



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: P.J. Mellana, Director of Parks and Recreation

SUBJECT: Consideration and possible action to approve the Letter of Intent with KaBOOM!, Inc., for the Construction of a New Playground at Ruth R. Caruthers Park; authorize the City Manager to sign the Letter of Intent; and adopt Resolution No. 16-XX – A Resolution approving the design and plans for the installation of playground equipment in Ruth R. Caruthers Park pursuant to Government Code § 830.6 and authorizing the City Manager to execute an agreement with KaBOOM!, Inc. and its Community Partner without the need for competitive bidding as otherwise required by the Bellflower Municipal Code.

DATE: June 13, 2016

EXECUTIVE SUMMARY

Through a competitive application process, the City of Bellflower has been selected to move forward with the next phase of the selection process for a “Build it with KaBOOM!” project. In order to proceed to the next phase, the City must submit a signed Letter of Intent (LOI) drafted by KaBOOM!, Inc. (KaBOOM!). By signing the LOI, the City of Bellflower will be added to KaBOOM!’s “shovel ready” project list waiting to be matched with a suitable Funding Partner. Once matched with a Funding Partner the City would immediately move forward with the project planning for what will be our second project with KaBOOM!

RECOMMENDATION TO CITY COUNCIL

- 1) Approve Letter of Intent (LOI) with KaBOOM!, Inc., and authorize the City Manager to sign the LOI;
- 2) Adopt Resolution No. 16-XX; or
- 3) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The City's fiscal commitment to the partnership is \$8,500 towards a small percentage of the playground equipment that would be purchased. That \$8,500 amount is intended to come from contributions made through community fundraising efforts; however, if the project committee fails to reach that goal, then the City will be responsible for that funding commitment. The City will also be responsible for any costs incurred for the required soil test and prior site preparation including the removal of current equipment. These aspects of the project will be conducted with in-house resources and labor through the Public Works Department and is anticipated to cost less than \$5,000.

The typical KaBOOM! project budget is estimated to be between \$88,500 and \$108,500, with the Funding Partner contributing a cash amount estimated to be between \$80,000 and \$100,000 towards the project. The project budget includes playground equipment and safety surfacing, playground enhancement projects that could include benches, sandboxes, planters, landscaping, murals, shade structures, etc., shipping of all equipment and general supplies, and KaBOOM! program management. A more in-depth description of the project is attached.

The City would be responsible for any costs outside of the aforementioned project budget items. This would include any chosen upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM! Since the City playground site is larger than the typical community project with KaBOOM!, a need could arise to repurpose a portion of the existing tot lot area of the playground. As mentioned, the project will include side enhancement projects and our focus will be on that repurposing, however, additional funds may be required and requested through the budget process to complete those efforts.

DISCUSSION

A "Build it with KaBOOM!" project would include the City partnering with KaBOOM! and a Funding Partner/Sponsor to plan, design, and build a new playground at Ruth R. Caruthers Park. The process would include the City conducting the site preparation with in-house resources, removing all existing playground equipment at the park, and preparing the grounds as needed for the build; thereafter the project will also include a design process through extensive community engagement, two preparation days with 30 volunteers each day, and finally a Community Build Day with 200-250 volunteers.

Other than the City's newer tot lot playground at Thompson Park and KaBOOM! playground at Simms Park, much of the playground equipment in the City is approximately 20 years old and in need of replacement in the near future. Staff is always looking for creative ways to identify funding and opportunities to meet this need and we feel this is a great opportunity for us to partner in a creative way and bring updated equipment to our parks. KaBOOM! has worked with communities throughout the nation to build, improve, and open more than 15,000 playgrounds since 1996. Several of those projects have taken place throughout southern California including the City of Bellflower's newest play space at Simms Park. Staff feels that if we have another successful project here in Bellflower it will open up other opportunities in the near future with KaBOOM!

The Community Partner Playground Agreement is provided by KaBOOM! and is its standard agreement. Other than minor changes directly related to our specific project and playground, KaBOOM! is unwilling to adjust language in the agreement. With that understanding, please note, pursuant to Subsection 1.(j) of the agreement, the City will be required to indemnify KaBOOM! and the Funding Partner for any injury that may arise in connection with that agreement, even if the injury is the result of something caused by KaBOOM!, unless it was the result of KaBOOM!’s willful misconduct. Playworld Systems will be providing the equipment used on the project and that company provides a warranty on the equipment and is licensed and insured. Additionally, a certified playground installer will be utilized to install the equipment and the installer, too, is required to be insured. The agreement does not call for indemnification of those two entities by the City.

Additionally, since the City is still in the preliminary phase of the selection process and only being added to the “shovel ready” project list at the moment, the Funding Partner has not yet been confirmed and the specific dates identified for the project are yet to be determined. Once all is confirmed, those sections of the attached agreement will be added and reviewed by the City before signing the final agreement.

Signing and submitting the LOI and signing the Community Partner Agreement, if selected for a project, will provide the partnership framework between KaBOOM!, the funding partner, and the City of Bellflower, while also establishing the necessary project responsibilities.

