Summary Title: Letter of Intent with Friends of Magical Bridge

Title: Approval of a Letter Of Intent with the Friends Of The Magical Bridge LLC for the Design, Construction and Installation of Playground Equipment, Pathways, Park Amenities and Other Improvements for a Universally Accessible Children's Play Area at Mitchell Park - Capital Improvement Project (PE-12000)

From: City Manager

Lead Department: Community Services

Recommendation
Staff recommends that Council authorize the City Manager or designee to sign the attached Letter of Intent with the Friends of the Magical Bridge for improvements located within Mitchell Park, including the installation of children’s playground equipment, pathways, site amenities and other improvements necessary to create a universally accessible playground.

Background
In June 2007, Friends Founder Olenka Villarreal approached staff about the need for a universally accessible children’s playground. Ms. Villarreal pointed out that although some Palo Alto playgrounds have rubber pathways that may allow some children to approach a play structure, all of the play structures in Palo Alto have very little accommodation for persons confined in wheel chairs. She showed staff that some children with developmental disabilities are unable to use existing park swings because some kids with special needs are unable to grip the support chains of a swing to maintain balance. She also informed staff that because of the Palo Alto Unified School District has an excellent program for special needs, there are more than 1,500 children in Palo Alto that have developmental, sight, hearing, balance or autistic challenges that require special play equipment and access. Ms. Villarreal has shared the stories of her own daughter, those of other local parents and even handicapped caregivers who are unable to play with their children at playgrounds because of physical barriers.
In April 2008, the Friends of the Magical Bridge made a presentation to the Parks and Recreation Commission and asked the Commission to determine if the Commission felt that a new children’s universally accessible playground at Mitchell Park would be compatible with the Master Plan for the Park. On July 22, 2008, the Commission heard a second presentation from Ms. Villarreal and the Commission concurred with staff that the project would be compatible with Mitchell Park and would also well serve the special need students and participants at the adjoining Achieve center and Abilities Unites.

On Jun 20, 2011, Council approved the allocation of $300,000 from the Infrastructure Reserve Fund to Capital Improvement Project PE-12000 for design and construction services associated with the construction of a new children’s playground at Mitchell Park (3800 Middlefield Road, in the southwest corner of the park) as part of a public/private partnership with the Friends of the Magical Bridge (“Friends”). The Friends intend to raise the balance of the funds necessary to build the playground, conceptually estimated at $1,600,000.

The Friends have worked with landscape architects to create a conceptual plan for the universally accessible playground that will make the playground inviting, family oriented, and completely accessible to all children and their caregivers. The 20,000-square foot playground is to be constructed in a rarely used and undeveloped area of Mitchell Park near two tennis courts and a pathway that connects to Charleston Road. The original master plan called for the area to be used as an archery range. In the distant past the sparsely landscaped area has been used for scout camp fires.

**Discussion**

Staff has worked cooperatively with the Friends to develop a Letter of Intent (Attachment A) that lays out the responsibilities and expectation of both parties. Similar to Letters of Intent with the Friends of Heritage Park, the Friends of Lytton Plaza and the Palo Alto Art Foundation, the letter describes the scope of the construction project, the amount of money that will be
contributed by each partner, and the responsibilities for the on-going maintenance of the park once it is improved.

Once the *Letter of Intent* is executed by both parties, the Friends will work with design consultants to prepare conceptual design options for the project. The Friends will return to the City with plans to be submitted for Planning Department, Architectural Review Board, and Planning & Transportation Commission review. The Friends will then develop a budget for the project, ensuring that there are adequate funds to successfully complete the project, a detailed construction timeline and evidence of insurance. Staff will then return to Council with a Park Improvement Ordinance, Budget Amendment Ordinance, and Agreement for the Design, Construction and Installation documents for review and approval. The Agreement would specify policy and procedural guidelines for the Friends to follow regarding construction, safety, liability, and payment details. The agreement would follow similar public/private partnership agreements that provide for authorized non-profits to manage the improvement of City facilities. Other examples of such partnerships include the Friends of the Children’s Theatre for the construction of the Magic Castle, and an agreement with Perry-Arrillaga for the construction of a refreshment stand at the Baylands Athletic Center.

**Timeline**

Once the attached Letter of Intent is approved by Council, the Friends will have two years (until July 1, 2013) in which to negotiate a contract and work with staff on the preparation of design plans and specifications. These plans will include engineer’s estimates that will enable the Friends to develop fundraising strategies to raise the $1,300,000 necessary for the project.

