

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
BOARD ACTION SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA #: \*B-5

AGENDA DATE: July 12, 2016

**SUBJECT:**

Approval to Enter into Agreements with KaBOOM!, Stanislaus County Police Activities League, and Manos Unidas to Build Recreational Play Areas at Fairview Park, and Accept the Donations of Playground Equipment and Construction

**BOARD ACTION AS FOLLOWS:**

No. 2016-361

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST: Elizabeth A. King  
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Parks and Recreation  
Urgent  Routine

BOARD AGENDA #: \*B-5

AGENDA DATE: July 12, 2016

CEO CONCURRENCE: *pro*

4/5 Vote Required: Yes  No

*mm*

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**SUBJECT:**

Approval to Enter into Agreements with KaBOOM!, Stanislaus County Police Activities League, and Manos Unidas to Build Recreational Play Areas at Fairview Park, and Accept the Donations of Playground Equipment and Construction

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**STAFF RECOMMENDATIONS:**

1. Approve the Community Partner Playground Agreement, including the Letter of Intent, with KaBOOM! for the Fairview Park playground application.
2. Authorize the Director of Parks and Recreation, or designee, to sign the KaBOOM! Letter of Intent, the Community Partner Playground Agreement, and other documents that may be needed for the completion of the project, for the building of recreational play areas at Fairview Park.
3. Authorize the Director of Parks and Recreation, or designee, to negotiate and execute an Agreement with Stanislaus County Police Activities League and Manos Unidas for the building of recreational play areas at Fairview Park, in substantial compliance with the attached draft Memorandum of Understanding.
4. Authorize the Director of Parks and Recreation, or designee, to accept the donation from KaBOOM! for the value of the playground equipment and the donations from the community volunteers constructing the play areas at Fairview Park.

**DISCUSSION:**

KaBOOM! (KaBoom) is a national non-profit organization dedicated to the bold goal of ensuring that all children, particularly the 16 million American children living in poverty, get the balance of active play they need to become healthy and successful adults. KaBoom has been a powerful champion for play since its founding in 1996, working with partners to build, improve and open more than 15,000 playgrounds, engage more than 1,000,000 volunteers and serve more than 6,600,000 children.

KaBoom's involvement in creating play areas is in response to their belief that America's children are playing less than any previous generation. In part, this is because children ages eight to 18 now spend almost half of their days in front of screens instead of engaging in active play. Only one in four children gets 60 minutes of physical activity or active play every day. As play has decreased, obesity rates and behavioral and cognitive disorders have increased. Childhood obesity has tripled in the last 30 years, and in 2011, the decline of play was linked to suicide rates that have quadrupled among teenagers under the age of 15, along with the rise

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of depression and anxiety in children and young adults. In addition, schools without recess face more incidents of classroom behavioral problems, from emotional outbursts to problems interacting with peers and teachers.

The Police Activities League (P.A.L.) and a community-run organization called Manos Unidas have partnered to apply for a playground grant through KaBoom. The playground areas would be constructed at Fairview Park in Modesto and in order to process the application, KaBoom is requiring that Stanislaus County sign a Letter of Intent (Attachment A) in order to place the playground equipment on County property, as well as commit to various responsibilities that are outlined in greater detail below. Should KaBoom approve the application for the playground equipment, the Community Partner Playground Agreement (Attachment B) would be completed and signed.

KaBoom will supply the playground equipment for free, the value of which is in excess of \$150,000, while relying on a partnership between the County, P.A.L and Manos Unidas to organize and complete a community-built playground project. This process officially kicks off with a design day during which the community children are given the opportunity to provide input into how the new playground will look. A town hall meeting would take place where adults from the community would be present to form a planning committee for the project. During build week, there are several days of preparation that consist of various responsibilities such as unloading playground equipment and cutting lumber. Build day typically runs from 8 a.m. to 3 p.m. with a ribbon cutting ceremony to end the community festivities.

