

AGENDA ITEM NO.

COUNCIL MEETING 2/27/07

APPROVED BY

  
DEPARTMENT DIRECTOR

CITY MANAGER

February 27, 2007

**FROM:** RANDALL L. COOPER, Director  
Parks, Recreation and Community Services Department

**BY:** JERRY HAYNES, Assistant Director   
Parks, Recreation and Community Services Department

**SUBJECT:** APPROVE A COMMUNITY PARTNER AGREEMENT BETWEEN THE CITY OF FRESNO PARKS, RECREATION AND COMMUNITY SERVICES DEPARTMENT AND KaBOOM! FOR THE INSTALLATION OF A COMMUNITY-BUILD SKATE PARK PROJECT AT ROMAIN PLAYGROUND

**KEY RESULT AREA** Customer Satisfaction

#### RECOMMENDATIONS

Staff recommends that the City Council approve the attached agreement with KaBOOM! and authorize the Director of Parks, Recreation and Community Services to execute the agreement on behalf of the City.

#### EXECUTIVE SUMMARY

The Parks, Recreation and Community Services (PRCS) Department was recently informed about an opportunity to receive a skate park grant from an organization called KaBoom! Romain Park and Neighborhood Center was identified as the ideal location because there are existing modular skate ramps that PRCS was planning to replace in the near future. PRCS was selected by KaBoom! to receive the grant and execution of this contract will allow PRCS to receive modular skate ramps appraised at \$55,000 with the cost to the City being \$10,000. The remaining cost is paid by California Volunteers, the "Funding Partner" as referenced in the Agreement.

#### KEY OBJECTIVE BALANCE

**Customer Satisfaction:** With the construction of the skate park, PRCS can expand recreational programming opportunities and reach additional kids and their families, strengthening ties with the community members.

**Financial Management:** The acceptance of this grant will result in a savings of approximately \$45,000.

## BACKGROUND

Romain Playground is located on First Street near Belmont Avenue. There is a Neighborhood Center located on the property that is being used for a Head Start Program administered by EOC, the Fresno Police Department P.A.L. program and the Parks, Recreation and Community Services (PRCS) Department activities and programs such as Senior activities with a hot lunch, after-school program, indoor gym, soccer and youth baseball fields. Approximately 40-50 neighborhood kids participate daily in the after-school programs. In the evening there are 100 plus adults and kids utilizing Romain Playground playing soccer, volley ball, skate boarding and a variety of other games. PRCS installed skateboard ramps at Romain Playground approximately eight years ago and is used daily by a large number of kids from the neighborhood. The ramps are in need of replacement or renovation because of its deteriorated condition and PRCS scheduled the removal and replacement of the skate ramps in the near future. Putting in the new modular skate park ramps will enhance the facilities at Romain Playground and create an environment where kids of the neighborhood can come and enjoy skate boarding, freestyle bicycling and take pride in the new skate park.

The City of Fresno Parks, Recreation and Community Services (PRCS) was successful in obtaining a competitive grant for a skate park through an organization named KaBOOM! KaBOOM! is a national nonprofit organization that envisions a great place to play within walking distance of every child in America and last year celebrated ten years of service. They bring together children, business and community interests for a select number of community play-space built each year.

The execution of this contract will allow PRCS to receive modular skate ramps appraised at \$55,000 with the cost to the City being \$10,000. The remaining cost is paid by California Volunteers, the "Funding Partner" as referenced in the Agreement.

On March 31, 2007, in recognition of Cesar Chavez's birthday, PRCS and KaBOOM! will be doing a space build construction party for the skate park located at Romain Park. At this event, there will be a number of activities that volunteers from the community will be working on. Most importantly, they will be adding new modular skate ramps, reconditioning the existing ramps, painting a mural in honor of Cesar Chavez and planting flowers.

Because this skate park will be built with PRCS staff and community volunteers made up of parents and kids from the neighborhood, there will be pride in the accomplishments and pride in the use of the skate park creating a positive environment for the community.

## FISCAL IMPACT

The \$10,000 of matching funds will be derived from the Park Impact Fee-funded skate park development project.

