



A RESOLUTION

04-R -1356

BY NATALYN ARCHIBONG

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO AN AGREEMENT TO ACCEPT THE DONATION OF IMPROVEMENTS TO BESSIE BRANHAM PARK FROM KIRKWOOD NEIGHBORS ORGANIZATION, AND FOR OTHER PURPOSES.

WHEREAS, Bessie Branham Park is a public park owned and maintained by the City of Atlanta; and

WHEREAS, Kirkwood Neighbors Organization is a private, non-profit organization dedicated to the preservation, restoration and maintenance Bessie Branham Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

WHEREAS, the construction of a playground in Bessie Branham Park would constitute an improvement to the park grounds and increase the recreational resources in the Kirkwood Historic District; and

WHEREAS, KaBOOM! is a non-profit organization that develops, manages and coordinates community-build playground programs; and

WHEREAS, Kirkwood Neighbors Organization proposes to enter into a written agreement with KaBOOM! as a Community Partner for services to plan, design and construct a community-built playground in Bessie Branham Park (the "Project"); and

WHEREAS, the value of the contribution to the Project by Kirkwood Neighbors Organization is \$20,000; and

WHEREAS, Kirkwood Neighbors Organization wishes to donate to the City of Atlanta the resulting improvement to Bessie Branham Park,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

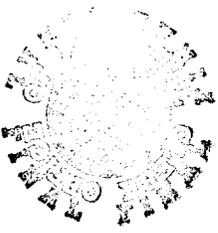
SECTION 1: That the Mayor is hereby authorized to enter into an agreement to accept on behalf of the City of Atlanta the donation of improvements to Bessie Branham Park in the form of a community-build playground from Kirkwood Neighbors Organization as set forth in substantial form as Attachment A.

A true copy,

Shonda Daughtrie Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

AUG 16, 2004
AUG 20, 2004



Attachment A

**AGREEMENT
BETWEEN
THE CITY OF ATLANTA
AND
THE KIRKWOOD NEIGHBORS' ORGANIZATION**

THIS AGREEMENT REGARDING THE DONATION OF A COMMUNITY-BUILD PLAYGROUND AND THE EQUIPMENT THEREON, made as of the _____day of _____, 2004 by and between the City of Atlanta, a municipal corporation and political subdivision created pursuant to the laws of the State of Georgia, and the KIRKWOOD NEIGHBORS' ORGANIZATION, a private, non-profit corporation organized and existing under the laws of the State of Georgia.

WITNESSETH THAT:

WHEREAS, Bessie Branham Park is a public park owned and maintained by the City of Atlanta; and

WHEREAS, Kirkwood Neighbors Organization is a private, non-profit organization dedicated, in part, to the preservation, restoration and maintenance Bessie Branham Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

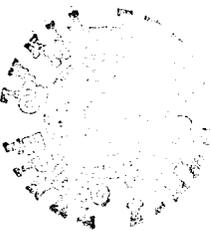
WHEREAS, Kirkwood Neighbors Organization has entered into a written agreement with KaBOOM!, a non-profit organization that develops, manages and coordinates community-build playground programs, for services to plan, design and construct a community-build playground in Bessie Branham Park; and

WHEREAS, Kirkwood Neighbors Organization wishes to donate to the City of Atlanta playground equipment and other improvements to Bessie Branham Park valued at approximately \$140,000,

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City and the Kirkwood Neighbors' Organization, intending to be legally bound, do hereby covenant and agree as follows:

I. OBJECTIVE

The City does hereby accept and Kirkwood Neighbors' Organization does hereby donate a community-build playground to be constructed in Bessie Branham Park pursuant to a separate written agreement between Kirkwood Neighbors' Organization and KaBOOM!. (Exhibit 1).



Attachment A

II: FORCE MAJEURE

A. If the community-build playground project to be completed by Kirkwood Neighbors Organization and KaBOOM! is prevented, suspended, or postponed by reason of any extended illness, fire, casualty, heightened state of emergency, act of terrorism, lockout, labor strike, riot, war, Act of God, or by ordinance, law, order or decree of any legally constituted authority (hereinafter, "*Force Majeure Event*"), then during such Force Majeure Event this Agreement may, at the option of the City, be suspended during the continuance of such Force Majeure Event. In the event that any such suspension described above continues for a period or aggregate of periods of forty-five (45) days, the parties may terminate this Agreement by mutual written consent.

III. INDEMNIFICATION

A. Kirkwood Neighbors' Organization shall indemnify the City and hold it harmless against any losses, claims, damages or liabilities to which the City may become subject to, arising in any manner out of or in connection with acts taken or omitted to be taken (including any untrue statements made or statements omitted to be made) by Kirkwood Neighbors' Organization or otherwise arising out of or in connection with the construction or installation of the community-build playground project hereunder unless, in a final adjudication, it is determined that such losses, claims, damages, or liabilities arose out of the gross negligence or gross misconduct of the City, to the extent that the City's governmental immunity or the provisions of O.C.G.A. Section 51-3-20 et seq do not apply.

B. Notwithstanding anything to the contrary contained herein, neither party shall be liable for consequential, incidental, punitive, special, exemplary or indirect damages, or lost profits in connection with claims made by either party or any other third party, in connection with this Agreement regardless of the form, or whether in contract or tort.