ATTACHMENTS

Letter of Intent (LOI) 4
Resolution No. 16-XX..... 6
Draft of Community Partner Playground Agreement 9
Build it with KaBOOM! Project Summary 15



March 22, 2016

Dear applicant:

Congratulations on making it to the third round of the selection process for the *Build it with KaBOOM!* playground grant! Before moving your application to the fourth and final step in the process, your organization will need to submit the following:

- Signed Letter of Intent, which signifies full contract approval by your organization

At this stage in the selection process, KaBOOM! requires all applicants to review and approve the draft Letter of Agreement (contract). Please have your organization's authorized signatory and any other necessary parties review and approve the attached contract. Once this has been completed, the signatory must sign the Letter of Intent indicating that the contract is fully reviewed and approved and that your organization is prepared to sign an official contract within three business days of being awarded the Build it with KaBOOM! playground grant.

KaBOOM! cannot recommend your application to the Funding Partner until the contract has been approved. Please note that signing the Letter of Intent does not guarantee funding or approval. Rather, we are now able to move you to the final step in the application process.

If you are applying in partnership with one or more organizations, please have each partner sign a separate Letter of Intent. If you have questions about submitting a Letter of Intent for respective partners, please contact your Community Outreach representative.

This is a standard form contract and changes cannot be made. However, if your signatory or any other reviewers have any questions, please direct them to your Community Outreach representative.

We look forward to receiving your signed Letter of Intent.

Sincerely,

Kelly Habig, Community Outreach Specialist
(O) 202.464.6411 (F) 202.659.0210
kaboom.org

KaBOOM! Letter of Intent

By signing this document, I understand that if my organization is selected for a KaBOOM! project, my organization will (please initial each point):

- _____ Assume all responsibilities as outlined in the KaBOOM! Community Partner Project Summary
- _____ Fundraise \$8,500 USD toward the cost of playground equipment
- _____ Own and maintain the playground for its lifetime
- _____ Provide land and secure all necessary permits for construction of playground
- _____ Remove all existing playground equipment currently on site
- _____ Perform site preparation resulting in a flat and dirt surface two weeks prior to Build Day of a site measuring at least 2,500 square feet.
- _____ Perform a utility check prior to Design Day and secure all necessary extensions to ensure the utility check is current through Build Day
- _____ Perform a soil test for lead and arsenic within two weeks of Design Day and perform remediation if necessary
- _____ Use Playworld Systems equipment and accept engineered wood fiber safety surfacing
- _____ Allow names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, measuring 12 ¼ inches wide by 30 ¼ inches tall
- _____ Recruit at least 15 community members, residents, and/or parents to participate in the Design Day and planning process
- _____ Recruit 30 volunteers from the community to participate in two preparation days and recruit 75 volunteers from the community to participate on Build Day
- _____ Provide food, water, tools, a dumpster, and music for volunteers on Build Day
- _____ Build the playground through supervised volunteer installation
- _____ Accept liability for and maintain the playground upon build completion
- _____ Obtain and maintain insurance for the playground and Build Day, and add KaBOOM! and the Funding Partner as additional insureds for the term described in the contract
- _____ Indemnify and hold harmless KaBOOM! and the Funding Partner
- _____ Follow KaBOOM! protocol on all media and promotions as outlined in the Corporate Sponsorship Policy

Signing this Letter of Intent signifies that all contract signatories have reviewed the draft contract and are prepared to sign a final contract within three business days of being awarded a KaBOOM! playground project. *Please ensure that the person authorized to sign contracts signs below.*

Legal Name of Organization: City of Bellflower

Name and Title of Signatory (please print): Jeffrey L. Stewart, City Manager

Authorized Signature: _____ Date: April 10, 2016

Signatory Mailing Address: 16600 Civic Center Drive, Bellflower, CA 90706

Contact information for person who should receive KaBOOM! Invoice:

Name: P.J. Mellana, Director of Parks & Recreation

Telephone number: 562-804-1424, ext. 2265

Mailing Address: 16600 Civic Center Drive, Bellflower, CA 90706

Email: pmellana@bellflower.org

Fax: 562-925-7272

CITY OF BELLFLOWER

RESOLUTION NO. 16-XX

A RESOLUTION APPROVING THE DESIGN AND PLANS FOR THE INSTALLATION OF PLAYGROUND EQUIPMENT IN RUTH R. CARUTHERS PARK PURSUANT TO GOVERNMENT CODE § 830.6 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH KABOOM!, INC. AND ITS COMMUNITY PARTNER WITHOUT THE NEED FOR COMPETITIVE BIDDING AS OTHERWISE REQUIRED BY THE BELLFLOWER MUNICIPAL CODE

THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

- A. On March 4, 2016, the City received a proposal by KaBOOM!, Inc. (the "Contractor") to design and install playground equipment at Ruth R. Caruthers Park (the "Project");
- B. Contractor and its community partner (which is yet to be determined) proposes to donate most materials and labor to construct the Project (collectively, the "Contractors"). In light of the overall value of the Project, the City would incur a nominal cost of \$8,500;
- C. Based upon information supplied by Public Works Department staff, the City Council understands and believes that the total value of the project would be \$100,000;
- D. Ordinarily, the City would need to comply with the competitive bidding requirements set forth in the California Public Contracts Code for this type of project;
- E. The purpose of such bidding requirements is to guard against favoritism, improvidence, extravagance, fraud and corruption, to prevent waste of public funds, and to obtain the best economic result for the public;
- F. The facts and circumstances of this Project, however, demonstrate that competitive bids would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable and impractical for the following reasons:
 - 1. There is, at most, only a nominal cost to the public for the reason that Contractors will donate most materials and labor;
 - 2. Contractors' only motivation in constructing the Project is to accomplish charitable works for the City; and
 - 3. It is improbable that any other private contractor can construct the Project for a lesser amount.

