



**Regular City Council Meeting  
7:00 p.m., Monday, June 4  
Conference Room  
23600 Liberty Street  
Farmington, MI 48335**

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## **REGULAR MEETING AGENDA**

- 1. Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment**
- 4. Board and Commission interview:**
  - Andrew Biggs, Emergency Preparedness Committee**
- 5. Consideration to approve public hearing notice for proposed FY 2018-19 budget and property tax rate**
- 6. Consideration to approve of the City of Farmington Investment Policy Addendum**
- 7. Consideration to approve quotes for the restoration and/or repair of 11 water mains and the Oakwood Cemetery east driveway**
- 8. Consideration to adopt an ordinance establishing a joint commission on Community Health with the City of Farmington Hills**
- 9. Evaluate the possibility of video recording the first City Council meetings of the month**
- 10. Consideration to approve a Community Partner Playground Agreement for new play equipment in Flanders Park**
- 11. Other Business**

**12. Council Comment**

**13. Adjournment**

<b>Farmington City Council Staff Report</b>	<b>Council Meeting Date: June 4, 2018</b>	<b>Item Number 4</b>
<b>Submitted by: Melissa Andrade</b>		
<b><u>Agenda Topic</u></b>		
Board and Committee Interview: Emergency Preparedness Committee: Andrew Biggs		
<b><u>Proposed Motion:</u></b> Move to appoint Andrew Biggs to the Emergency Preparedness Committee for a term ending February 1, 2020.		
<b><u>Background:</u></b>		
<p>The Emergency Preparedness Committee is a joint committee and includes two Farmington residents.</p>		
<p>The commission is charged with the authority and responsibility of making recommendations to the two cities concerning public education on safety, helping citizens take an active role in protecting themselves from harm, teaching citizens what to do in the event of a crisis, and providing citizens with the skills and abilities to make their families, homes and communities safer from the threats of terrorism, crime, and disaster. The commission may develop and make available a resource and/or service information base. It may also coordinate with other agencies (such as the police and fire department), promote and encourage the implementation of any program consistent with the purpose for which the commission is established including but not limited to CPR, first aid, and other emergency situation training.</p>		
<p>The committee meets the first Monday of each month; terms are three years.</p>		
<b><u>Materials:</u></b> Andrew Biggs' application		

<b>Farmington City Council Staff Report</b>	<b>Council Meeting Date:</b> June 4, 2018	<b>Reference Number 5</b>
<b>Submitted by:</b> David Murphy, City Manager		
<b>Description</b> Consideration to Approve Public Hearing Notice for Proposed Fiscal Year 2018-19 Budget and Property Tax Rates		
<b>Requested Action</b> Move to hold public hearing on Monday, June 18 at 7:00 p.m. regarding the proposed Fiscal Year 2018-19 Budget and property tax rates.		
<p><b>Background</b></p> <p>In accordance with the City Charter, Public Act 43 of the Extra Session of 1963 and Public Act 2 of 1968 as amended, it is necessary to hold a public hearing on the proposed budget and millage rate prior to their adoption. In accordance with the City Charter, the City Council must adopt the budget prior to June 21. It is recommended that the public hearing be held on Monday, June 18 at 7:00 p.m. Following the public hearing, it is recommended that the City Council adopt the budget and millage rates.</p> <p>Attached is the proposed public hearing notice. The proposed overall millage rate for the City is 15.4884 mills with 14.0000 mills for operating purposes and 1.4884 mills for roads. The proposed overall millage rate for the DDA is 1.9685 for operating purposes. The City Council has the discretion to lower the millage rate once the notice has been published but cannot increase it without holding another public hearing. The City Council can still make changes before the budget is adopted.</p>		
<b>Agenda Review</b>		
<b>Department Head</b>	<b>Finance/Treasurer</b>	<b>City Attorney</b>
<b>City Manager</b>		

CITY OF FARMINGTON

NOTICE OF PUBLIC HEARING  
TO REVIEW THE PROPOSED FISCAL YEAR 2018-19 BUDGET

The City Council of the City of Farmington will hold a public hearing on the proposed Fiscal Year 2018-19 Budget at 7:00 p.m. on June 18, 2018, in the Council Chamber in City Hall, 23600 Liberty Street, Farmington, Michigan 48335.