To clarify responsibilities, the partners in this opportunity have specific duties that each would be responsible for. As the property owner, Stanislaus County would be responsible to own and maintain the playground for its lifetime, provide ADA sidewalks to the playground areas, secure all necessary permits for the construction of the playground, perform a utility check prior to design day, secure all necessary extensions to ensure the utility check is current through build day, and perform soil testing and any remediation that may be required.

Police Activities League and Manos Unidas in partnership have agreed to perform site preparation resulting in a flat and dirt surface; recruit community members, residents, and/or parents to participate in the design and planning process; recruit volunteers from the community to participate in two preparation days; recruit volunteers from the community to participate in the construction; provide food, water, tools, a dumpster, and music for volunteers; and build the playground through supervised volunteer installation. In addition, Manos Unidas has agreed to raise funds in the amount of \$8,500 toward the cost of this opportunity.

A separate Memorandum of Understanding (Attachment C) between the three partners, Stanislaus County, P.A.L., and Manos Unidas is currently being drafted that specify each partner's responsibilities in detail. The Department is requesting authorization to sign this agreement, in substantial compliance with the attached, once the three partners have reviewed and agree on the terms and upon Counsel's approval.

The Manos Unidas community group has been very active in taking back Fairview Park. They have stepped up and gotten involved to create a safe environment where the children of the community can play. With community involvement and increased use of the park, criminal

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activity is greatly deterred. The partnership between Manos Unidas, P.A.L. and the Department is an exciting opportunity to complete the transformation of this park and create a community gathering place.

**POLICY ISSUE:**

Approval from the Board of Supervisors is required for the Director to sign the Letter of Intent, obligating the County in this project, and to sign an agreement with P.A.L. and Manos Unidas. Additionally, pursuant to Government Code Section 25355, the Board may accept the donation made to the County.

**FISCAL IMPACT:**

A preliminary estimate by staff for the County's cost is \$35,000. The Department has applied for and received a grant from the Housing Related Parks Program sponsored by the California Department of Housing and Community Development that will cover these costs. The estimated value of the donated play areas and labor for Fairview Park is in excess of \$150,000.

<b>Cost of recommended action:</b>		\$ 35,000
<b>Source(s) of Funding:</b>		
Housing Related Parks Program grant funding	\$35,000	
<b>Funding Total:</b>		\$ 35,000
<b>Net Cost to County General Fund</b>		\$ -
<b>Fiscal Year:</b>	2016-2017	
<b>Budget Adjustment/Appropriations needed:</b>	No	
<b>Fund Balance as of</b>		

**BOARD OF SUPERVISORS' PRIORITY:**

The recommended actions support the Boards' priorities of A Healthy Community and Effective Partnerships by leveraging the resources of Parks and Recreation to be part of a community build that will provide recreational play areas for the community of Fairview Park.

**STAFFING IMPACT:**

Existing staff will provide needed services and contract oversight and monitoring to complete the County's responsibilities in the partnership.

**CONTACT PERSON:**

Jami Aggers, Director of Parks and Recreation

Telephone: 209-525-6770

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**ATTACHMENT(S):**

- A. KaBOOM! Letter of Intent
- B. KaBOOM! Community Partner Playground Agreement
- C. Draft Memorandum of Understanding

## KaBOOM! Letter of Intent

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

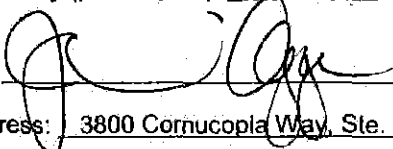
- Assume all responsibilities as outlined in the KaBOOM! Community Partner Project Summary
- Fundraise \$8,500 USD toward the cost of playground equipment
- Own and maintain the playground for its lifetime
- Provide land and secure all necessary permits for construction of playground
- Remove all existing playground equipment currently on site
- Perform site preparation resulting in a flat and dirt surface two weeks prior to Build Day of a site measuring at least 2,500 square feet.
- Perform a utility check prior to Design Day and secure all necessary extensions to ensure the utility check is current through Build Day
- Perform a soil test for lead and arsenic within two weeks of Design Day and perform remediation if necessary
- Use Playworld Systems, Inc equipment and accept engineered wood fiber safety surfacing
- Allow names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, measuring 12 1/4 inches wide by 30 1/4 inches tall
- Recruit at least 15 community members, residents, and/or parents to participate in the Design Day and planning process
- Recruit 30 volunteers from the community to participate in two preparation days and recruit 75 volunteers from the community to participate on Build Day
- Provide food, water, tools, a dumpster, and music for volunteers on Build Day
- Build the playground through supervised volunteer installation
- Accept liability for and maintain the playground upon build completion
- Obtain and maintain insurance for the playground and Build Day, and add KaBOOM! and the Funding Partner as additional insureds for the term described in the contract
- Indemnify and hold harmless KaBOOM! and the Funding Partner
- Follow KaBOOM! protocol on all media and promotions as outlined in the Corporate Sponsorship Policy