- G. In waiving the competitive bid requirements otherwise required by the Public Contract Code, the City Council takes note of the analysis and decisions set forth in *Graydon v. Pasadena Redevelopment Agency* (1980) Cal.App.3d 631; *Hodgeman v. City of San Diego* (1942) 53 Cal. App.2nd 610; *Orange County Water Dist. v. Bennett* (1958) 156 Cal. App.2nd 745; and *Los Angeles G&E Corp. v. City of Los Angeles* (1922) 188 Cal. 307;
- H. While the Project's plans and specifications are not yet complete, the City Council believes that the City Engineer may exercise discretion in accordance with Government Code § 830.6 to approve such plans and allow the Project to be constructed;
- I. The City Council wishes to obtain the immunities set forth in Government Code § 830.6 with regard to the plans and construction of the Project; and
- J. In accepting the Contractors' donation of the Project, the City notes that Labor Code § 1720.4 specifically exempts work performed by volunteers from payment of prevailing wages. In addition, the Department of Industrial Relations ("DIR") has determined that prevailing wages need not be paid for the Project (see DIR Decision No. 98-004 dated June 10, 1998 [donated pergola on city property]; and DIR Decision No. 99-058 dated January 7, 2000 [volunteer labor]). Accordingly, the Project is not a "public work" under the Labor Code and the Contractors' volunteers need not be paid prevailing wages.

SECTION 2. *Design Immunity.*

- A. Pursuant to Government Code § 830.6, the City Engineer is authorized to exercise discretion in approving the design and plans for the Project once they are drafted.
- B. Such determination must occur before actual work on the Project construction commences.
- C. The approval granted by this Resolution conforms with the City's General Plan.
- D. The approval and authorization granted by this Resolution is intended to avail the City of the immunities set forth in Government Code § 830.6.

SECTION 3. *Authorizations.*

- A. The City Engineer, or designee, is authorized to act on the City's behalf in approving any alterations or modifications of the design and plans approved by this Resolution.
- B. The City Manager is authorized to execute an agreement with the Contractors' for construction of the Project in a form approved by the City Attorney.

**City of Bellflower
Resolution No. 16-XX
Page 3 of 3**

SECTION 4. This Resolution does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 5. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 6. To the extent that any other resolution pertaining to an agreement with KaBOOM! for the installation of a playground in Ruth R. Caruthers Park is incorporated into this Resolution, it is superseded in its entirety.

SECTION 7. The City Manager will establish policies and procedures as necessary to carry out this policy.

SECTION 8. The Mayor, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

SECTION 9. This Resolution will become effective immediately upon adoption.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER THIS ____ OF _____ 2016.

Dan Koops, Mayor

Attest:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney



COMMUNITY PARTNER PLAYGROUND AGREEMENT

March 22, 2016

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that «CP» (referred to herein as the Community Partner) has agreed to collaborate with KaBOOM! and «FP» (referred to herein as the Funding Partner) in the construction of a new playground at «Site_Name», «Site_Address», «City», «State» «Zip» (the "Project"). This Community Partner Playground Agreement (this "Agreement"), which sets forth the Community Partner's obligations in connection with the Project and certain matters on which the parties have agreed, will, when executed by the duly authorized representatives of each party, supersede any prior agreements and represent the complete legally binding agreement between the parties regarding the Project.

1. Obligations of the Community Partner. The Community Partner shall work with KaBOOM! and the Funding Partner as well as community residents to design, plan and build the Project. By executing this Agreement, the Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
 - (a) Fundraising. In support of the Project, the Community Partner must contribute \$«Contribution» to KaBOOM!, which will apply the funds directly to the purchase of playground equipment. KaBOOM! will invoice the Community Partner for such amount promptly following the execution of this Agreement, which amount must be paid in full at least thirty (30) days prior to the Project's Build Day (as defined below).
 - (b) Project Site.
 - (i) Ownership. At the time of execution of this Agreement, the Community Partner shall provide KaBOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Community Partner or a letter from the property owner showing approval for the Project. The Community Partner is the owner of the playground in its entirety, for the lifetime of the playground, including the equipment and/or safety surfacing purchased by KaBOOM! and/or the Funding Partner.
 - (ii) Permits. Prior to Build Day, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playground in compliance with applicable laws and regulations.
 - (iii) Preparation. The Community Partner shall ensure that the Project site is safe for volunteers and children, which responsibility includes: (1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Day; (2) preparing the site for the installation of the Project at least two weeks before Build Day, which includes removing existing playground equipment, footers and safety surfacing, grading the land, removing fencing and performing soil tests; (3) conducting up to two (2) utility checks as reasonably requested by KaBOOM! with the appropriate utility companies, with the first test being completed on or before Design Day (as defined below) and with all utility check documentation provided upon completion to the KaBOOM! project manager who shall supervise the planning and installation of the playground (the "Project Manager"); and (4) conducting up to two (2) soil site tests as reasonably requested by KaBOOM!, with the first test being completed on or before Design Day and with all soil check documentation provided to the Project Manager upon completion. The Community Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
 - (iv) Safety and Security. The Community Partner shall ensure the security of equipment, tools, supplies and well being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
 - (v) Maintenance. Maintenance of the playground facility and supervision of its use is the sole responsibility of the Community Partner. The Community Partner shall collaborate with KaBOOM! during the Project