**THE PROPERTY TAX MILLAGE RATE PROPOSED TO BE LEVIED TO SUPPORT THE PROPOSED BUDGET WILL BE A SUBJECT OF THIS HEARING.**

The 2018 proposed property tax levy includes 14.0000 mills (\$14.0000 per \$1,000 of Taxable Value) for city operations and 1.4884 mills (\$1.4884 per \$1,000 of Taxable Value) for road improvements; for a total millage rate of 15.4884 (\$15.4884 per \$1,000 of Taxable Value.)

The Farmington Downtown Development Authority proposes to levy 1.9685 mills (\$1.9685 per \$1,000 of Taxable Value) on property in the Downtown Development District.)

Public comments, oral or written, are welcome at the hearing on the proposed budget and proposed property tax rate.

The proposed budget, as summarized below, will be on file in the office of the City Manager for public inspection and is also posted in detail on the City's website at [www.farmgov.com](http://www.farmgov.com).

<b><u>Fund</u></b>	<b><u>Revenues</u></b>	<b><u>Expenditures</u></b>
General Fund	\$9,058,028	\$9,272,544
Major Street Fund	774,446	735,954
Local Street Fund	745,528	830,190
Municipal Street Fund	507,900	477,175
Capital Improvement Fund	26,000	223,000
Water & Sewer Fund	5,064,607	5,179,778
Theater Fund	545,100	574,879
Nonvoted Debt Service Fund	158,893	158,893
Special Assessment Debt Service Fund	159,500	159,500
Streetscape Debt Service Fund	77,014	77,014
Drakeshire Special Assessment Debt Service Fund	84,800	84,800
Grove Special Assessment Debt Service Fund	97,695	97,695
OPEB 2013 LTGO Bonds	462,856	462,856
Employee Accrued Benefits Fund	12,000	15,000
Self Insurance Fund	215,511	215,511
DPW Equipment Revolving Fund	484,000	691,063

Publish: Farmington Observer

<b>Farmington City Council Staff Report</b>	<b>Council Meeting Date: June 4, 2018</b>	<b>Item Number 6</b>
<b>Submitted by:</b> Christopher M. Weber, Treasurer		
<b>Agenda Topic:</b> Approval of the City of Farmington Investment Policy Addendum		
<p><b><u>Proposed Motion:</u></b></p> <p>Move to approve the City of Farmington Investment Policy Addendum (Addendum) as presented and authorize the City Treasurer to invest surplus funds with any/all of the institutions included on the Addendum.</p>		
<p><b><u>Background:</u></b></p> <p>As directed by the City Charter, the Treasurer has custody of all monies belonging to the City. The Charter directs that these moneys shall be kept or deposited in such manner and only in such places as the Council may determine.</p> <p>Administration is requesting Council to authorize the City Treasurer to invest surplus funds with any/all of the institutions included on the Addendum.</p> <p>The list of banks and other financial institutions was compiled through discussion with other municipalities; and familiarity through the Oakland County Treasurers Association, the Michigan Municipal Treasurers Association, and the Michigan Governmental Finance Officers Association.</p> <p>The financial security of the banks included on the Addendum is reviewed monthly as part of the investment process. Specifically, the banks are rated by <a href="http://bauerfinancial.com">bauerfinancial.com</a>.</p> <p>The Oakland County investment pool is audited on a yearly basis.</p> <p>The Michigan Class and Comerica investment pools are rated by Standard and Poors on a yearly basis.</p>		
<p><b><u>Materials:</u></b></p> <p>City of Farmington Investment Policy Addendum</p>		

## **City of Farmington Investment Policy Addendum**

### **List of Approved Financial Institutions**

#### **Banks**

Chemical Bank  
CIBC Bank USA  
Comerica Bank  
Crestmark Bank  
Fifth Third Bank  
Flagstar  
Horizon Bank  
Huntington National Bank  
Independent Bank  
JP Morgan Chase  
Level One Bank  
mBank  
Mercantile Bank  
TCF Bank

#### **Other Financial Institutions**

Oakland County Local Government Investment Pool  
Michigan CLASS Investment Pool  
Comerica Investment Pool