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Revised 2-21-07

Attachment: Contract

**THIS KaBOOM! COMMUNITY PARTNER AGREEMENT** is made this 9<sup>th</sup> day of February by and between KaBOOM! and City of Fresno, Parks, Recreation and Community Services.

### RECITALS

WHEREAS, KaBOOM! is a non-profit organization chartered in the District of Columbia and organized as a 501(c) 3 by determination of the Internal Revenue Service;

WHEREAS KaBOOM! is an organization that develops, manages and coordinates a community-building skatepark for its Community and CaliforniaVolunteers, culminating in a one-day installation event known as a "Build Day";

WHEREAS CITY OF FRESNO, PARKS, RECREATION AND COMMUNITY SERVICES is entering into a written agreement with KaBOOM! for funding, and services to plan, design and construct a community-build skatepark ("Program");

WHEREAS KaBOOM! Has received charitable support from CALIFORNIAVOLUNTEERS ("Funding Partner") for this Program and has entered into a separate agreement with the Funding Partner, incorporated herein, the result of which are financial, in-kind and/or human resources for this program;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter expressed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

### AGREEMENTS

#### 1. OBLIGATIONS OF CITY OF FRESNO, PARKS, RECREATION AND COMMUNITY SERVICES

- 1.1. City of Fresno, Parks, Recreation and Community Services agrees to be the Community Partner organization ("Community Partner") for the CaliforniaVolunteers skatepark project at Romain Park, 745 N. First Street, Fresno CA 93702.
- 1.2. City of Fresno, Parks, Recreation and Community Services agrees to be responsive to the discreet timeline developed for the Program, inclusive of providing approval of, action toward or direction to, specific responsibilities and initiatives of KaBOOM! on behalf of this Program.
- 1.3. As a Community Partner for a KaBOOM! community-build skatepark project, City of Fresno, Parks, Recreation and Community Services will work with KaBOOM!, CaliforniaVolunteers and community residents to design, plan and build a community skatepark. All parties will work closely together to ensure a successful, productive, and fun event.
  - 1.3.1. City of Fresno, Parks, Recreation and Community Services agrees to host a KaBOOM!-facilitated Design Day with at least 10 adults and 20 youth.
  - 1.3.2. City of Fresno, Parks, Recreation and Community Services agrees to recruit and secure at least 15 adult volunteers for preparation activities two to three days prior to Build Day skatepark installation.
  - 1.3.3. City of Fresno, Parks, Recreation and Community Services agrees to recruit and secure at least 50-100 adult volunteers for the Build Day skatepark installation.