planning process to develop a maintenance program for the playground and, with the support of the property owner (if owner is a separate party), shall maintain the playground and the property before and after the Build Day to ensure a safe and attractive playspace. In furtherance of the foregoing, in the event any playground equipment included in the Project no longer is permitted for any reason to be located at its original site of construction or such site is no longer controlled by the Community Partner for any reason, then the Community Partner promptly shall notify KaBOOM! following its becoming aware of such situation and shall, at the Community Partner's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the playground equipment (including any permanent signage and other fixtures) to an alternate site that serves children or to ensure that the successor controlling person of such site shall continue to make such playground available to children in the same manner contemplated as of the Build Day and maintain (or permit the Community Partner to maintain) such playground in accordance with the maintenance program. In addition, the Community Partner shall accept and maintain engineered wood fiber as playground safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playground. Guidance and materials for the purpose of developing a maintenance plan for the playground are available, upon request, from the playground equipment and safety surfacing manufacturers, including Playworld Systems, Inc.

- (c) Design Day. The Community Partner agrees to host a KaBOOM!-facilitated "Design Day" with at least twenty (20) adult volunteers and twenty (20) children. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- (d) Build Day. The Community Partner shall recruit «Volunteers» adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on «BD_» and which is referred to herein as the Build Day. The Community Partner shall ensure that all volunteers sign a waiver. On the Build Day, the Community Partner shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.
- (e) Promotion; Intellectual Property. The Community Partner shall seek prior approval from KaBOOM! and/or the Funding Partner for any materials that reference the Project or contain the name, trademarks, service marks, logos and other intellectual property (collectively, and together with all goodwill attached or which shall become attached to any of the them, the "Marks") of KaBOOM! and/or the Funding Partner, including press releases, fliers and promotional materials. The Community Partner acknowledges and agrees that each of KaBOOM! and the Funding Partner is the sole owner of all right, title and interest in and to its respective Marks. The parties acknowledge that KaBOOM! and the Funding Partner may take all steps to protect their Marks as they deem appropriate. Any use of the Marks will inure to the sole benefit of KaBOOM! or the Funding Partner (as applicable). The Community Partner shall not use the Marks in any manner that would harm the reputation of KaBOOM! or the Funding Partner or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the Community Partner shall cease all use of the Marks. The Community Partner shall collaborate with KaBOOM! and the Funding Partner to secure media coverage for the Project.
- (f) Signage. The Community Partner shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, which shall be substantially in the form provided to the Community Partner during the application process and shall be 12 ¼ inches wide by 30 ¼ inches tall and mounted on poles in a mutually agreed location.
- (g) Playground Costs. The Community Partner is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the Community Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- (h) Warranty. The playground equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers, a copy of which may be obtained, upon request, from such manufacturers. The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KaBOOM! nor the Funding Partner nor any of their respective affiliates, directors, officers, managers, partners, members, shareholders,

employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including its quality, mechanical condition or fitness for a particular purpose.

- (i) Insurance. The Community Partner (or such other appropriate entity to which KaBOOM! consents in writing) shall obtain and maintain from no less than seven (7) days prior to the Build Day and through the first anniversary of the Build Day, commercial general liability insurance (providing coverage against liability for bodily injury, death and property damage that may arise out of or be based upon the use of the playground) with a limit of not less than one million dollars (\$1,000,000) per occurrence. The Community Partner shall also obtain and maintain worker's compensation insurance policies with statutory limits for the state in which the work is performed for their volunteer employees. Within seven (7) days from execution of this Agreement, the Community Partner shall provide to KaBOOM! a copy of a certificate from its insurer indicating the nature, scope, duration and amount of insurance coverage, and naming KaBOOM! and the Funding Partner as additional insureds under such policy, which insurance shall be primary over any other insurance covering KaBOOM! and the Funding Partner and which policy shall provide that KaBOOM! and the Funding Partner be given at least thirty (30) days prior written notice of any change or cancellation of coverage.
- (j) Indemnification. The Community Partner shall indemnify and hold harmless KaBOOM!, the Funding Partner and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives from any and all losses, liabilities, claims, actions, fees and expenses (including interest and penalties due and payable with respect thereto and reasonable attorneys' and accountants' fees and any other reasonable out-of-pocket expenses incurred in investigating, preparing, defending or settling any action), including any of the foregoing arising under, out of or in connection with any breach of this Agreement, any actions associated with this Project or resulting from the use of any playground property and equipment, including those for personal injury, death, or property damage, except to the extent resulting from the gross negligence or willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.
- (k) Data and Reporting Requirements. The Community Partner shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KaBOOM! to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by KaBOOM! within 2 weeks from the Build Day and a 6-month survey provided by KaBOOM! within 7 months from the Build Day.

2. Obligations of KaBOOM!.

- (a) Playground Build. KaBOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
 - (i) Coordinate Funding Partner participation, facilitate playground design, including regular planning meetings, and work with vendors to procure equipment and materials in a timely manner, except to the extent that safety surfacing other than engineered wood fiber is used, which shall be procured by the Community Partner.
 - (ii) Manage construction logistics for the Project, coordinate playground site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available on the Build Day.
 - (iii) Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
 - (iv) Make available certain educational and promotional materials related to the Project.
- (b) Inspection. KaBOOM!, in collaboration with the Community Partner, will secure a Certified Playground Safety Inspector to review the playground structure at the conclusion of the Build Day (or, if KaBOOM! assumes responsibility for the playground construction going beyond one day, at the conclusion of the installation) to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the Build Day is not completed on the Build Day due to failure of the Community Partner, in which case the Community Partner shall secure the Certified Playground Safety Inspector.