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

Legal Name of Organization: Stanislaus County, Department of Parks and Recreation

Name of Organization to Use in Media: Stanislaus County, Department of Parks and Recreation

Name and Title of Signatory (please print): Jami Aggers, Director of Environmental Resources and Parks and Recreation

Authorized Signature:  Date: 7/13/16

Signatory Mailing Address: 3800 Cornucopia Way, Ste. C., Modesto, CA 05358-9494

Contact information for person who should receive KaBOOM! Invoice:

Name: JAMI AGGERS

Telephone number: 209/525-6770

Mailing Address: 3800 CORNUCOPIA WAY, STE C., MODESTO CA 95358-9494

Email: [jaggers@envres.org](mailto:jaggers@envres.org)

Fax: 209/525-6773



## COMMUNITY PARTNER PLAYGROUND AGREEMENT

July 28, 2016

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that Stanislaus County Police Activities League (referred to herein as the Community Partner) has agreed to collaborate with KaBOOM! and Kaiser Permanente (referred to herein as the Funding Partner) in the construction of a new playground at Fairview Park, Tucson, Avenue, Modesto, CA 95358 (the "Project"). This Community Partner Playground Agreement (this "Agreement"), which sets forth the Community Partner's obligations in connection with the Project and certain matters on which the parties have agreed, will, when executed by the duly authorized representatives of each party, supersede any prior agreements and represent the complete legally binding agreement between the parties regarding the Project.

1. Obligations of the Community Partner. The Community Partner shall work with KaBOOM! and the Funding Partner as well as community residents to design, plan and build the Project. By executing this Agreement, the Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
  - (a) Fundraising. In support of the Project, the Community Partner must contribute \$8,500 to KaBOOM!, which will apply the funds directly to the purchase of playground equipment. KaBOOM! will invoice the Community Partner for such amount promptly following the execution of this Agreement, which amount must be paid in full at least thirty (30) days prior to the Project's Build Day (as defined below).
  - (b) Project Site.
    - (i) Ownership. At the time of execution of this Agreement, the Community Partner shall provide KaBOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Community Partner or a letter from the property owner showing approval for the Project. The Community Partner is the owner of the playground in its entirety, for the lifetime of the playground, including the equipment and/or safety surfacing purchased by KaBOOM! and/or the Funding Partner.
    - (ii) Permits. Prior to Build Day, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playground in compliance with applicable laws and regulations.
    - (iii) Preparation. The Community Partner shall ensure that the Project site is safe for volunteers and children, which responsibility includes: (1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Day; (2) preparing the site for the installation of the Project at least two weeks before Build Day, which includes removing existing playground equipment, footers and safety surfacing, grading the land, removing fencing and performing soil tests; (3) conducting up to two (2) utility checks as reasonably requested by KaBOOM! with the appropriate utility companies, with the first test being completed on or before Design Day (as defined below) and with all utility check documentation provided upon completion to the KaBOOM! project manager who shall supervise the planning and installation of the playground (the "Project Manager"); and (4) conducting up to two (2) soil site tests as reasonably requested by KaBOOM!, with the first test being completed on or before Design Day and with all soil check documentation provided to the Project Manager upon completion. The Community Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
    - (iv) Safety and Security. The Community Partner shall ensure the security of equipment, tools, supplies and well being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
    - (v) Maintenance. Maintenance of the playground facility and supervision of its use is the sole responsibility of the Community Partner. The Community Partner shall collaborate with KaBOOM! during the Project

