



COMMUNITY PARTNER AGREEMENT

March 11, 2021 ("the Effective Date")

KABOOM!, Inc. (referred to herein as KABOOM!) is pleased that The City of St. Paul (referred to herein as the Community Partner) has agreed to collaborate with KABOOM! and to be determined funding partner (referred to herein as the Funding Partner) in the construction of a new playspace at Dunning Park, 1221 Marshall Ave, St. Paul 55104 (the "Project"). This Community Partner 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.

The Community Partner acknowledge the playground project is contingent upon KABOOM! and or The City of St. Paul receiving funding. In the event the funding has not been secured the playground agreement is immediately terminated upon written notification from KABOOM!

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 provide a financial contribution not to exceed \$17,000 to KABOOM!, which will apply the funds directly to the purchase of the equipment. The payment will not be applied against the Community Partner site preparation cost as defined below in 1(b)(iii). 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 Week (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 playspace in its entirety, for the lifetime of the product, including the equipment and/or safety surfacing at the time purchased by KABOOM! and/or the Funding Partner.
 - (ii) Permits. Prior to Build Week, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playspace 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) preparing the site for the installation of the Project at least two weeks before Build Week, which may include removing existing equipment, footers and safety surfacing, grading the land, repairing existing surfacing, removing fencing and performing soil tests; (2) 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! community build manager who shall supervise the planning and installation of the equipment (the "Community Build Manager"); and (3) 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 Community Build 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 Week, including any postponement. This includes designating a Community Partner staff member or volunteer to serve as the safety leader onsite. This safety leader will register volunteers, ensure they have signed waivers, ensure they wear required cloth face coverings, and ask that they leave the project site exhibiting symptoms of illness and post signage for the project from the CDC. (sample signage: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs-11x17-en.pdf>)

(v) Maintenance. Maintenance of the 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 (a copy of which has been provided) for the play equipment and, with the support of the property owner (if owner is a separate party), shall maintain the equipment and the property before and after the Build Week to ensure a safe and attractive playspace. In furtherance of the foregoing, in the event any 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 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 equipment available to children in the same manner contemplated as of the Build Week and maintain (or permit the Community Partner to maintain) such play equipment in accordance with the maintenance program. In addition, if applicable, the Community Partner shall accept and maintain engineered wood fiber as play equipment safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playspace. Guidance and materials for the purpose of developing a maintenance plan for the playspace are available, upon request, from the play equipment and safety surfacing manufacturers.

(c) Playspace Design. In the event, Public Health guidelines and public health conditions permit public gatherings the Community Partner agrees to host a KABOOM!-facilitated "Playspace Design" events with at least twenty (20) adult volunteers and twenty (20) youth. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.

In the event, Public Health guidelines and public health conditions do not permit or preclude public gatherings, the Community Partner agrees to participate in KABOOM!-facilitated Playspace Design events remotely and virtually. The Community Partner will recruit at least twenty (20) adult volunteers and twenty (20) youth. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.

(d) Build Week. The Community Partner shall recruit forty (40) adult volunteers to participate in preparation activities for the four days of Build Week with approximately 10-30 volunteers needed per day from the community to participate in a four-day installation event for the Project, which is scheduled to occur from «Build Week dates_» and which is referred to herein as the Build Week. The Community Partner shall ensure that all volunteers sign a waiver (a copy of which has been provided). Throughout the Build Week, the Community Partner shall provide snacks, water, tools, dumpsters, music, hand washing and/or hand sanitizing facilities 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 signage (a copy of which has been provided), and shall be no greater than 19 ½ inches wide by 30 ¼ inches tall and mounted on poles in a mutually agreed location. If applicable, the Community Partner shall allow individual instructional signs to accompany the equipment.
- (g) 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 equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers (a copy of which has been provided). 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 confirms that it is self-insured and shall continue to maintain such self-insurance from no less than seven (7) days prior to the Build Week and through the first anniversary of Build Week for worker's compensation and general liability (including for liability for bodily injury, death and property damage that may arise out of or be based upon the use of the playground), provided that such coverage shall not be required to the extent the Community Partner is immune from any such liability under applicable law. This self-insurance shall be primary and non-contributing with any other insurance covering KABOOM! and its Funding Partners for actions or omissions of the Community Partner. KABOOM! confirms that it has general liability insurance and shall continue to have general liability insurance through the course of the Build to cover its own actions and omissions related to the Build. This general liability insurance shall be primary and non-contributing with any other insurance covering Community Partner for any damage, death, or injury related to KaBOOM's actions or omissions
- (j) Liability. The Community Partner and KaBOOM! shall each be responsible for its and its employees' own acts and the results thereof in connection with their performance of this Agreement. The liability of the Community Partner, its employees, representatives and agents shall be governed by provisions of Minnesota Statutes Chapter 466 et. seq. and other applicable law. The Community Partner further covenants and agrees that KaBOOM!, its Funding Partners and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives shall have no liability 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), arising under, out of or in connection with any breach of this Agreement, the use, operations, maintenance of any playground property and equipment occurring after the completion of the Build, including those for personal injury, death, or property damage, except to the extent resulting from the willful misconduct of such person. The Community Partner and KaBOOM! agree that this provision is not intended to cover any actions or omissions of KaBOOM!, its Funding Partners and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives that are taken during the course of the Build. 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 Week and a 6-month survey provided by KABOOM! within 7 months from the Build Week.