- (c) Promotion. KaBOOM! will provide proposed promotional materials relating to the Project for the Community Partner's review and approval, which approval shall not be unreasonably withheld or delayed.
 - (d) Website Listing. KaBOOM! will place the playground on its list of KaBOOM! builds on the KaBOOM! website and KaBOOM! will send information to the Community Partner on playground maintenance programming and enhancements.
 - (e) Post-Build Day. The Community Partner shall (i) within one week following the Build Day, complete and submit a Post Build Report, in the form to be made available by KaBOOM!, and (ii) shall use its commercially reasonable efforts to provide, and otherwise shall cooperate in good faith with KaBOOM! regarding obtaining, such other information related to the Project as KaBOOM! from time to time may request.
3. Build Day Postponement. The Build Day shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playground. The decision to postpone the Build Day will be made by majority agreement of the representatives of KaBOOM!, the Community Partner and the Funding Partner, except where such decision must be made by KaBOOM! on the construction site and representatives of the Community Partner and the Funding Partner are not available for consultation. In the event that the Build Day is postponed, KaBOOM!, the Community Partner and the Funding Partner shall develop a plan for rescheduling the Build Day at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Day, including, without limitation, equipment, labor and materials, storage and travel costs and expenses; *provided, however*, that the Funding Partner shall be notified of the estimated amount of such additional expenses in connection with rescheduling of the Build Day. Notwithstanding the foregoing, in the event that the date of the Build Day is cancelled or changed as a result of the Community Partner's failure to satisfy its obligations in connection with the Project, then the Community Partner shall be liable to KaBOOM! and the Funding Partner for all such additional expenses related to the rescheduled Build Day.
 4. Funding Partner Relations. KaBOOM! has a separate contract with the Funding Partner pursuant to which the Funding Partner has agreed to provide financial and human resources for the Project. In recognition of the Funding Partner's contribution of such resources, the Funding Partner shall receive first placement on any recognition materials developed for the Project, including playground signage, banners, T-shirts, press releases, website and newsletter stories, and flyers, and the Community Partner shall not solicit sponsors or donors in relation to the Project whose products or services directly compete with the products or services of the Funding Partner as identified to the Community Partner by KaBOOM! and/or the Funding Partner. In the event the Community Partner solicits other sponsors or donors, then the Community Partner shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.
 5. Termination. In the event that the Community Partner fails to make the payments required under Section 1(a) or otherwise breaches this Agreement, KaBOOM! may terminate this Agreement upon written notice to the Community Partner of such termination. Furthermore, if either party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and either party may terminate this Agreement if the other is unable to perform any obligation hereunder for a period longer than ten (10) calendar days due to such force majeure event, in which case KaBOOM! shall refund to the Community Partner any amounts paid to KaBOOM!, less expenses already committed and/or incurred prior to the date of such termination. If, upon termination as provided herein, the sum due KaBOOM! by the Community Partner exceeds the sum paid to KaBOOM! hereunder, the Community Partner shall pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within thirty (30) days of invoice. Except as set forth above, upon any termination, this Agreement shall become void and have no effect, and no party shall have any liability to the other party, except that nothing herein will relieve any party from liability for any intentional breach of this Agreement prior to such termination.
 6. General Provisions. The Community Partner represents to KaBOOM! that all information provided by it to KaBOOM!, including in the Playground Profile Application, is true, correct and complete in all respects and does not omit any information relevant to the Project. Each party has all requisite power and authority, including any necessary approval

by its governing body, to execute and deliver this Agreement, and to perform its obligations hereunder. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and where expressly stated, their affiliates and representatives. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to conflicts of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby. This Agreement may be altered, modified or amended only by a written document signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such party's signature below. The Funding Partner shall be an intended third party beneficiary of Sections 1(b), (e), (f), (g), (h), (i) and (j) and Sections 2(b), 3, 4 and 6 of this Agreement and is entitled to enforce its rights under such sections as if it were a party to this Agreement.

By executing this Community Partner Playground Agreement where indicated below, each of KaBOOM! and the Community Partner agrees, as of the date identified above, to be legally bound by all of the terms and provisions set forth above.

«CP»

KaBOOM!, Inc.

By: _____
Name: «Signatory_1»
Title: «Sig_1_Title»

By: _____
Name: Gerry Megas
Title: Chief Financial Officer

Address:
«S1_Address»
T: «S1_Phone»
«S1_Fax»
e-mail: «S1_Email»

Address:
4301 Connecticut Ave. NW, Suite ML-1
Washington, DC 20008
T: (202) 464- 6180
F: (202) 659-0210
e-mail: gmeegas@kaboom.org

«CP_2»

«Signatory_2»
«Sig_2_Title»

«S2_Address»
«S2_Phone»
«S2_Fax»
«S2_Email»

Contact information for the person who should receive KaBOOM! invoices:

Name: «Invoice_Name»