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

- (vi) **Adult Fitness Equipment Stations.** The Community Partner has agreed to accept five (5) Adult Fitness Equipment Stations as part of this playspace project and has agreed to: 1) work with their KaBOOM! Project Manager to coordinate the installation and pouring of five (5) 15' x 15' concrete pads to accommodate the stations at least two (2) weeks prior to Build Day at the cost of the Funding Partner; 2) identify which five (5) stations will be included within the scope of this project from Playworld Systems, Inc.'s line of LifeTrail® or ENERGI® (as designated by KaBOOM! and the Funding Partner) equipment at Design Day; 3) develop and implement a maintenance plan appropriate to the site and usage that will include regular (to be determined by Community Partner based on usage) and specified safety checks of the physical space and equipment.
- (c) **Design Day.** The Community Partner agrees to host a KaBOOM!-facilitated "Design Day" with at least twenty (20) adult volunteers and twenty (20) children. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- (d) **Build Day.** The Community Partner shall recruit 75 adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on 11/5/2016 and which is referred to herein as the Build Day. The Community Partner shall ensure that all volunteers sign a waiver. On the Build Day, the Community Partner shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.
- (e) **Promotion; Intellectual Property.** The Community Partner shall seek prior approval from KaBOOM! and/or the Funding Partner for any materials that reference the Project or contain the name, trademarks, service marks, logos and other intellectual property (collectively, and together with all goodwill attached or which shall become attached to any of the them, the "Marks") of KaBOOM! and/or the Funding Partner, including press releases, fliers and promotional materials. The Community Partner acknowledges and agrees that each of KaBOOM! and the Funding Partner is the sole owner of all right, title and interest in and to its respective Marks. The parties acknowledge that KaBOOM! and the Funding Partner may take all steps to protect their Marks as they deem appropriate. Any use of the Marks will inure to the sole benefit of KaBOOM! or the Funding Partner (as applicable). The Community Partner shall not use the Marks in any manner that would harm the reputation of KaBOOM! or the Funding Partner or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the Community Partner shall cease all use of the Marks. The Community Partner shall collaborate with KaBOOM! and the Funding Partner to secure media coverage for the Project.
- (f) **Signage.** The Community Partner shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, which shall be substantially in the form provided to the Community Partner during the application process and shall be 12 ¼ inches wide by 30 ¼ inches tall and mounted on poles in a mutually agreed location.



- (g) Shade. The Community Partner has agreed to accept the installation of the shade over the playground that was built with KaBOOM! and has agreed to: 1) determine if a permit is needed for shade and if so, identify what is needed to secure the permit. 2) If permit is required, the Community Partner is responsible for filing the paperwork and making payment for the expenses related to securing the permit. The KaBOOM! shade vendor will provide the necessary designs and documentation needed to secure the permit. 3) In coordination with the Project Manager and the shade vendor, the plan for drilling the holes for the shade post footers, installation of the rebar and pouring the concrete will be identified. This will include the timeline for the footer work and site access for the contractor. 4) the Community Partner is responsible for ensuring the shade vendor has access to the site. Damage to sidewalks or fences is the responsibility of the Community Partner 5) Once the shade post footers are completed, the Community Partner must secure the site so that no kids play on the footers. 6) Within 2-3 days of the footers being completed, provide access for the shade vendor to install the shade. 6) A maintenance plan for the shade is created and provided to KaBOOM! Once the shade is installed, it needs to be properly maintained. This includes checking the tension on the shade and tightening it as needed. In the event of a high wind event (ie. Hurricane), the shade needs to be taken down. Once the high wind event is over, the shade needs to be re installed. 7) Payment for the shade will be paid directly to the shade vendor.
- (h) Playground Costs. The Community Partner is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the Community Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- (i) Warranty. The playground equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers, a copy of which may be obtained, upon request, from such manufacturers. The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KaBOOM! nor the Funding Partner nor any of their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including its quality, mechanical condition or fitness for a particular purpose.
- (j) Insurance. The Community Partner 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). This self-insurance shall be primary over any other insurance covering KaBOOM! and its funding partners.
- (k) Indemnification. The Community Partner shall indemnify and hold harmless KaBOOM!, the Funding Partner and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives from any and all losses, liabilities, claims, actions, fees and expenses (including interest and penalties due and payable with respect thereto and reasonable attorneys' and accountants' fees and any other reasonable out-of-pocket expenses incurred in investigating, preparing, defending or settling any action), including any of the foregoing arising under, out of or in connection with any breach of this Agreement, any actions associated with this Project or resulting from the use of any playground property and equipment, including those for personal injury, death, or property damage, except to the extent resulting from the gross negligence or willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.
- (l) Data and Reporting Requirements. The Community Partner shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KaBOOM! to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by KaBOOM! within 2 weeks from the Build Day and a 6-month survey provided by KaBOOM! within 7 months from the Build Day.

