



## COMMUNITY PARTNER AGREEMENT

July 12, 2021

KABOOM!, Inc. (referred to herein as "KABOOM!") is pleased that the City of Milwaukee, by and through its Department of Public Works, (referred to herein as the "City") and Metcalfe Park Community Bridges (referred to herein as "Metcalfe") (City and Metcalfe collectively referred to herein as the "Community Partners") have agreed to collaborate with KABOOM! and to be named Funding Partner (referred to herein as the "Funding Partner") in the construction of a new playspace at Butterfly Park, 3717 West Meinecke Ave., Milwaukee WI 53210 ("Project"). This Community Partner Agreement (this "Agreement"), effective as of the above date, which sets forth the parties' 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 City acknowledges and agrees the primary source of funding for the Project is a contribution from the Funding Partner. In the event that such a contribution is not funded, then this agreement shall immediately terminate upon written notice thereof from KABOOM!

1. Obligations of the Community Partners. The Community Partners 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 Partners are agreeing to each of the following obligations:
  - (a) Fundraising. In support of the Project, the City must contribute \$8,500 to KABOOM!. KABOOM! will apply these funds directly to the purchase of the Equipment (as defined below). KABOOM! will invoice the City of Milwaukee Public Works 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). Pursuant to Common Council File No. 101137, if City does not make payment within 45 days after receipt of the invoice, City shall pay simple interest beginning with the 31st calendar day after submission of the invoice at the rate of one percent per month. No attorney's fees, expenses, or other collection costs may be billed to City unless otherwise agreed in writing. The City may dispute any incorrect charges, charges disallowed by this Agreement. No interest shall be applied to any outstanding amounts when KABOOM! has been sent notice that the amount owed to KABOOM! is subject to a good faith dispute within 45 days of the receipt of the invoice, provided the notice was sent in accordance with any notice provisions in this Agreement. In the event that the 45th day after receipt of the invoice is a Saturday, Sunday, or national holiday, payment may be made on the following business day without interest being owed to KABOOM!. Consistent with Wis. Stat. § 66.0135(3), KABOOM! shall pay any of its subcontractors for satisfactory work within seven (7) days of KABOOM!'s receipt of payment from City or seven (7) days from receipt of an invoice from the subcontractor, whichever is later. If KABOOM! fails to make timely payment to a subcontractor, KABOOM! shall pay interest to the subcontractor at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day after KABOOM!'s receipt of payment from City or receipt of an invoice from the subcontractor, whichever is later.
  - (b) Project Site.
    - (i) Ownership. At the time of execution of this Agreement, the City shall provide KABOOM! with proof of land ownership evidenced by a deed granting title to the property to the City. The City is the owner of the playspace in its entirety, for the lifetime of the product, including the equipment purchased by KABOOM! on behalf of the City for installation at the playspace pursuant to this Agreement (the "Equipment") and/or safety surfacing purchased by KABOOM! and/or the Funding Partner on behalf of the City. Unless otherwise provided for herein, all construction documents created as a result of this Agreement (the "Documents") are the City's exclusive property. The City has the right to use the Documents for any purpose without additional compensation to any party hereto unless otherwise provided for herein. The Equipment shall be delivered by KABOOM! . Ownership of the playspace and related equipment shall transfer and vest in the City upon its purchase. KABOOM! shall promptly inspect the equipment upon delivery and shall be responsible for making any claim with the equipment's manufacturer under the terms of the equipment purchase contract for any damage to the equipment that took place prior to or during delivery.
    - (ii) Permits. Prior to Build Week, the City of Milwaukee Public Works 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 City shall ensure that the Project site is reasonably 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 the soil tests outlined in this Section; (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 that meet the requirements of the Soil Test Guidelines, a copy of which is attached hereto and incorporated herewith, as reasonably requested by KABOOM!, with the first test being completed on or before Design Day and with documentation completed Soil Tests Results Form, a copy of which is attached hereto and incorporated herewith, provided to the Community Build Manager upon completion. The City is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
- (iv) Safety and Security. The City 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 City of Milwaukee Public Works staff member or volunteer to serve as the safety leader onsite. This safety leader will register volunteers, ensure they have signed waivers (a copy of which is attached hereto and incorporated herewith), ensure they wear cloth face coverings if the same are required under applicable federal, state, or local law, 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 City, and the City acknowledges that KABOOM! nor the Funding Partner are responsible for such maintenance or the risks that may arise from a failure to fulfill such maintenance obligation. The City shall collaborate with KABOOM! during the Project planning process to develop a maintenance program (a sample copy of which is attached hereto and incorporated herewith) for the play equipment and shall maintain the equipment and the property before and for a period of fifteen (15) years after the Build Week in accordance with the maintenance program. In furtherance of the foregoing, in the event any Equipment is no longer permitted for any reason to be located at its original site of construction or such site is no longer controlled by City for any reason, then the City shall notify KABOOM! within two weeks following its becoming aware of such situation and shall, at the City, in its sole discretion and sole cost and expense, either (1) 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 (2) 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 City to maintain) such play equipment in accordance with the maintenance program.