# KaBOOM!



- 1.3.4. City of Fresno, Parks, Recreation and Community Services agrees to be responsible for preparing the site for the installation of the new skatepark, which includes but is not limited to removing any existing equipment that might be on the site, grading the site, installing an appropriate skating surface where the ramps, rails and skating activities will be located, ensuring that the site is free of hazards. If the existing surface of the site is not in prime condition the City of Fresno, Parks, Recreation and Community Services will assume the costs and coordinate the logistics for getting the surface refinished. (Prime condition indicates that the surfacing is smooth, even and free of holes, cracks or other imperfections.)
- 1.3.5. City of Fresno, Parks, Recreation and Community Services agrees to provide certain provisions for the volunteers working on the construction project, including but not limited to food (breakfast snacks, lunch and mid-day snacks), water and restroom facilities.
- 1.4. In support of this project, City of Fresno, Parks, Recreation and Community Services is responsible for contributing \$10,000 to the skatepark project.
  - 1.4.1. All funds will go directly to purchasing skatepark equipment.
  - 1.4.2. Upon receipt of this signed agreement, KaBOOM! will invoice City of Fresno, Parks, Recreation and Community Services for the full amount of this contribution, and it will be due to KaBOOM! at least 30 days before the Build Day March 31, 2007.
  - 1.4.3. If City of Fresno, Parks, Recreation and Community Services does not make payment as outlined in Section 1.4.2, KaBOOM! reserves the right to cancel the build.
    - 1.4.3.1. In the event of the Build Day's cancellation due to non-payment by City of Fresno, Parks, Recreation and Community Services, as outlined in Section 1.4.2, at KaBOOM!'s written request, City of Fresno, Parks, Recreation and Community Services may be subject to reimburse KaBOOM! for expenses incurred to prepare for the Build Day, including but not limited to the purchase of skatepark equipment, tools and materials, and airline tickets.
  - 1.4.4. City of Fresno, Parks, Recreation and Community Services has the right to back-up documentation detailing the use of its contribution to the project. Upon request, KaBOOM! will provide back-up documentation for City of Fresno, Parks, Recreation and Community Services within 120 days after the Build Day.
- 1.5. The Build Day must occur in calendar year 2007 on Saturday March 31<sup>st</sup>.
  - 1.5.1. The Build Day shall not be postponed (defined as delayed, held over or rescheduled) under any circumstances other than for conditions that jeopardize the safety of the volunteers, or for unsafe weather conditions that threaten the structural integrity of the skatepark.
    - 1.5.1.1. The decision to postpone a Build Day shall be reached through discussion, collaboration and majority agreement by KaBOOM!, City of Fresno, Parks, Recreation and Community Services, and CaliforniaVolunteers each represented by a person authorized by each party.
    - 1.5.1.2. The sole exception to mutual decision-making and majority agreement shall be when the decision must be made immediately and solely by KaBOOM! on the construction site in absence of authorized representatives of City of Fresno, Parks, Recreation and Community Services and CaliforniaVolunteers being available.
    - 1.5.1.3. The authorized representatives are defined as those individuals who have signed this Agreement, and the Agreement between KaBOOM! and the CaliforniaVolunteers, or their designates.
  - 1.5.2. In the event that the Build Date is cancelled or changed solely by City of Fresno, Parks, Recreation and Community Services, City of Fresno, Parks, Recreation and Community Services shall be deemed liable for damages to KaBOOM! and CaliforniaVolunteers for any equipment costs, labor and materials and any additional expenses related to cancellation or change of the Program, such as airfare and general supplies.



- 1.5.3. In the event of a Build Day postponement, KaBOOM! shall collaborate with the City of Fresno, Parks, Recreation and Community Services and the CaliforniaVolunteers to issue a Memo of Understanding (MOU) that outlines a plan for rescheduling the Build Day.
  - 1.5.3.1. The MOU shall outline any additional expenses related to the rescheduled Build Day, and the party or parties responsible for covering the additional expenses. These expenses may include, but are not limited to, equipment storage, security, equipment shipment, and KaBOOM! travel and hotel expenses.
  - 1.5.3.2. The MOU shall identify the next-earliest possible date for the Build Day, based on the availability of open dates on the KaBOOM! program calendar, the availability of City of Fresno, Parks, Recreation and Community Services to participate in the project, and the availability of the CaliforniaVolunteers to participate in the project.
- 1.6. City of Fresno, Parks, Recreation and Community Services shall attach documentation showing proof of land ownership evidenced by a deed granting title of the property to City of Fresno, Parks, Recreation and Community Services to the property, or a letter from the property owner showing approval for the installation of the skatepark. Working with the support of the property owner (if owner is a separate party), City of Fresno, Parks, Recreation and Community Services will maintain the property before and after the build to ensure a safe and attractive play area.
- 1.7. City of Fresno, Parks, Recreation and Community Services shall collaborate with KaBOOM! during the planning of this Project to develop a maintenance program for the skatepark that will be implemented upon completion of the skatepark installation.
- 1.8. City of Fresno, Parks, Recreation and Community Services is self-insured and City of Fresno, Parks, Recreation and Community Services is responsible for providing coverage for its own employees and for any accidents arising out of the equipment, except for any accident arising out of the gross negligence or willful misconduct of KaBOOM! and/or the KaBOOM! Funding Partner.
- 1.9. City of Fresno, Parks, Recreation and Community Services will obtain all necessary and appropriate permits and licenses regarding the installation and possession and use of a skatepark prior to Build Day in compliance with local and state laws, regulations and guidelines.
- 1.10. City of Fresno, Parks, Recreation and Community Services is solely responsible for any additional cost beyond the skatepark budget if City of Fresno, Parks, Recreation and Community Services adds additional equipment or items that are over and above those that are included in the agreed upon skatepark design with KaBOOM!. KaBOOM! is not responsible for paying any vendors for any site or surfacing preparation, upgrades or improvements that are over and above those that are included in the agreed up on skatepark design with KaBOOM!. If City of Fresno, Parks, Recreation and Community Services purchases additional equipment or materials to supplement materials secured by KaBOOM!, then City of Fresno, Parks, Recreation and Community Services is solely responsible for paying for the materials and all other liabilities related to such materials. Neither KaBOOM! or CaliforniaVolunteers shall be liable for any such payments. City of Fresno, Parks, Recreation and Community Services will indemnify and hold KaBOOM! harmless from any payments, expenses or liability with respect to any such additional items.
- 1.11. City of Fresno, Parks, Recreation and Community Services is responsible for ensuring the skatepark site is safe for volunteers and children.
  - 1.11.1. City of Fresno, Parks, Recreation and Community Services is responsible for conducting up to two utility site checks as reasonably requested by KaBOOM! with the appropriate utility companies between two and eight