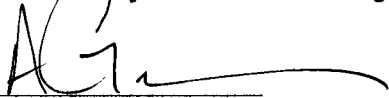
## 2. Obligations of KaBOOM!

- (a) Playground Build. KaBOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
    - (i) Coordinate Funding Partner participation, facilitate playground design, including regular planning meetings, and work with vendors to procure equipment and materials in a timely manner, except to the extent that safety surfacing other than engineered wood fiber is used, which shall be procured by the Community Partner.
    - (ii) Manage construction logistics for the Project, coordinate playground site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available on the Build Day.
    - (iii) Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
    - (iv) Make available certain educational and promotional materials related to the Project.
  - (b) Inspection. KaBOOM!, in collaboration with the Community Partner, will secure a Certified Playground Safety Inspector to review the playground structure at the conclusion of the Build Day (or, if KaBOOM! assumes responsibility for the playground construction going beyond one day, at the conclusion of the installation) to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the Build Day is not completed on the Build Day due to failure of the Community Partner, in which case the Community Partner shall secure the Certified Playground Safety Inspector.
  - (c) Promotion. KaBOOM! will provide proposed promotional materials relating to the Project for the Community Partner's review and approval, which approval shall not be unreasonably withheld or delayed.
  - (d) Website Listing. KaBOOM! will place the playground on its list of KaBOOM! builds on the KaBOOM! website and KaBOOM! will send information to the Community Partner on playground maintenance programming and enhancements.
  - (e) Post-Build Day. The Community Partner shall (i) within one week following the Build Day, complete and submit a Post Build Report, in the form to be made available by KaBOOM!, and (ii) shall use its commercially reasonable efforts to provide, and otherwise shall cooperate in good faith with KaBOOM! regarding obtaining, such other information related to the Project as KaBOOM! from time to time may request.
3. Build Day Postponement. The Build Day shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playground. The decision to postpone the Build Day will be made by majority agreement of the representatives of KaBOOM!, the Community Partner and the Funding Partner, except where such decision must be made by KaBOOM! on the construction site and representatives of the Community Partner and the Funding Partner are not available for consultation. In the event that the Build Day is postponed, KaBOOM!, the Community Partner and the Funding Partner shall develop a plan for rescheduling the Build Day at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Day, including, without limitation, equipment, labor and materials, storage and travel costs and expenses; *provided, however*, that the Funding Partner shall be notified of the estimated amount of such additional expenses in connection with rescheduling of the Build Day. Notwithstanding the foregoing, in the event that the date of the Build Day is cancelled or changed as a result of the Community Partner's failure to satisfy its obligations in connection with the Project, then the Community Partner shall be liable to KaBOOM! and the Funding Partner for all such additional expenses related to the rescheduled Build Day.
  4. Funding Partner Relations. KaBOOM! has a separate contract with the Funding Partner pursuant to which the Funding Partner has agreed to provide financial and human resources for the Project. In recognition of the Funding Partner's contribution of such resources, the Funding Partner shall receive first placement on any recognition materials developed for the Project, including playground signage, banners, T-shirts, press releases, website and newsletter stories, and flyers, and the Community Partner shall not solicit sponsors or donors in relation to the Project whose products or services directly compete with the products or services of the Funding Partner as identified to the Community Partner by KaBOOM! and/or the Funding Partner. In the event the Community Partner solicits other sponsors or donors, then the Community Partner shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.

