



2024 PLAYSPLACE PARTNER AGREEMENT

June 2, 2023

KABOOM!, Inc. ("KABOOM!") is pleased that the City of Fresno Parks, After School, Recreation, and Community Services Department (the "Playspace Partner" or "City") has agreed to collaborate with KABOOM! on the creation of a new Playspace at University Park (the "Project") at 4085 S. Angus St. Fresno, CA 93726. This Playspace Partner Agreement (this "Agreement"), which sets forth the Playspace 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.

1. Funding for the Project

- (a) The project is anticipated to have a cost of \$292,648, of which \$292,648 will come from the Playspace Partner. The Playspace Partner contribution excludes Playspace Partner site preparation responsibility as defined below in 3 (c)(iii).

2. Obligations of KABOOM!

- (a) Project Management. KABOOM! shall manage the overall execution of the Project on behalf of the Playspace Partner. KABOOM! shall supervise the planning and installation of the Playspace, including overseeing the Playspace Design event, presenting Playspace designs, convening committee conference calls, assuring that the necessary materials, tools and equipment are on hand and managing the Playspace installation event, which is referred to as the "Build Week" and which is scheduled to occur during a mutually agreed upon date in the fall of 2023. KABOOM! shall also provide technical and organizational leadership and guidance for the Project, manage construction logistics for the Project, coordinate Playspace site preparation activities with the Playspace Partner, inventory equipment and materials, assure that the necessary tools and materials are available on the Build Week, and lead the Build Week activities, including the coordination of team leaders and volunteers.
- (b) Vendors. KABOOM! shall select and manage vendors that will provide necessary equipment for the Playspace (e.g., surfacing, Playspace equipment, peripheral projects, landscaping, etc.). KABOOM! shall use commercially reasonable efforts to guard against any loss to the Playspace Partner through the failure of suppliers to properly honor their commitments, but KABOOM! shall not be held responsible for any such failure on their part. If the Playspace Partner requires different surfacing, due to environmental or municipal regulations, than that which is provided by KABOOM! the Playspace Partner shall have sole responsibility for vendor selection and installation of the surfacing materials.
- (c) Warranty. KABOOM! will obtain a warranty from the Playspace equipment manufacturers that all equipment meets or exceeds current government-approved safety standards. Obtaining such warranty shall be the total extent of the liability of KABOOM! to the Playspace Partner with respect to the Playspace equipment, and the Playspace Partner agrees that KABOOM! has not made nor is it in any manner responsible or liable for any warranty, representation, or guarantee, express or implied, in fact or in law, relative to any Playspace equipment, including without limitation the quality, mechanical condition or fitness for a particular purpose of the Playspace equipment. Any and all warranties and/or guarantees on Playspace equipment are subject to the respective manufacturers' terms and therefore, the Playspace Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee.
- (d) Inspection. KABOOM!, in collaboration with the Playspace Partner, will secure a Certified Playspace Safety Inspector to review the Playspace structure at the conclusion of the Build Week (or, if KABOOM! assumes responsibility for the Playspace 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 Week is not completed on the Build Week due to failure of the Playspace Partner, in which case the Playspace Partner shall secure the Certified Playspace Safety Inspector.
- (e) Insurance by KABOOM!
- (i) To perform the work in connection with this agreement, KABOOM! shall maintain and provide evidence of, the following insurance coverage: Commercial General Liability with a limit of \$1,000,000 per occurrence with a general aggregate limit of \$2,000,000 and umbrella coverage of at least \$1,000,000 per occurrence; Workers' Compensation with statutory limits for the state in which the work is performed and employers liability insurance with a minimum of \$500,000 per accident; and Automobile Liability for owned, hired and non-owned autos with a combined single limit of \$1,000,000. The Commercial General Liability policy shall name the City of Fresno, its officers, officials, employees, agents and volunteers as Additional Insured, and the policy shall be endorsed to include a Primary and Non Contributory endorsement in favor of the City. The Worker's Compensation policy shall be endorsed with a Waiver of Subrogation in favor of the City of Fresno.
- (ii) As promptly and reasonably practicable following execution of this Agreement and, in any event, at least three (3) business days prior to the first Build Week, the City will be endorsed to the required Commercial General Liability policies held by

KABOOM! and its playground equipment manufacturer as an additional insured by endorsement, which coverage shall be primary and non-contributing with any other self-insurance retention or insurance available to either KABOOM!, the City, even that which is available to each Party to this Agreement per the requirements set forth therein. All evidence of such insurance, which should be available via Certificates of Insurance, must disclose any self-insurance retention and/or deductibles applicable to all required coverage. KABOOM! shall maintain such insurances for the Term of this Agreement.