- weeks prior to the Build Day. Documentation of the utility checks must be provided to the KaBOOM! Project Manager upon completion.
- 1.11.2. City of Fresno, Parks, Recreation and Community Services is responsible for conducting up to two soil site tests as reasonably requested by KaBOOM! between two and ten weeks prior to the Build Day. Documentation of the soil checks must be provided to the KaBOOM! Project Manager upon completion. City of Fresno, Parks, Recreation and Community Services is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children or volunteers.
- 1.12. City of Fresno, Parks, Recreation and Community Services will seek prior approval from KaBOOM! and/or CaliforniaVolunteers for any written and/or printed materials that reference the Program and/or contain the logos of KaBOOM!, or CaliforniaVolunteers, including but not limited to press releases, fliers and promotional materials. City of Fresno, Parks, Recreation and Community Services will work in collaboration with KaBOOM! to secure media coverage. KaBOOM! will provide an opportunity for City of Fresno, Parks, Recreation and Community Services to review and approval materials prepared by KaBOOM! related to this Project.
- 1.13. City of Fresno, Parks, Recreation and Community Services will allow the name and/or logo of CaliforniaVolunteers and KaBOOM! on skatepark signage, in a mutually agreed upon location and in accordance with the City of Fresno, Parks, Recreation and Community Services' guidelines regarding corporate signage. If City of Fresno, Parks, Recreation and Community Services has specific guidelines regarding corporate signage on its property, please attach those guidelines to this Agreement.
- 1.13.1. Skatepark safety guidelines will be included on this sign or a on a separate sign on the site.
- 1.14. City of Fresno, Parks, Recreation and Community Services understands that the skatepark will be added to the roster of KaBOOM! Network of Playgrounds & Skateparks and, as such, may receive subsequent information from KaBOOM! on skatepark maintenance, programming and enhancements.

## 2. OBLIGATIONS OF KaBOOM!

- 2.1. KaBOOM! will provide City of Fresno, Parks, Recreation and Community Services with technical and organizational leadership and guidance for the skatepark project. KaBOOM! will contract with all necessary vendors (excluding site preparation vendor, which is the City of Fresno, Parks, Recreation and Community Services responsibility as outlined in section 1.3.2) and will make payment to all such vendors. KaBOOM! shall furnish documentation to City of Fresno, Parks, Recreation and Community Services within 60 days of paying such vendors demonstrating that all labor, materials and equipment furnished for the skatepark have been paid for and agreeing to indemnify the township against any loss from any cause or claims for payment.
- 2.1.1. Facilitate skatepark design and work with vendors to procure equipment and materials (excluding skatepark surfacing materials) in a timely fashion.
- 2.1.2. Manage construction logistics for the project, coordinate of the skatepark site preparation activities with City of Fresno, Parks, Recreation and Community Services, inventory equipment and materials, and assure that the necessary tools and materials are available to construct the skatepark.
- 2.1.3. Facilitate regular planning meetings with City of Fresno, Parks, Recreation and Community Services and the skatepark planning committee.
- 2.1.4. Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
- 2.1.5. Provide educational and promotional materials to support the skatepark project, including KaBOOM! publications, the KaBOOM! online Skatepark Planner, nametags and other general supplies.