5. Termination. In the event that the Community Partner fails to make the payments required under Section 1(a) or otherwise breaches this Agreement, KaBOOM! may terminate this Agreement upon written notice to the Community Partner of such termination. Furthermore, if either party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and either party may terminate this Agreement if the other is unable to perform any obligation hereunder for a period longer than ten (10) calendar days due to such force majeure event, in which case KaBOOM! shall refund to the Community Partner any amounts paid to KaBOOM!, less expenses already committed and/or incurred prior to the date of such termination. If, upon termination as provided herein, the sum due KaBOOM! the by Community Partner exceeds the sum paid to KaBOOM! hereunder, the Community Partner shall pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within thirty (30) days of invoice. Except as set forth above, upon any termination, this Agreement shall become void and have no effect, and no party shall have any liability to the other party, except that nothing herein will relieve any party from liability for any intentional breach of this Agreement prior to such termination.
  
6. General Provisions. The Community Partner represents to KaBOOM! that all information provided by it to KaBOOM!, including in the Playground Profile Application, is true, correct and complete in all respects and does not omit any information relevant to the Project. Each party has all requisite power and authority, including any necessary approval by its governing body, to execute and deliver this Agreement, and to perform its obligations hereunder. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and where expressly stated, their affiliates and representatives. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to conflicts of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby. This Agreement may be altered, modified or amended only by a written document signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such party's signature below. The Funding Partner shall be an intended third party beneficiary of Sections 1(b), (e), (f), (g), (h), (i) and (j) and Sections 2(b), 3, 4 and 6 of this Agreement and is entitled to enforce its rights under such sections as if it were a party to this Agreement.

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

**Stanislaus County Police Activities League**

By:   
Name: Alfredo Guerra  
Title: Executive Director

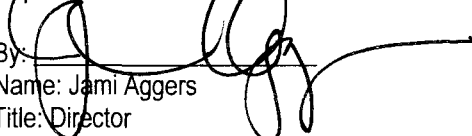
Address:  
1325 Beverly Drive  
Modesto, CA 95351  
T: 209-529-9121  
e-mail: [aguerra@stancopal.org](mailto:aguerra@stancopal.org)

**KaBOOM! Inc.**

By:   
Name: Gerry Megias  
Title: Chief Financial Officer

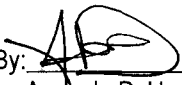
Address:  
4301 Connecticut Ave. NW, Suite ML-1  
Washington, DC 20008  
T: (202) 464- 6180  
F: (202) 659-0210  
e-mail: [gmegas@kaboom.org](mailto:gmegas@kaboom.org)

**COUNTY OF STANISLAUS**  
Department of Parks and Recreation

By:   
Name: Jami Aggers  
Title: Director

Address:  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
T: (209) 525-6750  
F: (209) 525-6773

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:   
Amanda DeHart  
Deputy County Counsel

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

Name: Alfredo Guerra

Telephone number: (209) 529-9121 X13

Mailing Address:  
1325 Beverly Drive  
Modesto, CA 95351

Email: [aguerra@stancopal.org](mailto:aguerra@stancopal.org)

Fax: (209) 529-8794



**DEPARTMENT OF PARKS AND RECREATION**  
3800 Cornucopia Way, Suite C, Modesto, CA 95358  
Phone: (209) 525-6700  
Fax: (209) 525-6773

**MEMORANDUM OF UNDERSTANDING BETWEEN  
STANISLAUS COUNTY DEPARTMENT OF PARKS AND RECREATION,  
STANISLAUS COUNTY POLICE ACTIVITIES LEAGUE, AND MANOS UNIDAS FOR THE  
COMMUNITY BUILD OF A PLAYGROUND AT FAIRVIEW PARK**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is made and entered into by and between the County of Stanislaus (hereinafter referred to as "County"), Stanislaus County Police Activities League (hereinafter referred to as "PAL"), and Manos Unidas, on July 12, 2016.