(f) Insurance by Contractor.

- (i) KABOOM! shall require the playground equipment manufacturer, independent contractor or any subcontractors of the playground equipment manufacturer maintain Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, bodily injury, property damage, personal and advertising injury. Coverage for products and completed operations with limits of two million dollars (2,000,000) aggregate.
- (ii) The coverage shall be primary and non-contributing with any other self-insurance retention or insurance available as to the City and shall name the City as an additional insured with the additional insured endorsement provided to the City. The policy shall protect KABOOM! and the City in the same manner as though each were separately issued.
- (iii) KABOOM! shall require the playground equipment manufacturer, independent contractor or any subcontractors of the playground equipment manufacturer procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident.
- (iv) All policies of insurance must be written on an occurrence basis and must be issued by companies licensed and/or admitted, or authorized to do business, in the State of California having a profitability rating of at least "A-" and a financial size class of "VII," as indicated by the most recent A.M. Best publication.
- (v) Promptly upon confirmation of Build Week, the playground equipment manufacturer shall cause KABOOM!, the City to be added as additional insured parties to the Commercial General Liability policies held by LSI, as an additional insured by endorsement, but only for claims for bodily injury or property damage caused by an alleged negligent act, error or omission of playground equipment manufacturer and/or its Installation Supervisor, or an alleged product defect in the playground equipment provided by the playground equipment manufacturer for the Project which coverage shall be primary and non-contributing with any other insurance available to the additional insured.
- (vi) Upon request by the City, KABOOM! shall submit written evidence of any insurance required by this Agreement.

- (g) Website Listing. KABOOM! will place the Playspace on its list of KABOOM! builds on the KABOOM! website and KABOOM! will send information to the Playspace Partner on Playspace maintenance programming and enhancements.

3. Obligations of the Playspace Partner.

- (a) Compensation. The Playspace Partner agrees to contribute to KABOOM! the amount of \$292,648 according to the following schedule:

- (i) Twenty-five percent (25%) of the total (\$73,162) shall be due within thirty (30) days of signing of this Agreement.
- (ii) Seventy percent (70%) of the total (\$204,853) shall be due forty-five (45) days prior to the Build Week date.
- (iii) Five (5%) of the total (\$14,632) shall be due within fifteen (15) days of the completion of the Playspace installation.
- (iv) The total of any additional fees and expenses incurred pursuant hereto will be due within thirty (30) days of invoicing.

- (b) Timeline. The Playspace Partner will respond to KABOOM! on the dates and times reasonably set forth for the Project.

- (i) The Playspace Partner and KABOOM! will identify a Build Week date which shall occur on a mutually agreeable date no later than December 31, 2024.

- (c) Project Site.

- (i) Ownership. At the time of execution of this Agreement, the Playspace Partner shall provide KABOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Playspace Partner or a letter from the property owner showing approval for the Project. The Playspace Partner is the owner of the Playspace in its entirety, for the lifetime of the Playspace, including the equipment and/or safety surfacing at the time purchased by KABOOM! and/or the Playspace Partner.
- (ii) Permits. Prior to the Build Week, the Playspace Partner shall obtain all necessary permits and licenses regarding the installation, possession and use of the Playspace in compliance with applicable laws and regulations.

