

**MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND NEIGHBORWORKS DAKOTA HOME RESOURCES
TO ERECT A PLAYGROUND IN WILLOW PARK**

This agreement is by and between the City of Rapid City, SD, a municipal corporation (“City”), and NeighborWorks Dakota Home Resources, a South Dakota non-profit located at 795 E. Main Street, Deadwood, SD 57732 (“NeighborWorks”).

PREAMBLE

WHEREAS, a parcel located south and west of the intersection of Blaine Avenue and Monroe Street is owned by the City and is commonly known as Willow Park (“the Property”); and

WHEREAS, NeighborWorks desires to erect a playground on the Property for use by neighborhood residents; and

WHEREAS, the Rapid City Parks and Recreation Advisory Council has approved of the installation of these improvements on the Property; and

WHEREAS, NeighborWorks applied for and received a Let’s Play Community Construction Grant of \$15,000 from KaBOOM!, a Washington, DC non-profit; and

WHEREAS, NeighborWorks intends to provide supplemental funds if necessary to cover all construction costs of the improvements; and

WHEREAS, City desires to give NeighborWorks access to the Property and to permit NeighborWorks to construct these improvements to the Property; and

WHEREAS, City desires to own any and all improvements constructed and installed by NeighborWorks and to be responsible for all maintenance once the improvements are fully constructed; and

WHEREAS, City recognizes the benefit to its citizens and city visitors from construction of the improvements to the Property, believes that construction of the improvements is in the best interests of the community, and believes that its construction and maintenance will enhance the quality of life in the City; and

WHEREAS, the parties mutually desire to reduce their understandings and agreements to writing by executing this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.

2. NeighborWorks' Obligations and Rights. NeighborWorks hereby agrees to perform all of the following, or guarantee performance of the following at NeighborWorks' direction, at its own expense, related to the playground on the Property ("the Project"):

a. Obtain all necessary permits, licenses, and authorization required by municipal, county, state, and federal authorities for construction of the Project;

b. Supervise and direct the construction of the Project efficiently and with proper economy, with the involvement of City as otherwise provided in this Agreement, and substantially in accordance with the design plan approved by the Parks and Recreation Advisory Committee;

c. Provide all financial resources necessary for the design and construction of the Project;

d. Construct the Project in accordance with applicable standards promulgated by the United States Consumer Products Safety Commission and the American Society for Testing and Materials (ASTM) as well as standards found in federal or state law (including the Americans with Disabilities Act);

e. Obtain liability insurance and workers compensation insurance for the Project during construction in the amount of one million dollars (\$1,000,000) for each policy, name the City as an additional insured on any and all liability insurance policies obtained by NeighborWorks, and furnish to City evidence of the same by certificates of insurance; and

f. Transfer all rights and obligations in the Project to City on the date of acceptance.

3. City's Obligations and Rights. City hereby agrees to do the following:

a. Permit and allow NeighborWorks and its designees to access the Property as needed to construct the Project and to otherwise complete its obligations under this Agreement;

b. Communicate regularly with NeighborWorks and participate in regular meetings regarding Project progress, changes to Project, financial status of Project, etc.;

c. Assist NeighborWorks in obtaining necessary City permits and licenses for the Project;

d. Assume all responsibility for the Project after the date of acceptance as defined below; and

e. Maintain for the life of the playground commercial and general liability insurance providing coverage against liability for bodily injury, death and property damage which may rise

out of or be based upon the use of the playground in an amount of not less than one million dollars (\$1,000,000.00); and

f. Maintain for the life of the playground a worker's compensation insurance policy in an amount of not less than one million dollars (\$1,000,000.00).

4. Ownership of Project. The parties agree that any and all improvements made to the Property will be owned by City.

5. Consultation and Design Changes. NeighborWorks and City agree to consult each other on a regular basis throughout construction of the Project regarding construction progress, proposed changes to design, financial status of the Project, etc. City names the Director of Parks & Recreation or his designee as its primary point of contact on the Project, and NeighborWorks agrees to direct any and all communications with City to this individual or his/her designee.

6. Conflicts in Project Design. If a conflict arises between NeighborWorks and City with regard to design or construction of the Project, and if the parties cannot agree on a resolution, the City has the authority to make the final decision. In such a situation, if the City's final decision results in increased costs for the Project and/or the improvements, the parties agree that City will be responsible for any increased costs.

7. Acceptance of Project. Upon notification from NeighborWorks of completion of construction of the Project, City shall satisfy itself by examination and inspection by a Certified Playground Safety Inspector that the work has been finally and fully completed in accordance with this Agreement and the relevant plans and specifications. Once City has satisfied itself by examination that the work has been finally and fully completed in accordance with this Agreement and the relevant plans and specifications, it shall provide written notice to NeighborWorks of its acceptance of the Project. As of the date of acceptance, City agrees to take over any and all responsibilities for the Project and the Property.

8. Expiration of Agreement. The parties agree that, if construction has not begun within three (3) years of the date of this Agreement, the rights and obligations under this Agreement will expire and the Agreement will terminate.

9. Notice to Terminate. If, at any time, the City deems the Project a blight and/or not up to City standards for a playground, or if it deems NeighborWorks to be in default under this agreement, the City will provide NeighborWorks with notice of the defect/default and give NeighborWorks thirty (30) days to comply with the terms of this Agreement or correct the defect. If the defect/default is not corrected within 30 days, the City may terminate this agreement, dismantle, take out, or shut down the Project, and/or exercise any rights it has under the law.

10. Independent Contractor. Nothing contained herein shall be construed as creating a partnership or joint venture between City and NeighborWorks, nor construed as making NeighborWorks anything other than an independent contractor of City. NeighborWorks shall

have no right or power to act for City other than as contemplated in this Agreement or otherwise expressly authorized by City.

11. Costs and Expenses. The parties shall pay all of their own costs and expenses incurred in connection with performance of its duties hereunder.

12. Financial Statements and Audit. City shall have the right to inspect all of NeighborWorks' financial records relating to the Project, and shall have the option of ordering an audit by the auditor of the City's choosing.

13. Waivers. No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

14. Consideration. The parties agree that the City's act of allowing NeighborWorks to access the Property and construct the Project on the Property constitutes sufficient good and valuable consideration for NeighborWorks's promises made within this Agreement and for the execution and performance of this Agreement.

15. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard for its conflict of laws provisions. The parties agree to bring any suit at law or equity only in Seventh Judicial Circuit Court in Pennington County, South Dakota.

16. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

17. Agreement Binding. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

18. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given, when received, if delivered by hand or by facsimile transmission, and when deposited, if placed in the mails for delivery by air mail, postage prepaid, addressed to the appropriate party as specified on the first page of this Agreement. Addresses may be changed by written notice given pursuant to this Section, however any such notice shall not be effective, if mailed, until three (3) working days after depositing in the mails or when actually received, whichever occurs first.

19. Severability. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in the manner appropriate to each, to be effective as set forth herein.

EFFECTIVE DATE: In witness whereof, the parties hereto have executed this agreement this _____ day of _____, 2014.

CITY OF RAPID CITY

By _____
Sam Kooiker, Mayor

(SEAL)

ATTEST:

Finance Officer

State of South Dakota)

SS.

County of Pennington)

On this the _____ day of _____, 2014, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

NEIGHBORWORKS DAKOTA HOME RESOURCES

By _____
Its _____

State of South Dakota)

SS.

County of Pennington)

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____, of the NeighborWorks Dakota Home Resources, a South Dakota nonprofit, and that as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the NeighborWorks Dakota Home Resources by himself/herself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)