**RECITALS**

WHEREAS, the County desires to sign a letter of intent to enter into a Community Partner Playground Agreement with KaBOOM! Inc. ("KaBoom!"), in partnership with PAL and Manos Unidas, for the construction of a new playground at Fairview Park; and

WHEREAS, the County has a need for an MOU to delineate those responsibilities between the County, PAL and Manos Unidas, as outlined in KaBOOM!'s Community Partner Playground Agreement; and

NOW THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**AGREEMENT**

**1. Scope of Agreement**

1.1. The County, PAL, and Manos Unidas acknowledge that it is beneficial to the community to participate in the Community Build of a playground at Fairview Park and to ensure that all parties have a clear understanding of their responsibilities as outlined in the letter of intent and Community Partner Playground Agreement, for the successful completion of this project.

1.2. County, PAL, and Manos Unidas collectively agree to provide the services as outlined below, and as described in the Community Partner Playground Agreement:

1.2.1. County shall provide the following services:

- a. Own and maintain the playground in its entirety for the lifetime of the playground, including the equipment and/or safety surfacing.
- b. Provide ADA sidewalks to the playground.
- c. Provide the land at Fairview Park, and secure all necessary permits for construction of a playground in compliance with applicable laws and regulations.
- d. Perform a utility check prior to Design Day and secure all necessary extensions to ensure the utility check is current through the Build Day.

County shall provide all appropriate utility check documentation to KaBOOM!.

- e. Perform a soil test for lead and arsenic within two weeks of Design Day and perform remediation if necessary. County shall provide all appropriate soil check documentation to KaBOOM!.
- f. Allow names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, measuring 12-1/4" wide by 30-1/4" inches tall, and mounted on poles in a mutually agreed location.
- g. The County is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the County for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- h. In the event any playground equipment included in the Project no longer is permitted for any reason to be located at its original site of construction or such site is no longer controlled by the County for any reason, then the County shall promptly notify KaBOOM! following its becoming aware of such situation and shall, at the County's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the playground equipment (including any permanent signage and other fixtures) to an alternate site that serves children or to ensure that the successor controlling person of such site shall continue to make such playground available to children in the same manner contemplated as of the Build Day and maintain (or permit the County to maintain) such playground in accordance with the maintenance program.
- i. In addition, the County shall accept and maintain engineered wood fiber as playground safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playground.
- j. The County acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the County agrees to look solely to such manufacturers for any such warranty and/or guarantee.
- k. Accept liability for and maintain the playground upon build completion. County shall collaborate with KaBOOM! during the project planning process to develop a maintenance program for the playground.
- l. Obtain and maintain insurance for the playground and Build Day, as described in the County Playground Agreement, and add KaBOOM! and the Funding Partner as additional insureds for the term described in the contract.

1.2.2. PAL and Manos Unidas shall provide the following services:

- a. Ensure that the Project site is safe for volunteers and children, including ensuring the safety of equipment, tools, supplies and well-being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
- b. Recruit at least fifteen (15) adult community members, residents, and/or parents to participate in the preparation activities two to three days prior to

Build Day, and the Design Day and planning process.

- c. Prepare the site for the installation of the Project at least two weeks before Build Day, which includes removing all existing playground equipment, footers and safety surfacing, grading the land and removing fencing currently on site. Site preparation shall result in a flat and dirt surface two weeks prior to Build Day of the site, measuring at least 2,500 square feet.
- d. Recruit at least twenty (20) adult volunteers and twenty (20) children for Design Day. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- e. Recruit 30 volunteers from the community to participate in two preparation days and recruit 75 volunteers from the community to participate on Build Day.
- f. Provide food, water, tools, a dumpster, and music for volunteers on Build Day.
- g. Ensure that all volunteers are signed up and registered as a volunteer through either PAL or Manos Unidas and do not participate in any activities associated with this project unless and until they sign a waiver, and return the signed waivers to the Stanislaus County Department of Parks and Recreation.
- h. Build the playground through supervised volunteer installation.
- i. Indemnify and hold harmless KaBoom! and the Funding Partner.
- j. Follow KaBoom! protocol on all media and promotions as outlined in the Corporate Sponsorship Policy.