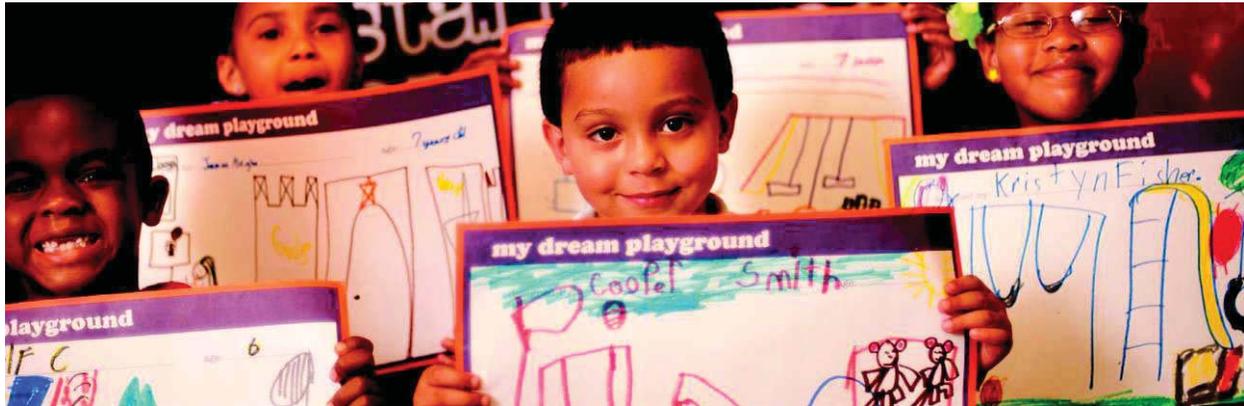
Telephone number: «Invoice_Phone»

Mailing Address:
«Invoice_Address»

Email: «Invoice_Email»

«Invoice_Fax»

Build it with KaBOOM! Project Summary



KaBOOM! is the national non-profit dedicated to the bold goal of ensuring that all children, particularly the 16 million American children living in poverty, get the balance of active play they need to become healthy and successful adults. KaBOOM! creates and catalyzes great places to play, inspires, empowers and leads play advocates, and educates and elevates the societal conversation about the importance of play in children's lives. KaBOOM! has been a powerful champion for play since its founding in 1996, working with partners to build, improve and open more than 15,000 playgrounds, engage more than 1,000,000 volunteers and serve more than 6,600,000 children.

Contents

[Who's Who | Getting to Know the PLAYers](#)
[Project Timeline](#)
[Site Preparation & Construction](#)
[Administrative & Legal Responsibilities](#)
[Community Engagement | The Planning Committee](#)
[KaBOOM! Corporate Sponsorship Policy](#)

Who's Who | Getting to Know the PLAYers

KaBOOM!

The Community Outreach team at KaBOOM! is responsible for screening and guiding applicants for playground projects through the selection process and ultimately preparing organization/s for a *community-led* play space project. KaBOOM! will:

- Pair partners with a certified playground safety inspector Project Manager & Installer
- Provide coaching and guidance for approximately 8 – 10 weeks of project planning
- Facilitate Design Day in person, leading discussion around community building
- Facilitate Build Week in person, serving as a liaison between partners and vendors
- Support community's relationship with a sponsor, also known as a Funding Partner
- Offer tools and mentorship from our growing [Playmaker Network](#) for the community

Community Partner | That's You!

A Community Partner can be one or several child-serving non-profits serving a high need population in need of a safe place for children to play. We look for Community Partners who have a "Can Do" spirit, are prepared to take on the roles and responsibilities involved in completing a community-built playground project. Community Partners will:

- Build playspace that includes 2500 square foot playground with [enhancement projects](#)
- Form a committee of 10 – 15 community members working as a team on project planning
- Develop meaningful relationships to support community-build planning process
- Own or attain permission to build on available land
- Complete necessary site preparation
- Assume insurance, maintenance, and liability of the new play space
- Research and secure any necessary permits required locally to build play space
- Contribute a cash contribution towards the cost of equipment
- Host Design Day and Build Week

Funding Partner | The Sponsor

KaBOOM! has worked with more than 200 [Funding Partners](#) over the past 18 years to build more than 2,400 playgrounds, creating places to play for an estimated 6.6 million children. Many of our Funding Partners want to make an impact in specific geographic areas, such as where they are based or have a local office, so they designate the city they would like to build in and provide insight into the type of Community Partner with whom they are hoping to work. Funding Partners will:

- Generously donate the majority of funds needed for the playground project
- Select their Community Partner for the play space project
- Commit volunteers to help build the playground alongside community volunteers
- Establish a relationship with their KaBOOM! Community Partner
- Support our collective vision to promote and protect play through their networks

Project Timeline

Confirming Selection

Each Build It with KaBOOM! opportunity is extremely competitive. In order to consider potential organizations, KaBOOM! requires the submission of several key documents before the application is considered complete (see [Administrative & Legal](#)). When a Community Partner is selected by a Funding Partner, the general timeline between notifying Community Partner of their selection and meeting the Project Manager and Funding Partner is two weeks, although in some cases it may be more or less. During this time, selected partner(s) will want to mobilize all that expressed interest in their involvement.

Design Day¹

The official kick off ...this is where the fun begins. It is when we give the true play experts—the kids—a chance to tell us what they would like to see on their new playground. Design Day is also the time to rally the community, get them committed to joining the planning committee and ask for their input on the playground design.



1 hr

Site Walk



1 hr

Youth Portion



2+ hrs

Community Meeting



Site Walk | The purpose of the site walk is to familiarize the Project Manager with the site for the new playground with key representatives of the Construction committee and those knowledgeable about site preparation, applicable permitting, and installation decisions.

Youth Portion | This energetic and heartwarming session is where children will be asked to draw and present their dream play spaces! A minimum of 20 children from the direct community and/or served by the partnering organization(s) must be present.