<b>Farmington City Council Staff Report</b>	<b>Council Meeting Date:</b> June 4, 2018	<b>Item Number 7</b>
<b>Submitted by:</b> Charles Eudy, Superintendent		
<b>Agenda Topic:</b> Restoration of Asphalt at Water Main Repair Locations 2017/18		
<b>Proposed Motion:</b> Move to approve quotes from Surface Sealing of Milford Michigan in the amount of \$42,200 to replace the asphalt where 11 water main repairs were conducted and repair the asphalt of Oakwood Cemetery east driveway.		
<b>Background:</b> Over the 2017-18 winter the City of Farmington experienced over 21 water main repairs. Historically the Farmington Water & Sewer Department conducted restoration to the roads, sidewalks, driveways and grass the following spring.  Due to the number of repairs and the limited staff available, Public Services contacted Surface Sealing, who provided the lowest estimate for asphalt repairs to the Maxfield Training Center last year. Due to the locations being spread out throughout the community, cost per square yard are elevated in comparison to a large scoped project.  If a contractor is not brought in to assist the W&S Department, the City will be at risk of not meeting compliance with MDEQ regulations, and MMRMA risk assessments of maintaining the sanitary sewer system. This is in addition to the esthetics, residents and visitors see when they are in the community.  I have reviewed the W&S budget funding and recommend a redistribution of allocations from several W&S allocations. One third of the Oakwood Cemetery Driveway repairs will also be funded by the W&S Department as a result of the water tank maintenance project. The remaining expense will be funded from redistribution of cemetery allocations.		
<b>Materials:</b> Surface Sealing WMB Surface Sealing Cemetery W&S Asphalt WMB Restoration Funds		





Asphalt Maintenance Specialists For Over 48 Years

235 E. DAWSON • MILFORD, MICHIGAN 48381 • (248) 685-7355 • FAX (248) 685-7756

TO: Mr. Joshua Leach
City of Farmington
33720 W 9 Mile Road
Farmington, MI 48335

JLeach@farmgov.com

DATE: May 21, 2018

PROJECT: Water Main/Sewer Cuts
At 11 Locations

PHONE: 248-473-7250

We propose to furnish labor, equipment and material necessary to complete the following:

A. Asphalt Repairs:

- 1. Remove approx. 2,641 sq. ft. of asphalt (sawcut by City of Farmington) to a depth of 4 1/2" and haul off site.
2. Compact existing base material.
3. Install 2 1/2" of 13A H.M.A. and roll for compaction.
4. Install 2" of 13A H.M.A. and roll for compaction.
5. Remove all debris resulting from our operation.

NOTE: Price is based on 4 days on job sites.

We offer to furnish the necessary labor and materials to do the above work in accordance with the above specifications for the sum of:
Twenty-eight thousand five hundred and no/100----- Dollars. (\$ 28,500.00 )

John E. Lieblich

TERMS: The debt represented by this agreement is due upon completion.

JOHN E. LIEBLICH

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

COMPANY NAME

DATE

SIGNATURE



Asphalt Maintenance Specialists For Over 48 Years

235 E. DAWSON • MILFORD, MICHIGAN 48381 • (248) 685-7355 • FAX (248) 685-7756

TO: Mr. Joshua Leach
City of Farmington
33720 W 9 Mile Road
Farmington, MI 48335

JLeach@farmgov.com

DATE: May 21, 2018

PROJECT: Oakwood Cemetery
East Drive

PHONE: 248-473-7250

We propose to furnish labor, equipment and material necessary to complete the following:

- A. Asphalt Repairs: Wedge In and Recap Approx. 3,770 Sq. Ft., Removing Cold Patch Area Prior to Paving PRICE: \$6,825.00
1. Clean and prepare surface. Remove loose dirt, asphalt, and debris from area to be capped.
2. Wedge in holes and voids with asphalt.
3. Apply SS1-H emulsion course for adhesion at a rate of .25 gallons per sq. yd.
4. Install 1" - 1 1/2" of hot mix asphalt and roll for compaction.
5. Remove all debris resulting from our operation.