The City will finance, install, and maintain resilient surfacing in the form of rubber tile, pour-in-place rubber, synthetic turf, or engineered wood fiber as playground safety surfacing meeting all safety guidelines as established by the American Society for Testing and Materials (ASTM F2223 and ASTM-1292) and the Consumer Product Safety Commission's Handbook for Playground Safety, for a period of fifteen (15) years after the Build Week. (1) The rubber surfacing must be installed within two (2) weeks following Build Day. (2) The City will identify the surfacing vendor who must meet current required safety standards in partnership with the KABOOM! Project Manager. (3) The City will coordinate delivery and installation of the safety surfacing. (4) The City, with the technical guidance of KABOOM!, will provide site preparation and the required sub-surfacing as deemed appropriate by the surfacing manufacturer using technical guidance from the KABOOM! Project Manager. (5) The City will ensure that a representative of the surfacing vendor is coordinating with the KABOOM! Project Manager pre-build and is present on the Build Day. The representative will approve the plumbness of the decks and the height to which cement is being poured in the holes to avoid potential problems after the playground is installed. (6) The City of Milwaukee Public Works will make reasonable efforts to secure the playground and make reasonable efforts to prohibit children from playing on it until the surfacing is in place and is safe to play on.

- (c) Playspace Design. In the event public health laws, rules, or regulations and public health conditions permit public gatherings the Metcalfe Park Community Bridges agrees to host KABOOM!-facilitated "Playspace Design" events with at least twenty (20) adult volunteers and twenty (20) youth volunteers. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.

In the event, public health laws, rules, or regulations and public health conditions do not permit public gatherings, the Community Partners agree to participate in KABOOM!-facilitated Playspace Design events remotely and virtually. Metcalfe Park Community Bridges will recruit at least twenty (20) adult volunteers and twenty (20) youth volunteers that will attend such events. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.