1.2.3. Manos Unidas shall provide the following services:

- a. Fundraise and contribute \$8,500 to KaBOOM!, which will apply the funds directly to the purchase of playground equipment.
- b. Manos Unidas 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 two (2) weeks from the Build Day and a 6-month survey provided by KaBOOM! within seven (7) months from the Build Day.

## 2. Term

- 2.1. The term of this MOU shall be from July 12, 2016, and end July 12, 2017, unless sooner terminated as provided below or unless some other method or time of termination is listed herein.
- 2.2. Should any party default in the performance of this MOU or materially breach any of its provisions, the other party, at that party's option, may terminate this MOU by giving written notification to the other party.

3. Mutual Indemnification

- 3.1. PAL shall indemnify, defend and hold harmless the County, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, caused by any willful misconduct or negligent acts or omissions of PAL, its officers, agents, employees, or anyone directly or indirectly acting on behalf of PAL.
- 3.2. Manos Unidas and shall indemnify, defend and hold harmless the County, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, caused by any willful misconduct or negligent acts or omissions of Manos Unidas, its officers, agents, employees, or anyone directly or indirectly acting on behalf of Manos Unidas.
- 3.3. The County shall indemnify, defend and hold harmless PAL, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, caused by any willful misconduct or negligent acts or omissions of County, its officers, agents, employees, or anyone directly or indirectly acting on behalf of County.
- 3.4. The County shall indemnify, defend and hold harmless Manos Unidas, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, caused by any willful misconduct or negligent acts or omissions of County, its officers, agents, employees, or anyone directly or indirectly acting on behalf of County.
- 3.5. Manos Unidas and PAL shall indemnify, defend and hold each other, and each other's officers, agents, employees and representatives harmless from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, caused by any willful misconduct or negligent acts or omissions of either PAL or Manos Unidas, their officers, agents, employees, or anyone directly or indirectly acting on behalf of either PAL or Manos Unidas.

4. Amendment. This MOU may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by the parties.

5. Notices:

Any notice, communication, amendment, addition or deletion to this MOU, including change of address of any party during the term of this MOU, shall be in writing and may be personally served or, alternatively, sent by US mail to the respective parties as follows:

**To: County of Stanislaus**  
Department of Parks and Recreation  
Attn: Merry Mayhew  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 534-6370  
Fax: (209) 525-6773

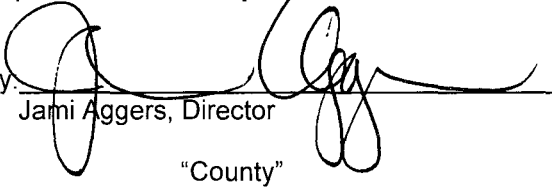


**To: Stanislaus County Police Activities League**  
Attn: Alfredo Guerra, Executive Director  
1325 Beverly Drive  
Modesto, CA 95351

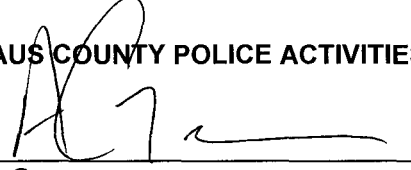
**To: Manos Unidas**  
Attn: Manuel Rivera, Coordinator  
PO Box 1352  
Modesto, CA 95350

IN WITNESS WHEREOF, the parties have executed this MOU on July 21, 2016.


**COUNTY OF STANISLAUS**  
Department of Parks and Recreation

By:   
Jami Aggers, Director  
"County"

**STANISLAUS COUNTY POLICE ACTIVITIES LEAGUE**

By:   
Alfredo Guerra  
Executive Director  
"PAL"

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:   
Amanda DeHart, Deputy County Counsel

**MANOS UNIDAS**

By:   
Manuel Rivera, Coordinator