OR

- B. Asphalt Repairs: Remove and Replace Approx. 3,770 Sq. Ft. of Old, Damaged Asphalt PRICE: \$13,700.00
1. Saw cut and remove 4" of badly deteriorated asphalt.
2. Adjust and compact sub-grade. If necessary, additional stone will be installed at an additional charge.
3. Install 4" of commercial grade asphalt; additional charge for thickness over 4".
4. Roll for compaction.
5. Remove all debris resulting from our operation.

NOTE: Existing underground utilities that cannot be located by Miss Dig or the owner (i.e. irrigation lines, light pole wires, etc.) are not the responsibility of Surface Sealing, Inc. if disturbed or damaged.

We offer to furnish the necessary labor and materials to do the above work in accordance with the above specifications for the sum of: Dollars. (\$ )

John E. Lieblich

TERMS: The debt represented by this agreement is due upon completion.

JOHN E. LIEBLICH

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

COMPANY NAME

DATE

SIGNATURE

## W&S Asphalt WMB Restoration Funds

		706	707	709
592	620	\$ -	\$ -	\$ -
592	621	\$ -	\$ 2,750.00	\$ (16,000.00)
592	622	\$ 18,000.00	\$ 1,400.00	\$ 1,200.00
592	623	\$ 2,800.00	\$ 500.00	\$ 200.00
592	624	\$ 11,000.00	\$ 1,100.00	\$ 3,200.00
592	625	\$ 1,500.00	\$ -	\$ (2,000.00)
592	626	\$ 3,500.00	\$ -	\$ 950.00
592	632	\$ (5,000.00)	\$ 927.00	\$ (10.00)
592	633	\$ (400.00)	\$ 309.00	\$ (232.00)
592	666	\$ 200.00	\$ -	\$ -
592	668	\$ 4,800.00	\$ 150.00	\$ (102.00)
592	671	\$ (2,400.00)	\$ 200.00	\$ 700.00
592	673	\$ 4,023.00	\$ -	\$ 500.00
		\$ 38,023.00	\$ 7,336.00	\$ (11,594.00)

\$ 33,765.00

		706	707	709	740	818	943 Total
101	276	\$ 4,727.00	\$ (500.00)	\$ 600.00	\$ (1,750.00)	\$ 2,120.00	\$ 6,000.00

\$ 11,197.00

**Farmington City Council  
Staff Report**

**Council Meeting  
Date: June 4, 2018**

**Reference  
Number  
8**

**Submitted by: David Murphy, City Manager**

**Description Consideration to adopt Ordinance C-787 2018, establishing a Joint Commission on Community Health with the City of Farmington Hills (SECOND READING)**

**Requested Action Move to adopt Ordinance C-787 2018, establishing a Joint Commission on Community Health with the City of Farmington Hills**

**Background** City Administration has discussed the potential establishment of a Commission on Community Health as a joint commission with the City of Farmington Hills. The intention is to have the Commission focus on supporting and encouraging an environment where residents have access to quality health services and wellness programs, and to the information, education, and resources necessary to promote physical and mental health and wellbeing.

The City of Farmington Hills recently adopted its ordinance establishing the Commission as an eleven-member body with nine members appointed by Farmington Hills and two members appointed by Farmington. This ordinance would formalize Farmington's participation in the Commission.

Introduction of the ordinance would be the first step of a two-part adoption process. If Council ultimately adopts the ordinance, the Farmington Hills members can be appointed at that time.

**Materials:** proposed ordinance

**STATE OF MICHIGAN**

**COUNTY OF OAKLAND**

**CITY OF FARMINGTON**

**ORDINANCE NO. C-787-2018**

**AN ORDINANCE TO AMEND THE CITY OF FARMINGTON CITY CODE OF ORDINANCES, CHAPTER 2, "ADMINISTRATION," ARTICLE IV, "BOARDS AND COMMISSIONS," IN ORDER TO CREATE A NEW DIVISION 4, "COMMISSION ON COMMUNITY HEALTH," TO ESTABLISH A NEW JOINT COMMISSION WITH THE CITY OF FARMINGTON HILLS**