- (d) Build Week. Metcalfe Park Community Bridges shall ensure that forty (40) adult volunteers 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 on mutually agreeable to be determined dates in September and which is referred to herein as the Build Week. The Community Partners shall ensure that all volunteers sign a waiver (a copy of which is attached hereto and incorporated herewith). Throughout the Build Week, the Community Partners 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 Partners shall seek prior approval from KABOOM! and/or the Funding Partner prior to releasing to the public any materials that 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 unless such release is required by any applicable laws, rules, regulations, or court orders. The Community Partners 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 reasonably 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 Partners shall cease all use of the Marks unless such use is required by any applicable laws, rules, regulations, or court orders. The Community Partners shall collaborate with KABOOM! and the Funding Partner to secure media coverage for the Project.
- (f) Signage. The Community Partners shall allow the names and logos of KABOOM! and the Funding Partner to be displayed on permanent signage (a copy of which is attached hereto and incorporated herewith), 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 Partners shall allow individual instructional signs to accompany the Equipment.
- (g) Costs. Each Community Partner is solely responsible for any costs incurred by that Community Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement the Equipment. KABOOM! and the Funding Partner shall not be responsible for any costs incurred by the Community Partners for project 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 is attached hereto and incorporated herewith). The City acknowledges that any warranties and/or guarantees on the Equipment and the safety surfacing related to the Project are subject to the respective manufacturer's terms thereof, and the City 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 City of Milwaukee Department of Public Works is self-insured and is responsible for providing coverage for its own employees and against liability for bodily injury, death and property damage that may arise out of or be based on the use of the playground at "Community Partner location", from 7 (seven) calendar days before the Build Day and for a minimum of one year afterward, in each case, in amounts not less than one million dollars (\$1,000,000) as of January 1 of each year. This self-insurance shall be primary and non-contributing with any other insurance covering KABOOM! and its funding partners
- (j) Indemnification. The City shall indemnify and hold harmless KABOOM!, the Funding Partner and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives from any and all losses, liabilities, claims, actions, fees and expenses (including interest and penalties due and payable with respect thereto and reasonable attorneys' and accountants' fees and any other reasonable out-of-pocket expenses incurred in investigating, preparing, defending or settling any action), including any of the foregoing

arising under, out of or in connection with any breach of this Agreement, any actions associated with this Project or resulting from the use of any play property and Equipment, including those for personal injury, death, or property damage, except to the extent resulting from the gross negligence or willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.

- (k) **Assumption of Risk.** The City acknowledge and agree that neither KABOOM! nor the Funding Partner shall be responsible for the acts and omissions of the City, and the City agrees to assume all risks or liabilities associated with its acts and omissions, including all risk or liabilities caused by it for any personal injury, death or property damage; provided, however, that the foregoing shall not limit any applicable state law sovereign immunity protections to which the City is entitled.
- (l) **Data and Reporting Requirements.** The Community Partners shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KABOOM! to Project stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause Project participants 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.
- (m) **Code of Conduct.** The Community Partners agrees to comply with the build site rules (a copy of which is attached hereto and incorporated herewith). City shall display 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 approved by the City to procure the Equipment and materials in a timely manner.
  - (ii) On the behalf of and in collaboration with the City, KABOOM! shall manage construction logistics for the Project, coordinate site preparation activities with the City, 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.
  - (iv) KABOOM! shall ensure that any individual or entity delivering or installing the Equipment or any other materials under this Agreement shall, at a minimum, carry insurance that meets the criteria applicable to Contractors on the attached document entitled "City of Milwaukee Insurance Requirements".
- (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 including those of the Consumer Product Safety Commission and the ADA (as defined below), unless the installation is not completed during the Build Week due to failure of one of the Community Partners, in which case the Community Partner causing the delay shall secure the Installation Supervisor
- (c) **Promotion.** KABOOM! will provide proposed promotional materials relating to the Project for the City's review and approval, which approval shall not be unreasonably withheld or delayed for more than one week.
- (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 Partners 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.
- (f) **Americans with Disabilities Act.** KABOOM! and City shall ensure that the Equipment installed pursuant to this Agreement shall fully comply with, as applicable, the Americans with Disabilities Act, Sections 504 and 508 of the Rehabilitation Act of 1973. If KABOOM! is performing its obligations under this Agreement based on specifications prepared by or on behalf of City, and KABOOM! knows or should know based on KABOOM!'s experience in its field that such specifications are not in compliance with the ADA, KABOOM! must notify City in writing of such non-compliance prior to commencing or causing to be commenced any work under those specifications.