- 2.1.6. Provide for and coordinate the participation of the Funding Partner, CaliforniaVolunteers, which has committed to provide KaBOOM! with financial, human and/or in-kind resources to bring to fruition the skatepark project with City of Fresno, Parks, Recreation and Community Services.
- 2.1.7. In the event that the project is cancelled due solely to KaBOOM and/or CaliforniaVolunteers, the Community Partner will receive back the \$10,000 contribution.
- 2.2. KaBOOM! (in collaboration with City of Fresno, Parks, Recreation and Community Services) will secure a representative of the skatepark equipment company ("Equipment Representative) to review the skatepark structure to ensure that it is safe and built to all appropriate standards and guidelines. City of Fresno, Parks, Recreation and Community Services acknowledges that neither KaBOOM! or CaliforniaVolunteers nor their respective officers, directors, employees, or agents, have made nor are in any manner responsible or liable for action, inaction or negligence of the Equipment Representative and City of Fresno, Parks, Recreation and Community Services agrees to look solely to the Equipment Representative for such liability, costs or expenses which arise out of the Equipment Representative's action, inaction or negligence.
  - 2.2.1. The review will occur at the conclusion of the Build Day or, if KaBOOM! assumes responsibility for the skatepark construction going beyond one day at the conclusion of the installation.
  - 2.2.2. In accordance with Section 4, in the event that the Build Day is delayed or not completed on the scheduled day due to failure of City of Fresno, Parks, Recreation and Community Services to meet the terms of this Agreement, then City of Fresno, Parks, Recreation and Community Services will be responsible for coordinating a review of the skatepark with the Equipment Representative.

### 3. FUNDING PARTNER RELATIONS

- 3.1. KaBOOM! has a separate agreement with CaliforniaVolunteers ("Funding Partner"), whose contributions to KaBOOM! are helping to make this Project possible.
- 3.2. City of Fresno, Parks, Recreation and Community Services shall not solicit sponsors whose products or services directly compete with the products or services of the CaliforniaVolunteers.
  - 3.2.1. For the purposes of this Agreement, sponsors are defined as individuals, businesses or philanthropic organizations that contribute funding or in-kind gifts to this Project in exchange for certain rights to promote their affiliation with this Project to the general public, including but not limited to name recognition via this skatepark Project's signs, T-shirts, media materials and public-address systems. Conversely, donors are individuals or groups whose gifts to this Project require personal acknowledgement only, such as thank-you letters.
- 3.3. In the event City of Fresno, Parks, Recreation and Community Services solicits other sponsors or donors, then those sponsors and donors shall not compete with the Funding Partner for signage and sponsorship recognition. The Funding Partner shall receive first placement on any recognition materials developed for the Project, including skatepark signage, banners, T-shirts, press releases, web-site and newsletter stories, and flyers.
- 3.4. In the event of a conflict between the Funding Partner and other sponsors and donors, the Funding Partner, City of Fresno, Parks, Recreation and Community Services and KaBOOM! shall consider recognition on a case-by-case basis.

### 4. OWNERSHIP AND LIABILITY

- 4.1. City of Fresno, Parks, Recreation and Community Services is the owner of the skatepark in its entirety, including the equipment purchased by KaBOOM! and/or its Funding Partner(s).