**THE CITY OF FARMINGTON ORDAINS:**

**PART I.** That Chapter 2, "Administration," Article IV, "Boards and Commission," of the City of Farmington Code of Ordinances is hereby amended to add a new Division 4 to read as follows:

**Sec. 2-265. - Establishment; purposes.**

There is established in cooperation with the City of Farmington Hills a Commission on Community Health having the purposes of supporting and encouraging an environment where residents have access to quality health services and wellness programs, and to the information, education, and resources necessary to promote physical and mental health and wellbeing. The Commission's purpose is to achieve a community-wide collaboration and partnership of organizations and individuals to work together to identify and develop new and innovative programs, utilize existing programs, and locate and capture funding to assist in building a healthier community. The Commission on Community Health may also be referred to as the "Community Health Commission."

**Sec. 2-266. – Authority, purposes and duties.**

The Commission on Community Health is charged with the authority and responsibility of making recommendations to the cities concerning community health matters and the appropriate means by which public and private agencies, in cooperation with community volunteers and health care professionals, may increase public awareness and utilization of new and available programs and resources to improve the overall health and wellness of the community and motivate individuals to make healthy behavioral changes. The Commission may establish and make available information dissemination programs to provide information and answer questions about public health and wellness issues and the local programs available to respond to health-related concerns. It may engage in multisector collaborations with residents, community stakeholders, healthcare professionals and others to identify and implement innovative approaches, promote existing programs, and explore funding opportunities to encourage improvements in health and quality of life throughout the community. It may also promote and encourage the implementation and utilization of any program consistent with the purpose for which the commission is established including, but not limited to, the F2H Fit Challenge and Farmington SAFE programs.

**Sec. 2-267. - Members; appointment.**

The Commission shall consist of eleven (11) regular members and two (2) alternate members, who shall represent, insofar as possible, the general citizens of the city, the students of the Farmington area schools, the clergy, the school districts, local businesses, medical professions, hospitals, community organizations, and local and regional volunteer agencies. Nine (9) regular members and one (1) alternate member shall be appointed by the City of Farmington Hills. Two (2) regular members and one (1) alternate member shall be appointed by the City of Farmington.

**Part II      Severability**

Should any section, subsection, paragraph, sentence, clause, or word of this ordinance be held invalid for any reason, such decisions shall not affect the validity of the remaining portions of the ordinance.

**Part III      Savings**

This amendatory ordinance shall not affect violations of the zoning ordinance or any other ordinance existing prior to the effective date of this ordinance and such violation shall be governed and shall continue to be separately punishable to the full extent of the law under the provisions of such ordinance at the time the violation was committed.

**Part IV      Effective Date: Publication.**

This amendatory ordinance shall be effective 10 days after adoption by the City Council and after publication as provided by the Charter of the City of Farmington.

Ayes:  
Nays:  
Abstentions:  
Absent:

STATE OF MICHIGAN    )  
                                          )ss.  
COUNTY OF OAKLAND    )

I, the undersigned, the qualified and acting City Clerk of the City of Farmington, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Farmington at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2018, the original of which is on file in my office.

\_\_\_\_\_  
SUSAN K. HALBERSTADT, City Clerk  
City of Farmington

Adopted:  
Published:  
Effective:

<b>Farmington City Council Staff Report</b>	<b>Council Meeting Date: June 4, 2018</b>	<b>Item Number 10</b>
<b>Submitted by: Joe LaRussa, Council Member</b>		
<b>Agenda Topic:</b> Consideration of a Community Partner Playground Agreement for new play equipment in Flanders Park.		
<b>Proposed Motion:</b> Motion to authorize the City Manager to enter into the Community Partner Playground Agreement as presented, subject to final approval as to form by the city manager and city attorney, including any amendments or revisions.		
<b>Background:</b>  City Manager Murphy, Finance Director Weber and Council Member LaRussa attended a meeting with OHM Advisors on March 6, 2018, where the agenda included grant funding opportunities that could be pursued for projects in Farmington.  Subsequent to this meeting, Mr. LaRussa identified among the opportunities a non-profit named Ka-Boom! that connects funding sources with project applicants who seek to increase the "play value" of their communities. Among the programs facilitated by Ka-Boom! is one called "Build it with Ka-Boom!" that leverages the funding from a partner organization to execute a community-designed and community-built playscape project within a municipality.  Mr. LaRussa submitted a grant application on May 10, 2018. Ka-Boom! Community Outreach staff then engaged in a dialogue with the City to review our application and shared the additional steps required to be recommended for funding. Farmington is currently being considered for two potential projects: <ol style="list-style-type: none"> <li>1.) A Ka-Boom! standard build project, typically comprising a 2,500 square-foot playscape.</li> <li>2.) An "enhanced" build project, which includes a 4,000-5,000 square-foot playscape, landscaping, and other enhancement projects to be defined.</li> </ol> One of the pre-requisites to be recommended for funding is review and commitment to execute a Community Partner Playground Agreement. In this agreement, among other conditions, is a commitment by the named community partner (in this case the City of Farmington) to bring matching funds of \$8,500 to the project. This investment would represent 10% of the total project value if Farmington is selected for Project 1.) above, and this investment would represent 3% of the total project value if Farmington is selected for Project 2.) above.  We have received positive feedback about our grant application and its competitiveness. Council Member LaRussa is requesting and recommending the City Council authorize the City to enter the Community Partner Playground Agreement with Ka-Boom! if Farmington is selected as a grant recipient.		
<b>Materials:</b> Community Partner Playground Agreement		



## COMMUNITY PARTNER PLAYGROUND AGREEMENT

May 24, 2018

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that City of Farmington (referred to herein as the Community Partner) has agreed to collaborate with KaBOOM! and «FP» (referred to herein as the Funding Partner) in the construction of a new playground at Flanders Park, 32714 Flanders Street Farmington, MI 48336 (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 sixty (60) 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.
- (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 up to 300 adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on Saturday, October 6, 2018 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) 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!.
- (h) 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.

- (i) Insurance. The Community Partner (or such other appropriate entity to which KaBOOM! consents in writing) shall obtain and maintain from no less than seven (7) days prior to the Build Day and through the first anniversary of the Build Day, commercial general liability insurance (providing coverage against liability for bodily injury, death and property damage that may arise out of or be based upon the use of the playground) with a limit of not less than one million dollars (\$1,000,000) per occurrence. The Community Partner shall also obtain and maintain worker's compensation insurance policies with statutory limits for the state in which the work is performed for their volunteer employees. Within seven (7) days from execution of this Agreement, the Community Partner shall provide to KaBOOM! a copy of a certificate from its insurer indicating the nature, scope, duration and amount of insurance coverage, and naming KaBOOM! and the Funding Partner as additional insureds under such policy, which insurance shall be primary over any other insurance covering KaBOOM! and the Funding Partner and which policy shall provide that KaBOOM! and the Funding Partner be given at least thirty (30) days prior written notice of any change or cancellation of coverage.
- (j) 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.
- (k) Data and Reporting Requirements. The Community Partner shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KaBOOM! to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by KaBOOM! within 2 weeks from the Build Day and a 6-month survey provided by KaBOOM! within 7 months from the Build Day.
- (l) Code of Conduct. The Community Partner shall establish, communicate and enforce a code of conduct for all participants in the Project's Build Day events. The Community Partner shall identify certain core standards that are expected to be included in the Community Partner's code of conduct.

## 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! by the Community Partner exceeds the sum paid to KaBOOM! hereunder, the Community Partner shall pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within thirty (30) days of invoice. Except as set forth above, upon any termination, this Agreement shall become void and have no effect, and no party shall have any liability to the other

party, except that nothing herein will relieve any party from liability for any intentional breach of this Agreement prior to such termination.

6. General Provisions. The Community Partner represents to KaBOOM! that all information provided by it to KaBOOM!, including in the 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.

«CP»

**KaBOOM!, Inc.**

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

Name: «Signatory\_1»

Title: «Sig\_1\_Title»

Address:

«S1\_Address»

T: «S1\_Phone»

«S1\_Fax»

e-mail: «S1\_Email»

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)

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

Name: «Invoice\_Name»

Telephone number: «Invoice\_Phone»

Mailing Address:

«Invoice\_Address»

Email: «Invoice\_Email»

«Invoice\_Fax»