## 3. Build Week Postponement.

- (a) COVID-19 Public Health Compliance. The Community Build Manager will monitor COVID-19 public health laws, rules, or regulations and local conditions (collectively the “Health Requirements”) to ensure public health and safety prior to Build Week. If the project does not meet the Health Requirements , KABOOM!, the Funding Partner and the Community Partners will mutually agree on a postponement date at least 1 month later than the original Build Week and only if the Health Requirements allow project completion. If the Health Requirements do not allow project completion within close to the originally scheduled date, the Project will be rescheduled on a mutually agreed upon date or converted to a professional installation with no volunteers participating in building the playspace. KABOOM! will cover the costs of any professional installation.
- (i) If the Project does not meet the Health Requirements at 6 weeks out from the Build Week, 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 the Project does not meet the Health Requirements at 4 weeks out from Build Week, the equipment may already be in manufacturing. KABOOM! will work with the manufacturer to halt manufacturing if possible and find a storage solution if halting is not possible.
  - (iii) If the Project does not meet the Health Requirements at 2 or less weeks out from the Build Week, KABOOM! will reschedule deliveries of construction materials and Equipment and arrange storage for any construction materials and Equipment that cannot be rescheduled together with the Community Partners.
  - (iv) If the Health Requirements do not allow project completion on the reschedule date, the project will need to be postponed and rescheduled when the Health Requirements 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 others, including the parties’ employees, participating in Build Week or threaten the structural integrity of the playspace or Equipment. The decision to postpone the Build Week will be made by majority agreement of KABOOM!, the Community Partners and the Funding Partner, except where such decision must be made by KABOOM! on the construction site and representatives of the Community Partners and the Funding Partner are not available for consultation. If no majority decision is reached, KABOOM! shall make the determination of whether to postpone. In the event that the Build Week is postponed, KABOOM!, the Community Partners and the Funding Partner shall mutually develop a plan for rescheduling the Build Week at the next earliest date reasonably practicable 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 by KABOOM! 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 any parties’ failure to satisfy its obligations in connection with the Project, then the party failing to satisfy its obligations shall be liable 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 for the Project, then the Community Partner shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.
5. Term and Termination.
- (a) Term. The obligations contained herein shall commence upon the later of (a) the execution of the Agreement by all parties or (b) as set forth in any schedule or scope of services included in the Agreement. Unless otherwise specifically provided for in the Agreement, the parties shall perform their respective obligations under this Agreement in such sequence as to assure their expeditious completion in the light of the purposes of the and in a manner commensurate with the highest industry standards.
  - (b) Termination for Cause. In the event that any party materially breaches this Agreement, any non-breaching party

adversely affected by such a material breach may terminate this Agreement upon thirty (30) days written notice to all parties hereto of such termination. During such notice period, the breaching party shall have the right to cure such default.

- (c) Termination for Force Majeure. 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 any party materially affected by such delay may terminate this Agreement if the delaying party is unable to perform any obligation hereunder for a period longer than ten (10) calendar days due to such force majeure event.
- (d) Payment Upon Early Termination. If there has been a prepayment by City, KABOOM! will refund to City, within thirty (30) days of the effective date of termination, any amounts paid to KABOOM!, less expenses already committed and/or incurred prior to the date of such termination. In no case will such amount of expenses committed and/or incurred prior to the date of termination exceed \$8,500.00 unless the same results from a breach of contract by the City and termination under the Section entitled "Termination for Cause".
- (e) Effect of Termination. Except as otherwise provided for in this Agreement, upon any termination, this Agreement shall become void and have no effect. Notwithstanding the forgoing, Sections 1(a), 1(b)(i), 1(h), 1(i), 1(j) 5(d), 5(e), 6(d), 6(e), 6(h), 6(l), 6(m), 6(p), 6(q), 6(s) and any other section(s) which by its/their meaning is/are implied to survive termination shall continue in force and effect following the termination or expiration of this Agreement.

#### 6. General Provisions.

- (a) The parties represent that all information provided, including in the application submitted by the Community Partners, is true, correct and complete in all respects.
- (b) Each party represents and warrants that it 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.
- (c) This Agreement may not be assigned or transferred by either party without the prior written consent of the other parties hereto.
- (d) This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and whereexpressly stated, their affiliates and representatives.
- (e) Choice of Law and Venue. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The parties agree that for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, jurisdiction and venue shall be in Milwaukee County, Wisconsin, for matters arising under state law or, should federal courts have jurisdiction, the eastern district of Wisconsin. The parties agree to submit themselves to the jurisdiction of said courts, to the exclusion of any other court that may have jurisdiction over such a dispute according to any other law.
- (f) This Agreement may be altered, modified or amended only by awritten document signed by both parties. Pursuant to the Milwaukee Code of Ordinances, all City contracts must be reviewed and approved by City Attorney. City Attorney has approved this Agreement. Any modification of this Agreement without written approval by the Office of City Attorney shall render such amendment voidable at the sole discretion of City.
- (g) 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.
- (h) 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.
- (i) 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.