Community Meeting | At least 20 adults should participate in this “town hall” type meeting, with the central goal of Design Day being to finalize a planning committee. Participants should be interested in taking on responsibility during the entire process.

Build Week

Prep Day 1	Prep Day 2	Build Day
30 volunteers	30 volunteers	200 – 250 volunteers
8 am – 5 pm	8 am – 5 pm	8 am – 3 pm

Prep Day volunteers take care of various jobs (unloading playground equipment, cutting lumber for enhancement projects, priming walls for murals, etc.). It is not always necessary to use both Prep Days if everything is accomplished on Prep Day 1, but you should be prepared to recruit for both days. **Build Day** typically runs from an 8 am arrival on site to a 3 pm ribbon cutting ceremony. Volunteers should plan to stay for the duration of the day.



¹ Following Design Day, the Project Manager will submit the community’s wish list to Playworld Systems. Playworld’s designers will produce three (3) custom designs and the community will be responsible for picking the winning design.

Site Preparation & Construction

Construction Committee

The goal of this team is to prepare the site for the build and get the tools and materials needed as introduced during outreach and implemented during the planning process.

- 1. Site preparation** – The Community Partner is responsible for the completion of site preparation. The entire playground footprint must be prepared to a flat, dirt surface with no more than a 2% grade and any existing playground equipment within this footprint must be removed. Different ground surfacing involves alternative preparation expectations that would be discussed during screening. Test holes will be requested by the Project Manager to get a sense for the challenges around hole digging. This must all be completed at least two weeks before Build Day.
- 
- 2. Soil Testing** – If selected, The Community Partner must have the soil tested of proposed playground site for levels of lead and arsenic prior to the Design Day. Partners may identify the lab of choice as long as they test for lead and arsenic. Past Community Partners have used the following company with success: testamericainc.com/locations/locationmap.htm. It is the community partners' responsibility to have the results analyzed according to local standards to see if the levels are acceptable. *If levels are too high, it is the Community Partner's responsibility to remediate the soil appropriately.*
 - 3. Utility Check** – If selected, the Community Partner must have public and private utility checks completed. The public utility check should be a free service from utility providers. The first check must happen right after a site is selected and **completed by Design Day** so any utility lines that will affect the design of the playground can be taken identified when the playground is designed. It is the responsibility of the Community Partner to extend the utility check to cover the Build Week, when holes will be dug for the playground.
 - 4. Signage** – A sign welcoming visitors to the playground will be installed near the entrance of the playground. The Welcome Sign is two-sided and measures 30.25 inches by 12.25 inches. The language on the sign will include the appropriate age range of the playground as decided by the Community Partner as well as the organization's logo(s) and the logos of KaBOOM! and the Funding Partner.
 - 5. Tools** – The community is collectively responsible for providing the tools necessary for the Prep Days and Build Day. We encourage communities to find ways to gather the required tools through lending and by involving other community groups or members in the project, saving the cost of purchasing the tools. Some cities have public tool banks, which is a great place to start.

Sample Tool List & Sample Pictures

- Wheelbarrows (15)
- Spade shovels (30)
- Rock/metal rakes (30)
- Digging bars (2 - 3)
- Manual post hole diggers (5)
- Cement (or garden) hoes (15)
- Garden hoses (2 - 3) with Spray Nozzles
- Power Strips/Cord Splitters (5)
- Pop Up Tents (4)
- 6' & 8' Step Ladders (2 – 3 each)
- 4 lb. Mini Sledge & 8 lb. Sledge Hammers (2 each)
- Claw Hammers (10)
- Tamps (3)
- Corded Drills (10+)
- Cordless Drills with Chargers (5+)
- 25' & 100' Extension Cords (5 each)
- Garbage Cans (3-5)
- Tables (15) & Chairs (60)



Skid Steer (1)



12" & 18" Auger Bits



Spade Shovels



Metal Rakes



Cement Mortar Hoes



Wheelbarrows



Manual Post Hole Diggers



Digging Bar



Tamp



12" Miter Saw



Drills (Cordless / Corded)



6' & 8' Step Ladders

Sample Enhancement Projects

Work with a KaBOOM! Project Manager to identify projects that will transform your outdoor space for community gatherings and activities. More examples can be found on our [website](http://www.kaboom.org).



