shall participate in meetings with City’s design team and consultants to assist City in preparing the Final Design and 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 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 shall use commercially reasonable efforts to solicit a total amount of donations to support the Project not less than the amount of the Community Donation.
- 2.2. 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 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, less the Processing Fee (“**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 Parks and Recreation Department of City or similar organization;
- 1.3. Raising the City Donation within **[three (3)]** months after the Effective Date and designating those funds solely for the purpose of building the Playground;
- 1.4. Using its best efforts, with reasonable assistance and cooperation from Magical Bridge, to solicit and procure Community Donations for the Playground, including the arrangement of meetings with potential donors;
- 1.5. Allowing for reasonable access to the Site by Magical Bridge employees and agents, including but not limited to the Magical Bridge landscape architect;
- 1.6. Facilitating meetings and discussions between Magical Bridge and various stakeholders in order to ensure community support for the Playground;
- 1.7. 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;
- 1.8. Entering into and performing all obligations under all agreements with third party contractors performing services related to the Playground;
- 1.9. Maintaining the Playground in good order, condition, and repair during and following the expiry or termination of this Agreement;
- 1.10. Advising community groups in relation to on-going programs and activities at the Playground; and
- 1.11. Procuring and maintaining general liability insurance in respect of the Playground in an amount no less than the industry standard, 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 3.2 of the Agreement, according to the following schedule:

<u>Task</u>	<u>Milestone</u>	<u>Payment Amount</u>
Kickoff	Effective Date of Agreement	\$[##,###]
Design	City's receipt of the Final Design Certification for the Playground	\$[##,###]
Fundraising	City's receipt of the Community Donation in full from Magical Bridge	\$[##,###]
Community Engagement	The latter of (i) the date of the Opening Event; or (ii) the last transfer of the Excess Funds to City	\$[##,###]

2.

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.

EXHIBIT E - MAGICAL BRIDGE TEAM

Jill Asher

Olenka Villarreal

Kris Loew