- (j) Subcontractors. Unless otherwise provided for herein, the parties may not employ subcontractors to perform under this Agreement without written pre-approval from City. If any party receives written pre-approval to hire subcontractors from City, such party shall hire such subcontractors via written subcontract, and shall insert language into each such subcontract specifying that the subcontractor shall be subject to each provision of this Agreement, including, but not limited to, any insurance requirements. Such party hiring a subcontractor shall be as fully responsible to City for the acts and omissions of its subcontractors and of persons indirectly employed by it as it is for the acts and omissions of its own officers, employees and agents.
- (k) Independent Contractors. All parties hereto are independent contractors, and none of the parties, nor their officers, employees or agents are employees of City, nor are they entitled to any fringe benefits or any other benefits to which City's employees are entitled to or are receiving. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of KABOOM! receiving payment under this Agreement shall be the sole responsibility of KABOOM!. The parties hereto form no joint venture or partnership under this Agreement. Each party is responsible for securing at its own expense all personnel required to perform its obligations hereunder and shall ensure such personnel are qualified to perform such obligations.
- (l) Public Records Law. KABOOM! and Metcalfe understand that City is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, et. seq. Pursuant to Wis. Stat. §19.36(3), City may be obligated to produce, to a third party, the records of KABOOM! or Metcalfe that are "produced or collected" by KABOOM! or Metcalfe under this Agreement ("Records"). KABOOM! and Metcalfe are further directed to Wis. Stat. §19.21, et. seq., for the statutory definition of Records subject to disclosure under this paragraph, and KABOOM! and Metcalfe acknowledge that they have read and understands that definition. Irrespective of any other term of this Agreement, KABOOM! and Metcalfe are obligated to: (1) retain Records for seven years from the date of the Record's creation, and (2) produce such Records to City if, in City's determination, City is required to produce the Records to a third party in response to a public records request. KABOOM! and/or Metcalfe's failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and the breaching party must defend and hold City harmless from liability due such breach.
- (m) Nondiscrimination. It is City's policy not to discriminate against any qualified employee or qualified applicant for employment because of an individual's sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories ("Protected Classes"), pursuant to Milwaukee Code of Ordinances ("MCO") Section 109-9. Contractors and their subcontractors employing any resident of City of Milwaukee may not discriminate against any member of the Protected Classes, and such contractors must insert this clause into any subcontracts of subcontractors employing any resident of City of Milwaukee.
- (n) Standard of Care. All parties agree that the obligations required under this Agreement shall be performed in accordance with generally accepted professional practices and in a manner consistent with a reasonable level of care and skill exercised under similar conditions by members of each party's profession practicing in Wisconsin. Performance of the Services shall conform to all applicable federal, state and local laws and regulations.
- (o) Severability. If any term of this Agreement is, to any extent, held invalid or incapable of being enforced, such term shall be excluded only to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect and, to the extent possible, any invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If such invalid or unenforceable term has a material and adverse effect on a party and a valid and enforceable replacement that comes closest to expressing the intention of such invalid or unenforceable term cannot be created, the party materially and adversely impacted shall be allowed to terminate the Agreement pursuant to the section entitled "Termination for Force Majeure." Should any local, state or national regulatory authority having jurisdiction over City impose a valid and enforceable order upon City which has the effect of changing or superseding any term or condition of the Agreement, such order shall be complied

with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, the Agreement shall remain in effect and be modified or terminated in the manner provided for by this Section.