Mendocino Bench



Picnic Tables



Planter Bench



Wooden Shade Structure



Asphalt Games / Painting



Gardening

Administrative & Legal Responsibilities

1. **Community Partner Agreement** – KaBOOM! requires potential Community Partner(s) to review and approve the draft Community Partner Agreement by any legal or board review, before moving ahead in the competitive application process. Referred to as a *Letter of Agreement (LOA)*, we cannot fully consider any organization until this document has been reviewed and approved by all necessary parties. You do not need to fill out the template. **Please direct any questions or comments to your Community Outreach team member immediately.**
2. **Land Ownership** – Community Partners must provide either proof of land ownership (a copy of the deed, tax records, or a property survey) or a copy of their current lease and a Letter of Permission from the landowner. KaBOOM! will provide the template letter in the latter case.
3. **Insurance** – Community Partners must be able to provide insurance for the playground amounting to one million dollars in commercial liability insurance or equivalent, as well as add KaBOOM! and the Funding Partner as ‘additional insured’ parties for the Build Week and one year thereafter. Proof of insurance must be submitted to KaBOOM! 30 days prior to the Build Day. Insurance is not required to be in place until Build Week. For self-insured entities, the self-insurance must be primary for the same amount of time. It is imperative that applicants check in with their insurance broker to ensure this can be completed.
4. **Permitting** – Community Partners must determine whether or not they need a permit to build a playground at the proposed site. Identifying the process for obtaining and ultimately obtaining a permit (if applicable) can be time consuming; it is important to understand these requirements during the selection process, so that KaBOOM! and the community partner can meet timelines required by any applicable permit. Prior to the KaBOOM! Build Day, securing a permit is the sole responsibility of the Community Partner.
5. **Community Contribution** – Community Partners are responsible for raising a financial contribution of \$8,500 for the project, which may be raised using a combination of existing funds, grassroots fundraising and local business support.² This cash contribution is due to KaBOOM! 30 days before the Build Day and goes directly toward the playground equipment costs.
6. **Playground Surfacing** – *Build it with KaBOOM! Grants* include Engineered Wood Fiber (EWF). EWF is safe and ADA compliant under play structures, as long as it is regularly raked to an even, deep distribution. Community Partners interested in alternative forms of safety surfacing are responsible for fully securing the funds for site preparation, completing site preparation in advance, purchase, and installation of alternative safety surfacing.

² KaBOOM! encourages Community Partners to reach out to local organizations for support, but please be aware that KaBOOM! enforces a **Corporate Sponsorship Policy** which we ask all Community Partners to abide by to ensure that the Funding Partner receives primary acknowledgement and that no competitors of the Funding Partner are solicited for support.

Community Engagement | The Planning Committee

Planning Committee³

Committee Chairs and the Planning Committee make up the core of every KaBOOM! project. If selected, Community Partners are responsible for identifying Chairs and recruiting 10-15 committed individuals who will drive the project forward to ensure success, as well as focusing on the lasting impact the project can have on the community. Planning Committee members should be available to participate in a one-hour weekly conference call with the Funding Partner and KaBOOM! Project Manager as well as commit to time in-between calls to fulfill responsibilities.

A toolkit with resources for all planning committee teams can be found on our website, [here](#).

The Planning Committee will be broken down into the following Leaders & Teams

Main Points of Contact / Committee Chairs

- Champion community engagement throughout the process
- Track & celebrate the community's accomplishments on a weekly basis

Play Chair

- Identifies a volunteer to lead a playful warm-up during Build Day kick-off
- Develop ways for children to participate in the project from the beginning to the end
- Teach & mentor youth about volunteerism & instilling ownership of the playground
- Facilitate play activities into the planning process build day and post-build
- Criteria: creative, responsible and good with children

We've heard from our alumni that there is significant impact made on the individual child who is a part of the planning and implementation of a KaBOOM! project. Ideas for encouraging and supporting youth involvement are available on our [website](#).

Recruitment Team

- Helps recruit 30 volunteers on Prep Day 1 and Prep Day 2
- Helps recruit and track anywhere from 75 – 200 community volunteers for Build Day
- At least half of the volunteers should be community members, residents, and/or parents
- Secures a sound system with mic to play music and make announcements during build day
- Identifies a photographer and/or videographer to document Build Day

Fundraising Team

By contributing to the project financially, the community gains greater ownership of their playground and this helps ensure long term care and maintenance.

- Prepares a solicitation letter and distributes to potential community supporters
- Hosts fundraising events that encourages broad community support and contribution
- Tracks donations and submits payment of \$8,500 to KaBOOM! in a timely fashion

³ At least 50% of the Planning Committee must be **non-staff**, including parents, grandparents or guardians of children served by the partnering organization, as well as interested residents and community members.

Food Team

This team will build new relationships and help shine a light on the project and the great work communities are doing with businesses that are a part of the community.

- Feeds volunteers a healthy and easy to serve breakfast & lunch all 3 days of build week
- Provides healthy snacks & beverages to keep volunteers hydrated all 3 days of build week
- Develops a plan for serving, distributing, and cleaning up a designated food area
- Ensures that there are suitable vegetarian options

Logistics Team

- Secures a storage area to store the equipment once it is delivered⁴
- Ensures restrooms are accessible for volunteers
- Identifies running water & electrical sources for build week
- Secures a 40 cubic yard dumpster and recycling container
- Knowledgeable about what debris from Build Day can be recycled or reused
- Develops a plan for on-site safety
- Secures a First Aid/CPR certified volunteer for each day of build week

PR Team

This team will be responsible for presenting this project to the community at large and to volunteers on Build Day.

- Participates in a PR specific call approximately 2 weeks after Design Day
- Generates press, publicity and social media materials announcing the project
- All materials must be sent to your KaBOOM! Project Manager prior to distribution

KaBOOM! Corporate Sponsorship Policy

Please be aware that KaBOOM! has a Corporate Sponsorship Policy that all Community Partners must abide by to ensure that contributions from the Funding Partner are appropriately acknowledged:

- Volunteers recruited from organizations or companies should be in groups of 10 or less
- No branded clothing or signage from groups other than the Community and Funding Partner may be worn during build week
- Volunteers cannot wear any hats, shirts, buttons, etc. identifying them as part of another group or organization
- Only the Funding Partner, Community Partner and KaBOOM! will have permanent signage or recognition on the project site
- Community Partners cannot solicit support from direct competitors of the Funding Partner
- If a restaurant donates food, they may include menus or cards on the serving table
- Other organizations and companies may be thanked by making one large banner recognizing all project supporters

⁴ In most cases, the KaBOOM! project budget can cover the expense of a temporary storage container, its delivery and pick-up from site.