- 4.2. Except to the extent of California statutory tort immunities afforded City as a Government agency, it is agreed that City of Fresno, Parks, Recreation and Community Services will indemnify and hold harmless KaBOOM! and/or the Funding Partner and their respective officers, directors, employees and agents from and against any and all claims, costs, expenses (including attorneys' fees and disbursements) or actions, including but not limited to claims and actions for personal injury, including death or property damage, resulting from the use of the skatepark property and equipment, except to the extent resulting from gross negligence or willful misconduct of KaBOOM! and/or the KaBOOM! Funding Partner. KaBOOM! and KaBOOM! Funding Partner agree that this Agreement shall in no way act to abrogate or waive any immunity of City available under the Tort Claims Act of California (California Government Code Section 810 et seq.)
- 4.3. The KaBOOM! project manager will be trained in skatepark equipment installation and he/she will review the skatepark structure upon completion at the end of the scheduled Build Day. The Equipment Representative, appointed by the equipment manufacturer, will certify that the skatepark was installed to manufacturer's specifications at the end of the Build Day by signing the skatepark installer certificate of installation.
  - 4.3.1. Notwithstanding the foregoing, City of Fresno, Parks, Recreation and Community Services shall be fully responsible for the skatepark and its equipment upon certification of the skatepark.
  - 4.3.2. City of Fresno, Parks, Recreation and Community Services shall be responsible for securing safety measures of the skatepark to prevent injury or death or property damages in the unlikely event that the skatepark is not completely constructed, and all equipment fully installed, at the conclusion of the Build Day and once KaBOOM! and/or the Equipment Representative leave the skatepark site.
  - 4.3.3. In the unlikely event or planned circumstances that the skatepark is not completely constructed and all equipment fully installed at the conclusion of the Build Day, City of Fresno, Parks, Recreation and Community Services shall be responsible for completing the installation of the skatepark in accordance with the specified guidelines with the assistance of the Equipment Representative, facilitated by KaBOOM!. City of Fresno, Parks, Recreation and Community Services shall be responsible for any injuries, death or property damage that arises out of City of Fresno, Parks, Recreation and Community Services' completion of such installation.
- 4.4. Maintenance of the skatepark facility and supervision of its use is the sole responsibility of City of Fresno, Parks, Recreation and Community Services. Upon request, the skatepark equipment manufacturer(s) will provide guidance and materials, toward a maintenance plan for the skatepark.
  - 4.4.1. City of Fresno, Parks, Recreation and Community Services will receive from Woodward Ramps and Rails, the provider of its skatepark equipment, or via its KaBOOM! project manager, a skatepark equipment maintenance kit from Woodward Ramps and Rails, the provider of its skatepark equipment.
  - 4.4.2. KaBOOM! shall at all time keep City of Fresno, Parks, Recreation and Community Services property and the Project/equipment free and clear of liens and encumbrances.

## 5. WARRANTY

- 5.1. The skatepark equipment is covered under warranty by the selected skatepark equipment company in accordance with its warranty policy. Upon request, a copy of the warranty for the skatepark-equipment will be provided by the manufacturer(s) to City of Fresno, Parks, Recreation and Community Services. While, skatepark equipment and/or material manufacturers may provide a warranty with respect to its product, City of Fresno, Parks, Recreation and Community Services acknowledges that neither KaBOOM! or California Volunteers nor their respective officers, directors, employees, or agents, have made nor are in any manner responsible or liable for any warranty, representation, or guarantee, express or implied, in fact or in law, relative to any equipment or material, including



but not limited to its quality, mechanical condition or fitness for a particular purpose. Any warranties and/or guarantees on any equipment or material are subject to the respective manufacturers' terms therefore, and City of Fresno, Parks, Recreation and Community Services agrees to look solely to such manufacturers for any such warranty and/or guarantee

**6. GENERAL**

- 6.1. Notices. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage properly prepaid, or by personal delivery addressed as follows:
- 6.2. If either party is required to commence and proceeding or legal action to enforce any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fee and legal expenses

To: Helen Zimmerman, Manager Contracts & Risk Management  
KaBOOM!  
4455 Connecticut Ave., NW, Suite B100  
Washington, DC 20008 USA  
202-659-0215

Copy to: Jane Wilson, Client Services Coordinator  
(Use same address as above)

To Corporation: Randall L. Cooper  
City of Fresno, Parks, Recreation and Community Services  
2326 Fresno Street, Room 101  
Fresno CA, 93721  
559-621-2910

- 6.3. Counterparts. This Agreement may be executed by the parties in one or more counterparts which shall, in the aggregate, be signed by all parties and each counterpart shall be deemed an original instrument as against any party who has signed it.
- 6.4. Governing Law. The laws of the State of California, without reference to its choice of law provisions, shall govern the interpretation and/or legal effect hereunder and the parties hereto subject to the jurisdiction and venue of Fresno County, California for any dispute (including arbitration) arising out of or under the terms of this Agreement.
- 6.5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective affiliates, successor, and personal representatives of the parties to this Agreement, except to the extent of any contrary provision in this Agreement.
- 6.6. Severability. This Agreement shall be construed to be in accordance with federal and state statutes. If any provision of this Agreement, or any portion thereof, is found to be invalid, illegal, or unenforceable, under any applicable statute or rule of law, then such provision or portion thereof shall be deemed omitted, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.