- (p) Remedies and No Waiver. Nothing in this Agreement shall be construed to waive any privilege, right of recovery, cause of action, defense, remedy, category of damages, or immunity to which City is entitled under common law, or federal, state, or local law; waiver of any of the foregoing may only be accomplished in writing by an individual with the authority to bind City.
- (q) Conflict of Interest. Any contract in which a member of the City of Milwaukee Common Council is an interested party shall be voidable at the sole discretion of City, and City may sue to recover any amounts paid on such contract.
- (r) Audit. Upon reasonable advance written notice KABOOM! shall make all reports, studies, analysis, memoranda, information, records, and related data and materials created by KABOOM! as a result of this Agreement available to City to allow City to audit, examine, excerpt or transcribe all reports, studies, analysis, memoranda, information, records, and related data and materials created by KABOOM! as a result of this Agreement and audit, examine, excerpt or transcribe all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data in each case to the extent relating solely to all matters covered by this Agreement any time during normal business hours and as often as City may, in its reasonable discretion, deem necessary. KABOOM! shall not charge any additional fees to City by virtue of any additional work or costs associated with the performance of KABOOM!'s duties under this section. Notwithstanding the foregoing, in no event shall KABOOM! be required to provide any such reports, studies, analysis, memoranda, information, records, and related data and materials if and to the extent doing is prohibited by law or legal process, including any privacy law, result in the disclosure of any trade secrets of third parties in breach of any contract with such third party, violate any obligation of KABOOM! with respect to confidentiality, non-disclosure or privacy or jeopardize protections afforded to KABOOM! under the attorney-client privilege or the attorney work product doctrine.
- (s) Slavery Disclosure Affidavit. All vendors in existence during the "slavery era" (prior to 1865), contracting with City, shall complete an affidavit prior to entering into a contract verifying that it has searched any and all company records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any enslaved persons or slaveholders described in those records must be disclosed in the affidavit.
- (t) Taxpayer Identification Number. KABOOM! must provide accurate information related to its taxpayer identification number. If incorrect information is provided and KABOOM! fails to adequately and timely respond to City's efforts to obtain corrected information, City may impose a fee equal to City's added costs for meeting backup withholding requirements. This sum may be deducted from payments owed to KABOOM! pursuant to this or other contracts, or may be billed separately. Failure to cooperate with City in this regard, or failure to pay a fee imposed under this provision, could result in KABOOM! being barred from participating in future City contracts.

7. Green Contracting.

- (a) Duplex/Recycled Paper. In accordance with efficient resource procurement and utilization policies adopted by the City, the parties shall make reasonable efforts to ensure that, whenever practicable, all printed materials produced in the performance of this Agreement are duplexed (two-sided copies), printed on recycled paper, and labeled as such.
- (b) Recycled Materials. The parties shall make reasonable efforts to utilize recycled materials whenever technically and economically feasible.

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

**The City of Milwaukee**

By: \_\_\_\_\_  
Name: Jeffrey Polenske

Title: Commissioner of Public Works

Address:  
841 N. Broadway, Room 501  
Milwaukee, WI 53202  
T: 414-286-3301



COUNTERSIGNED:

**KABOOM!, Inc.**

\_\_\_\_\_  
City of Milwaukee Comptroller Aycha Sawa

Approved as to form, content, and execution:

\_\_\_\_\_  
Assistant City Attorney                      Date

By: \_\_\_\_\_

Name: Gerry Megas  
Title: Chief Financial Officer

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

**Park Community Bridges**

By: \_\_\_\_\_

Name: Danell Cross  
Title: Executive Director

Address:  
3624 W North Avenue  
Milwaukee, WI 53208  
T: 414-616-1688  
e-mail: [DCross@metcalfepark.org](mailto:DCross@metcalfepark.org)

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

Name: Joe Kaltenburg

Telephone number: (608) 345-3061

Mailing Address:  
3624 W North Avenue  
Milwaukee, WI 53208

Email: [\\_jokalt@milwaukee.gov](mailto:_jokalt@milwaukee.gov)