**Resource Impact**

Funds for the City’s share of this project are included in Capital Improvement Program Project – PE-12000 (Magical Bridge Playground at Mitchell Park). Funds for this project will be matched by the Friends of the Magical Bridge. The Friends estimates the total cost of the construction to be $1,600,000. The *Letter of Intent* caps the City’s financial participation for design and construction of improvements at $300,000.
The current maintenance and utilities cost of this area of Mitchell Park is less than $5,000 per year. The projected annual cost to the City for maintaining and operating the playground is estimated at $10,000. This cost includes the maintenance of playground facilities and its periodic inspection by staff field inspectors and replacement of play structure parts.

When the new project is completed will an additional $5,000 be needed in the parks budget to maintain and inspect the playground.

**Policy Implications**

This project is consistent with the recently approved (Policies & Services Committee) public/private partnership policy as a "joint partnership project."

The proposed project is consistent with existing City policy, including C-26: Maintain and enhance existing park facilities.

A Park Improvement Ordinance will be required for park development. The Ordinance will be prepared and presented to the Council at the point when the actual project agreement is ready for Council approval.

**ENVIRONMENTAL REVIEW**

Environmental review will be performed at the time the project is presented to Council for approval.

**Attachments:**

- Attachment A - Letter of Intent (PDF)

Prepared By: Greg Betts, Director, Community Services

Department Head: Greg Betts, Director, Community Services
City of Palo Alto
Department of Community Services

July 18, 2011

Attn.: Olenka Villarreal, Dawn Billman, Kit Gibbs, Jocelyn Alexander and Debra Szescei

RE: Addition of Magical Bridge Playground and Remodel of Bridge at Mitchell Park

Dear Olenka, Dawn, Kit, Jocelyn and Debra:

The City of Palo Alto (the “City”) and the Friends of the Magical Bridge LLC (the “Magical Friends”) (each a “Party” and collectively, the “Parties”) wish to collaborate in a project that would result in the creation of a universally accessible playground in a currently unused area of Mitchell Park (the “Project”). This area is adjacent to the office of Abilities United and is connected to the main park area via a wooden bridge (the “Bridge”), which spans Adobe Creek, a concrete channel that is managed by the Santa Clara Valley Water District. The City is interested in providing the Magical Friends, for a period of time, a license or permission for access to and use of the non-exclusive possession of this area of Mitchell Park, which will be referred to as the “Magical Area” or the “Premises”) (the “Agreement”), as may be mutually agreed to by the Parties, in order that the Magical Friends may develop this area as Palo Alto’s first playground, inclusive of all, including those who must use wheelchairs or those who are physically disabled and who are older community members.

The City understands that the Magical Friends are interested in entering into the Agreement with the City in regard to the Magical Friends’ commitment to undertake and complete the Project, on mutually acceptable terms and conditions, as follows:

1. The Project will be located in the southeast corner of Mitchell Park, 3800 Middlefield Road, Palo Alto, CA 94303. The
approximate square footage of the area is 20,000 square feet; this measurement will be verified later by the City.

2. The term of the Agreement shall be for a period of time equal to the design and construction period of the Project, estimated at approximately two (2) years, commencing after the City has conceptually approved the Project through the Capital Improvement Project budget process and the Parties have executed and delivered the Agreement, or as otherwise may be agreed to by the Parties. The Magical Friends acknowledge and understand that the park design and its fundraising efforts must be completed by July 1, 2013.

3. Subject to Paragraph 10 of this letter, the Magical Friends will not pay rent to the City but, in lieu thereof, subject to the Magical Friends’ preparation and approval of an estimated budget for the Project, which the Magical Friends anticipate will be approximately $1,600,000, and the Parties’ approval of the amount that the City will contribute to the Project (not to exceed $300,000), the Magical Friends will contribute funds equal to the estimated budgeted portion of $1,300,000, plus any additional amount in construction costs incurred in excess of the estimated budget of $1,600,000. Excepting those ongoing maintenance costs for the Project to be contributed by the City, as described in paragraph 10 below, the funds will be used to acquire the services of an architect, a general contractor, a project manager and/or other professional(s) with respect to the design and construction of the Project and to defray Project-related costs and expenses. The services of consultants and contractors will be procured by the City in accordance with the City’s competitive bid selection processes as defined in the City’s Purchasing Ordinance. Performance bonds and payments bonds in the amounts of one hundred percent of the selected bid will be required of the general contractor for the Project. The Magical Friends will select the playground equipment to be located at the Premises in consultation with the City; the funds for the acquisition of the playground equipment will come from the funds to be provided by the Magical Friends.