- (iii) Preparation. The Playspace Partner shall ensure that the Project site is safe for volunteers and children, which responsibility includes, without limitation: (1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Week Playspace installation; (2) preparing the site for the installation of the Project at least two (2) weeks before Build Week, which includes but is not limited to removing existing Playspace 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 within two weeks of Design event and with all utility check documentation provided upon completion to the KABOOM! community build manager who shall supervise the planning and installation of the Playspace (the "Community Build Manager"); and (4) conducting up to two (2) soil site tests as reasonably requested by KABOOM!, with the first test being completed within two weeks of Design event and with all soil check documentation provided to the Community Build Manager upon completion. The Playspace Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
- (iv) Safety and Security. The Playspace 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 Playspace 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 deleave 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 Playspace facility and supervision of its use is the sole responsibility of the Playspace Partner. The Playspace Partner shall collaborate with KABOOM! during the Project planning process to develop a maintenance program for the Playspace and, with the support of the property owner (if owner is a separate party), shall maintain the Playspace 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 Playspace 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 Playspace Partner for any reason, then the Playspace Partner promptly shall notify KABOOM! following its becoming aware of such situation and shall, at the Playspace Partner's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the Playspace 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 Playspace available to children in the same manner contemplated as of the Build Week and maintain (or permit the Playspace Partner to maintain) such Playspace in accordance with the maintenance program.¹ In addition, the Playspace Partner shall accept and maintain engineered wood fiber as Playspace 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 Playspace equipment and safety surfacing manufacturers, including Landscape Structures, Inc.
- (d) Playspace Design. In the event, Public Health guidelines and public health conditions permit public gatherings the Playspace 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 Playspace Partner agrees to participate in KABOOM!-facilitated Playspace Design events remotely and virtually. The Playspace 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.*
- (e) Volunteers. The Playspace Partner shall use its reasonable efforts to engage no more than one hundred and fifty (150) 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 will occur during a mutually agreed upon week, and which is referred to herein as the Build Week. The Playspace Partner shall ensure that all volunteers sign a waiver attached hereto as Exhibit A. Throughout the Build Week, the Playspace Partner shall provide snacks, water, tools, dumpsters, music, hand washing and/or hand sanitizing facilities and restroom facilities for all volunteers.
- (f) Additional Materials. If the Playspace Partner decides to purchase additional equipment, including materials for site preparation, upgrades or improvements, to supplement materials secured by KABOOM! through the Project budget, then the Playspace Partner is responsible for paying for the materials directly. The Playspace Partner will hold KABOOM! harmless of any payments or liability with respect to the additional items ordered.
- (g) Playspace Costs. The Playspace Partner is solely responsible for and shall hold KABOOM! harmless from any costs beyond the proposed Project budget, including costs incurred by the Playspace Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KABOOM!.
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- (h) Signage. The Playspace Partner shall allow the name and logo of KABOOM! to be displayed on permanent Playspace signage, which shall be substantially in the form provided to the Playspace 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.
 - (i) Insurance. The City is self-insured and is responsible for providing insurance coverage for its own employees and against liability for any claim subject to the government torts act. This insurance shall be primary and non-contributing with any other insurance covering KABOOM!.
 - (j) Data Reporting. The Playspace 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
 - (k) Code of Conduct. The Playspace Partner agrees to comply with the build site rules (a copy of which has been provided). The Playspace 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 Playspace and Build Week events.
4. Grant of Promotional Rights. KABOOM! will provide an opportunity for the Playspace Partner name and logo to appear on the permanent Playspace site sign and on certain materials developed jointly by KABOOM! and the Playspace Partner pertaining to the each Project (if more than one). The Playspace Partner may post banner(s) with its name and logo at the Project site for Playspace Design and Build Week events.
5. Intellectual Property.
- (a) During the term of this Agreement, KABOOM! hereby grants to the Playspace Partner a limited, non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use the name and mark KABOOM! (the "Mark") and the tagline "Space to play, Sparks for change" (the Tagline), each in any form or embodiment, as well as the designs and logos as specified on the KABOOM! website at www.kaboom.org/style (the "Logos", and together with the Mark and the Tagline (and any successor marks, taglines, or logos), the "KABOOM! Marks"), and the Playspace Partner hereby grants to KABOOM! a limited, non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use the Playspace Partner's name, trademarks, service marks, and logos (collectively, the "Playspace Partner Marks"), solely to promote the Project, including, without limitation, in broadcast, print, and Internet media and advertising, press releases, and other media materials, internal communications materials, and promotional materials, but only as provided below. Other than in connection with the materials jointly developed as provided in Section 3, each party will obtain the prior written approval of the other before using the other party's name, marks, or logos in connection with any publicly distributed materials, provided that the party whose approval is being sought will not unreasonably withhold or delay its approval. KABOOM! shall have the right to review and approve the type, manner, location, and duration of any advertisements or promotions in which the Playspace Partner references the KABOOM! Marks, the Project, or its participation in the Project. All such advertisements and promotions, inclusive of merchandising, sampling and special events, shall be at the expense and liability of the Playspace Partner.
 - (b) The Playspace Partner acknowledges and agrees that KABOOM! is the sole owner of all right, title and interest in and to the KABOOM! Marks, as well as all goodwill attached or which shall become attached to any of the KABOOM! Marks. The Logo is comprised of the Mark and Tagline in a starburst design. On occasion, the Logo may be used without the Tagline; however, prior written approval of KABOOM! is required for such use. Guidelines for the usage of the Logo are available from KABOOM! or via the Internet at www.kaboom.org/style. The Playspace Partner further acknowledges and agrees that, as between the parties, KABOOM! is the sole owner of all label designs, product identifications, artwork, symbols, devices, manuals, guides, inventions, and publications produced as part of KABOOM! operations, services, and programs. The parties acknowledge that KABOOM! may take all steps to protect the KABOOM! Marks and its other property as KABOOM! deems appropriate.
 - (c) KABOOM! acknowledges and agrees that the Playspace Partner is the sole owner of all right, title and interest in and to the Playspace Partner Marks, as well as all goodwill attached or which shall become attached to any of the Playspace Partner Marks. The Playspace Partner shall make available to KABOOM! the guidelines, if any, for the usage of the Playspace Partner Marks. KABOOM! further acknowledges and agrees that, as between the parties, the Playspace Partner is the sole owner of all label designs, product identifications, artwork, symbols, devices, manuals, guides, inventions, and publications produced as part of the Playspace Partner operations, services, and programs. The parties acknowledge that the Playspace Partner may take all steps to protect the Playspace Partner Marks and its other property as the Playspace Partner deems appropriate.
 - (d) The Playspace Partner shall not manufacture, sell, or distribute, or license or otherwise permit the manufacture, sale or distribution of, any merchandise that incorporates or includes the KABOOM! Marks, without prior written consent of KABOOM!.
 - (e) Any use of the KABOOM! Marks by the Playspace Partner will inure to the sole benefit of KABOOM!. The Playspace Partner shall not use the KABOOM! Marks in any manner that would harm the reputation of KABOOM! or disparage or negatively reflect upon the KABOOM! Marks. Upon expiration of or termination of this contract for any reason, the Playspace Partner shall cease all use of the KABOOM! Marks.