- 6.7. Complete Agreement. This Agreement, when executed by the duly authorized representatives of each party shall be the entire agreement between the parties as to the subject matter stated herein and supersedes and replaces any and all previous agreements and all amendments thereto.
- 6.8. Assignment. This Agreement may not be assigned, delegated or transferred by either party without the prior written consent of the other party hereto.
- 6.9. Force Majeure. If either of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by Force Majeure, said party shall not be liable under this Agreement for said delay or failure. "Force Majeure" means any cause beyond the reasonable control of a party, including, but not limited to acts of God, acts of omission of civil or military authorities of a state or nation, fire, strike, flood, riot, act of terrorism, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 6.10. Waiver. A waiver by either party of a breach or failure to perform shall not constitute a waiver of any subsequent breach or failure.
- 6.11. City of Fresno, Parks, Recreation and Community Services obligations under this Agreement are subject to all constitutional and local law requirements and allocated and available funding in each City of Fresno fiscal year.
- 6.12. City of Fresno, Parks, Recreation and Community Services obligations under this Agreement are subject to and shall be effective upon and consistent with Fresno City Council approval/ratification of this Agreement



IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

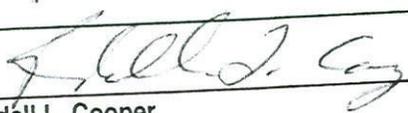
By signing this Agreement, City of Fresno, Parks, Recreation and Community Services fully acknowledges its consent and understanding of and commitment to the terms and guidelines set forth above. Please sign both original versions of this letter and return them to KaBOOM!. We will then sign the originals, and mail one original and one copy back to you for your files.

KaBOOM! And CaliforniaVolunteers look forward to working with City of Fresno, Parks, Recreation and Community Services to make this skatepark a reality.

Date Terms agreed to:

Date Terms agreed to:

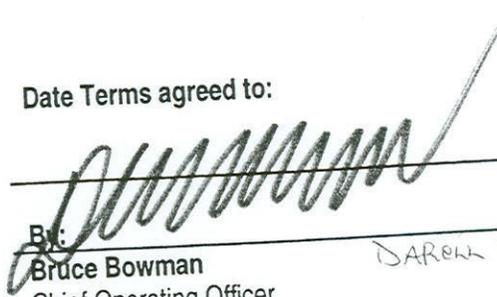
By:



**Randall L. Cooper**

Director of Parks, Recreation and Community Services  
Phone Number: 559-621-2900  
Fax Number: 559-498-1588  
Email Address: [randy.cooper@fresno.gov](mailto:randy.cooper@fresno.gov)  
Parks Recreation and Community Services  
2326 Fresno Street, Room 101  
Fresno, CA 93721

By:



**Bruce Bowman**

Chief Operating Officer  
Phone number: 202-464-6168  
Fax number: 202-659-0210  
Email Address: [jwilson@kaboom.org](mailto:jwilson@kaboom.org)  
KaBOOM!  
4455 Connecticut Ave, NW, B100  
Washington, DC 20008

DARREN HAMMOND

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

Name: Jerry Haynes

Telephone Number: 559-621-2910

Mailing Address:  
2326 Fresno Street, Room 101  
Fresno, CA 93721

Fax Number: 559-498-1588

Email Address: [jerry.haynes@fresno.gov](mailto:jerry.haynes@fresno.gov)

Copy to:

Paul Melikian, Finance Manager

Copy to:

- Attachments: Utility Inspection Form (for completion and return to KaBOOM!)
- Soil Inspection Form (for completion and return to KaBOOM!)
- Certified Playground Installer Certificate (sample)
- Playworld Systems Inc. Playground Equipment Warranty (sample)

Copy: Brian Crowley, Interim Vice President of Administrative Services  
CaliforniaVolunteers Contact  
KaBOOM! Project Archives