4. Upon the Magical Friends’ acceptance of this Letter of Intent, the Parties understand that the City, acting on behalf of the Magical Friends, will take the lead in designing and preparing construction documents for the Project, conducting a competitive bid selection process to obtain a construction contractor for the Project, and managing the construction contract. The Parties also understand that the City will issue a Request for Proposal for landscape architecture services and, with the prior approval of the Magical Friends, assign a landscape architecture firm to perform requisite design services, including the preparation of construction documents and providing design support during the construction phase. All designs will be reviewed by the City’s Departments of Community Services, Planning and Community Environment, Utilities and Public Works, reviewed and approved by the City’s Architectural Review Board and, as appropriate, review by the City’s
boards and commissions, including, but not limited to, the Parks and Recreation Commission, and the City Council.

5. The Magical Friends will not be required to obtain and maintain all required City permits and other authorizations and furnish or caused to be furnished any financial and non-financial security, during the construction, as appropriate, and upon request, to the City, including, but not limited to, insurance, indemnity, lien waivers, performance and payment bonds (as noted in paragraph 3) and covenants.; the City will obtain and maintain those items on behalf of the Magical Friends. The Magical Friends acknowledge that the City must develop findings of fact that the Project does not intrude in the public right-of-way. Any survey of the Premises to support such findings will be performed at the City's cost and expense.

6. The Magical Friends will furnish a copy of its articles of organization and other information relating to its legal or entity status to the Office of City Attorney for its review.

7. The Magical Friends will undertake a community outreach and fund-raising program to garner the community's input and support for the Project. The Magical Friends will coordinate construction efforts at the Park with interested community groups and organizations.

8. The Magical Friends will surrender possession of the Premises and transfer or otherwise quitclaim any and all rights, title and interests to the Project, upon completion of construction thereof, to the City. The date of completion of the construction of the Project, the surrender of possession of the Premises, the termination of the obligations of the Magical Friends under the Agreement (including the termination of the obligations of the Magical Friends during construction that apply during the construction of the Project referred to in Paragraph 10 hereof), the acceptance of the Project by the City, and the assumption by the City of the responsibility for the permanent maintenance and repair of the Project thereafter will be confirmed, in writing, by the Parties.

9. The City will provide reasonable staff support and other assistance, upon request, to the Magical Friends in connection with the execution of the Project.

10. The City, subject to the approval of the City Council, will contribute not more than three hundred thousand dollars ($300,000), which will be applied to the design and construction-related costs and expenses referred to in paragraph 3 above. During the period from the commencement of construction of the Project through the completion of the Project and the termination of the obligations of the Magical Friends under the Agreement, the City will not absorb any other costs and expenses relating to the design and construction.
of the Project, including utilities rates and charges, and maintenance costs associated with the Project, in excess of the sum stipulated above under the Agreement. The City will be responsible for Mitchell Park's on-going maintenance and operating costs and expenses of the Project, effective as of the satisfaction of the following: the park construction is completed; the obligations of the Magical Friends under the Agreement are terminated; and the Park is officially open to the public, in accordance with the Agreement.

11. During the construction of the Project, the Magical Friends will be obligated to pay all utilities fees and charges that are due and payable to the City’s Enterprise Fund in connection with the execution of the Project to the extent such costs and expenses are separately billed to the Friends. Such fees and charges will be listed in an exhibit to the Agreement to the extent practicable.

12. The Agreement will be subject to the approval of the City Council and the approval as to form by the City Attorney. The Council will be required to adopt a Park Improvement Ordinance in connection with the Project.

13. This letter is not intended to be a contract between the Parties with respect to the Project. It is intended to facilitate discussion of the Project and is only an expression of the basis on which the Parties would enter into an Agreement regarding the Project and the rights and obligations of the Parties. The City requests that the Magical Friends’ execution of this letter of intent below in order that the City may proceed to develop a draft Agreement concerning the Project for the Magical Friends’ consideration. Neither the City nor the Magical Friends will have any obligation with respect to the Project, unless and until the Project is approved by the City and a mutually acceptable Agreement is executed and delivered by the Parties.

Sincerely,

James Keene
City Manager

Copies to:
Greg Betts, Director, Community Services
Mike Sartor, Interim Director, Public Works
Grant Kolling, Senior Asst. City Attorney
The Friends of the Magical Bridge LLC hereby acknowledge the foregoing proposed general terms of a contract between the Parties pertaining to the Project.

Date: 6/29/11

By: [Signature]
Title: Member

Olenka Villarreal