6. Build Week Postponement.

- (a) COVID-19 Public Health Compliance. KABOOM! 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! and the Playspace will agree on a postponement date at least thirty (30) days 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.
- (b) Other conditions unrelated to COVID-19. A 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 a Build Week will be made by majority agreement of the representatives of KABOOM!, the Funding Partner and the Playspace Partner, except where such decision must be made by KABOOM! on the construction site and representatives of the Playspace Partner are unavailable for consultation. In the event that a Build Week is postponed, KABOOM!, and the Playspace Partner shall develop a plan for rescheduling the Build Week at the next earliest date possible for each party. The Playspace 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 Playspace Partner shall be notified of the estimated amount of such additional expenses in connection with rescheduling of the Build Week.

7. Termination. In the event that the Playspace Partner fails to make the payments required under this Agreement, KABOOM! may terminate the Agreement upon written notice to the Playspace Partner of such termination. In addition, either party may terminate this Agreement in the event of a breach by the other party of any of its obligations hereunder, which breach (other than in the case of a payment breach), to the extent curable, remains uncured for thirty (30) days after such party has provided written notice of such breach to the other party. 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 calendar days due to such force majeure event, in which case KABOOM! shall refund to the Playspace 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 Playspace Partner exceeds the sum paid to KABOOM! hereunder, the Playspace 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.