- (l) Code of Conduct. The Community Partner agrees to comply with the build site rules (a copy of which has been provided). The Community Partner shall allow the build site rules to be displayed on site and communicate and enforce the build site rules for all participants in the Project's Design Day and Build Week events.

2. Obligations of KABOOM!

- (a) Project. KABOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
 - (i) Coordinate Funding Partner participation, facilitate 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) On the behalf of and in collaboration with the Community Partner, KABOOM! manage construction logistics for the Project, coordinate site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary small hand tools and materials and other general supplies are available on the Build Week. Lead the Build Week activities, including the coordination of Build Week volunteers.
 - (iii) Make available certain educational and promotional materials related to the Project.
- (b) Inspection. KABOOM!, in collaboration with the Community Partner, will secure an Installation Supervisor to review the structure at the conclusion of the Build Week to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the installation is not completed during the Build Week due to failure of the Community Partner, in which case the Community Partner shall secure the Installation Supervisor
- (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 playspace on its list of KABOOM! builds on the KABOOM! website and KABOOM! will send information to the Community Partner on maintenance programming and enhancements.
- (e) Post-Build Week. The Community Partner shall (i) within one week following the Build Week, complete and submit a Post Build Survey, 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 Week Postponement

- (a) COVID-19 Public Health Compliance. The Community Build Manager will monitor public health guidelines and local conditions to ensure adherence to public health safety at specific timelines prior to Build Week. If the project does not meet requirements, KABOOM!, the FP and the CP will agree on a postponement date at least 1 month later than the original Build Week and if health indicators allow project completion. If health indicators do not allow project completion within close to the originally scheduled date, project will be rescheduled on a mutually agreed upon date or converted to a professional installation with no volunteers participating in building the playspace.
 - (i) If a project does not meet requirements at 6 weeks out, the design process will be completed and KABOOM! will work with relevant parties (playground manufacturer, playground safety surfacing and construction materials) to reschedule deliveries.
 - (ii) If a project does not meet requirements at 4 weeks out, the equipment may already be in manufacturing, KABOOM! will work with the manufacturer to halt manufacturing if possible and find a storage solution if not possible.
 - (iii) If a project does not meet requirements at 2 weeks out, KABOOM! will reschedule deliveries of construction materials and arrange storage for any materials that cannot be rescheduled together with the Community Partner

- (iv) If a project does not meet requirements at 1 week out or less, KABOOM! will reschedule deliveries of construction materials and arrange storage for any materials that cannot be rescheduled together with the Community Partner.
 - (v) If health indicators do not allow project completion on the reschedule date, the project will need to be postponed and rescheduled when health indicators allow project completion.
- (b) Weather or other conditions unrelated to COVID-19. The Build Week shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playspace. The decision to postpone the Build Week 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 Week is postponed, KABOOM!, the Community Partner and the Funding Partner shall develop a plan for rescheduling the Build Week at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Week, 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 Week. Notwithstanding the foregoing, in the event that the date of the Build Week 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 Week.
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 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 thirty (30) 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 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 Minnesota, 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.

7. Term. The Term of this Community Partner Agreement shall commence as of the Effective Date and remain in effect through December 31, 2022, unless the term ("Term") is extended or terminated pursuant to the terms hereof by all Parties.
8. Electronic Signatures. The Parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

By executing this Community Partner 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.

The City of St. Paul

KABOOM!, Inc.

By: _____
Name: Mike Hahm
Title: Director, Parks and Recreation

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

By: _____
Name: _____
Title: Office of Financial Services

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

By: _____
Name: _____
Title: Mayor's Office

Approved as to Form:

Sarah K. Sullivan, Assistant City Attorney

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

Name: Bryan Murphy

Telephone number: 651-266-6411

Mailing Address:
25 West Fourth St, 400 CHA
St. Paul, MN 55102

Email: bryan.murphy@ci.stpaul.mn.us

Invoice_Fax: 651-292-7405