8. Indemnification. Except as expressly prohibited by state law, each party will indemnify, defend and hold harmless the other party and its and their respective affiliates' directors, officers, managers, partners, members, shareholders, employees, agents, representatives, successors and permitted assigns 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 actions associated with each Project (if more than one) due to: (a) any alleged or actual breach of this Agreement; (b) any act or omission in the performance of this Agreement by the indemnifying party or any volunteer or other person participating in the Project at the behest of the indemnifying party; or (c) any claims that the indemnifying party's intellectual property infringes a third party's intellectual property, as long as the indemnifying party's intellectual property has been used in the manner contemplated hereby. In addition, the Playspace Partner shall indemnify and hold harmless KABOOM! and its and its 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), resulting from the use of any Playspace property and equipment, including those for personal injury, death, or property damage, except to the extent resulting from the willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.

9. General Provisions. The Playspace Partner represents to KABOOM! that all information provided by it to KABOOM!, including in the Playspace 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 California, without regard to conflicts of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California. 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.

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

City of Fresno

KABOOM!, Inc.

DocuSigned by:

4B59C02BA274430...ne White
Title: City Manager

DocuSigned by:


5D500CAA56C47E...eg
Title: Chief Financial Officer

2600 Fresno Street
Fresno, CA 93721
T: 559-621-7770
e-mail: Georgeanne.white@Fresno.gov

7200 Wisconsin Avenue, Suite 400
Bethesda, MD 20814
T: (202) 464-6091
F: (202) 659-0210
e-mail: gmegas@kaboom.org

DocuSigned by:

A1AA5ECA0B314E5...
Title: City Attorney

DocuSigned by:

2F1BC57F78C4E1...
Title: City Clerk

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

Summer Rooks
City of Fresno – PARCS Project Administrator
Mailing Address: 1515 E Divisadero Ave, Fresno, CA
T: 559-621-2933
Email: summer.rooks@fresno.gov

2023 Playspace Volunteer Build Day Waiver

KABOOM! PLAYSPACE PROJECT -- VOLUNTEER WAIVER AND RELEASE

This form must be signed by or on behalf of each volunteer who will participate in or otherwise be involved with the construction of the FP, CP and KABOOM! Playspace Build (the "Playspace Build" or the "Project"), or will be on the construction site of the Playspace Build, occurring Build Month, Day, Year in City, State. If you are unable to read this print, please speak with the person handling volunteer registration for assistance.

The KABOOM! project and activities will include the playspace construction, side projects and play enhancement projects on and in the periphery of the playspace construction site including, without limitation, building interiors at or near the site. The "playspace construction site" is the physical space where the playspace is being installed; the playspace construction projects are any activities directly related to the installation and placement of the playspace equipment, the mixing of concrete, and/or moving safety surfacing onto the playspace site. Volunteers under age 18 (or under 19 in AL and NE) may not work on the "playspace construction site", as defined above. Volunteers under 18 but who meet this state's minimum age for employment may work on the side projects, such as beautification and play enhancement projects, and other non-playspace construction site projects and may help with preparation for the build day only if they have received and delivered KABOOM! written approval from a parent or legal guardian for participation. Any children under state's minimum age for employment will not be supervised by KABOOM! in any way or be allowed to participate in playspace or non-playspace construction projects managed by KABOOM!; however KABOOM! will work with the community partner to procure supplies for use by these children and to help them plan projects that are occurring on a site that is distinctly separated from the playspace construction site. No children under this state's legal working age should be on the playspace construction site.

I understand that I will be spending the day(s) as a volunteer for the Project and will be participating at my own risk. I acknowledge that my participation is voluntary and does not constitute a condition or requirement of employment. I further acknowledge that the Project will occur at a construction site and that the construction site will be a potentially dangerous place. I attest that I am physically fit and prepared for this event and these activities.

I will not create an unsafe situation for other individuals or myself nor will I use any tool or engage in any task with which I am not completely comfortable. I will abide by all applicable federal, state and local laws, as well as the rules and directions of the sponsors and coordinators. If I see any situation that I feel is unsafe, I will immediately call it to the attention of KABOOM! or a safety coordinator. If I bring any children or young adults with me to participate in the Project, I will be solely responsible for providing for their safety and will keep them under close supervision at all times. FOR EACH PARTICIPANT UNDER 18 (19 in AL and NE), THE PARENT OR GUARDIAN MUST FILL OUT A SEPARATE WAIVER. I understand that a volunteer may be at the Project to provide medical treatment in the event of an injury, and if necessary to assist in arranging transportation to medical facilities, but acknowledge that neither KABOOM! nor any other of the Released Parties (as defined below) are in any way responsible for providing such medical volunteer or treatment.

Participation includes possible exposure to and illness from infectious diseases and biological outbreaks, including but not limited to MRSA, influenza, and COVID-19. While particular rules and personal discipline may reduce this risk, the risk of serious illness and death does exist; and, I knowingly and freely assume all such risks, both known and unknown, even if arising from the negligence of the releases or others, and assume full responsibility for my participation; and, I willingly agree to comply with the stated and customary terms and conditions for participation as regards protection against infectious diseases. If, however, I observe any unusual or significant hazard, or if I experience any COVID-19 symptoms during my presence or participation, I will remove myself from participation and bring such to the attention of the nearest official immediately.

On behalf of myself, as well as my heirs, executors, administrators and assigns, I hereby forever release, discharge, waive and agree to indemnify and hold harmless KABOOM!, FP, CP, Landscape Structures Inc. and/or Connor Sport Court International, and any additional sponsors of the Project, along with their respective officers, directors, agents, employees, contractors, successors and assigns, and any volunteers to whom I give my consent to provide medical treatment to me or to any children or young adults under my supervision ("Released Parties"), from and against any and all claims, demands, actions, causes of action, obligations, liabilities, suits, losses, damages, costs, expenses, and fees, including, without limitation, court costs and attorneys' fees, of any and every nature of character, including, without limitation, for death, personal injury and/or loss of property, whether anticipated or unanticipated, directly or indirectly, whether caused, in whole or in part, by the sole or concurrent negligence or wrongdoings, strict liability or fault of the Released Parties or otherwise, arising out of or connected in any way with my participation in the Project or any side projects in connection with the Project.

I acknowledge that I have read the foregoing paragraph and know and understand the full contents and effects of it. **IF BUILD IS IN CALIFORNIA ADD: I understand the full nature, extent, and import of Section 1542 of the California Civil Code and of the entire release stated in the foregoing paragraph. Accordingly, I waive and relinquish, any and all rights or benefits that I may have under the provisions of Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."** I hereby grant KABOOM!, FP and CP full and complete permission to use my name and likeness, including any photographs, videography and interview footage and quotations from me obtained in connection with the Project (whether or not at the Project Build or otherwise) in legitimate promotions of the Project and to further the mission and vision of KABOOM!. in any and all media now known or hereinafter developed without restriction or compensation.

I understand that I have given up substantial rights by signing this Waiver and have signed it freely and voluntarily without any inducement, assurance or guarantee being made to me and I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE of all liability of Released Parties to the greatest extent allowed by law.

Adult Volunteer (Age 18+)

Volunteer Under Age 18 (Or under 19 in AL and NE)

I am here to volunteer from:

- CP (I am a: staff member / non-staff member)
- Local Community
- FP

Please fill out a SEPARATE waiver for your child—use this section ONLY

Signature of Participant

Date

Signature of Parent or Legal Guardian of Participant

Printed Name of Participant

Printed Name of Parent or Legal Guardian

Address

City State Zip

Email Address

- I would not like to receive information about KABOOM! in the future.
- I would not like to receive information about CP in the future.

Do you affirm that your child or dependent meets this state's minimum age requirements for employment?

- Yes, my child may volunteer
- No, my child cannot volunteer

Printed Name of Child Participant Date