IV. ASSIGNMENT OF AGREEMENT

This Agreement, the obligations of Kirkwood Neighbors' Organization hereunder, and the obligations of the City hereunder shall not be assignable by Kirkwood Neighbors' Organization without the written consent of the City. Nothing in this Agreement shall confer or be construed as conferring any rights or obligations upon any person or other entity not a direct party to this Agreement.

V. MISCELLANEOUS

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to the conflict of law principles thereof. The parties hereby agree to submit to the jurisdiction of the courts of the State of Georgia for the purpose of resolving any dispute arising out of or resulting from this Agreement.

B. Notices. All notices and statements required hereunder shall be in writing and delivered, certified or registered first class mail (postage prepaid and return receipt requested), or via overnight delivery to the addresses set forth below unless notification of a change of address is given in writing. Notice may be sent via confirmed facsimile transmission but a hard copy must also be mailed. Notice shall be deemed given when mailed and faxed as follows:



Attachment A

If to Kirkwood
Neighbors'
Organization:

Douglas L. Wood,
Kirkwood Neighbors' Organization
PO Box 170304
Atlanta, Georgia 30317

If to City:

Ms. Dianne Harnell Cohen, Commissioner
City of Atlanta Department of Parks, Recreation, and Cultural Affairs
City Hall East, 875 Ponce de Leon Avenue, N.E., 8th floor
Atlanta, Georgia 30308

and

Ms. Stacey Y. Abrams, Deputy City Attorney
Department of Law
68 Mitchell Street
City Hall Towers, Suite 4100
Atlanta, Georgia 30303
Facsimile Number: (404) 658-6894

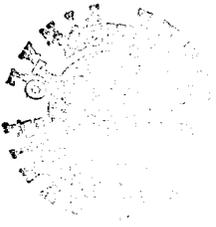
C. No Waiver. The waiver of any breach of this Agreement either by the City or Kirkwood Neighbors' Organization of any rights, remedies or defenses is not intended and will not be deemed a waiver of any additional rights, remedies or defenses to which such party would be entitled at law or in equity as to such breach. In addition, no waiver by either party of a breach of any term or provision of this Agreement will be construed to be a waiver of any proceeding or succeeding breach of the same or any other term or provision.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument and may be delivered via electronic transmission with the same force and effect as if it were executed and delivered by the parties simultaneously in the presence of one another.

E. Headings. The headings to the Sections of this Agreement are for convenience only and shall not be considered a part of this Agreement or be used in determining the intent of the parties.

F. Severability. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein.

G. Survival. The provisions of Section III (Indemnification) shall survive the expiration or early termination of this Agreement.



Attachment A

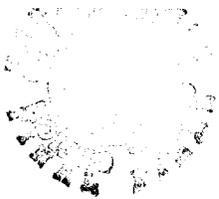
H. Modifications or Extensions. Except as otherwise provided herein, this Agreement may only be modified or extended by a written agreement signed by both parties.

I. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, supersedes all previous written or verbal agreements between the parties, including but not limited to all representations, warranties, statements, correspondence, and understandings previously made by Kirkwood Neighbors Organization or the City with respect to the subject matter of this Agreement.

* * * *

{Signatures on Following Page}

IN WITNESS WHEREOF, the City and Kirkwood Neighbors Organization (CDC) have caused this Agreement to be executed as of _____, 2003.



Attachment A

Kirkwood Neighbors Organization

The City of Atlanta

By: _____

By: _____

Doug Wood
Kirkwood Neighbors Organization

Mayor Shirley Franklin
The City of Atlanta

RCS# 5937
8/16/04
2:51 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG(S) 1-14 EXCEPT:04-R-1339
04-R-1391
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	NV Martin	Y Norwood
Y Young	Y Shook	Y Maddox	NV Willis
Y Winslow	Y Muller	Y Sheperd	NV Borders

CONSENT I

8-16-4 Council Meeting		
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 04-O-1375	41. 04-R-1317	59. 04-R-1336
2. 04-O-1206	42. 04-R-1400	60. 04-R-1337
3. 04-O-1209	43. 04-R-1320	61. 04-R-1338
4. 04-O-1354	44. 04-R-1321	62. 04-R-1340
5. 04-O-1357	45. 04-R-1322	63. 04-R-1341
6. 04-O-1366	46. 04-R-1323	64. 04-R-1342
7. 04-O-0437	47. 04-R-1324	65. 04-R-1343
8. 04-O-1350	48. 04-R-1325	66. 04-R-1344
9. 04-O-1351	49. 04-R-1326	67. 04-R-1345
10. 04-O-1368	50. 04-R-1327	68. 04-R-1346
11. 04-O-1247	51. 04-R-1328	69. 04-R-1347
12. 04-O-1221	52. 04-R-1329	70. 04-R-1348
13. 04-R-1372	53. 04-R-1330	
14. 04-R-1273	54. 04-R-1331	
15. 04-R-1388	55. 04-R-1332	
16. 04-R-1402	56. 04-R-1333	
17. 04-R-1403	57. 04-R-1334	
18. 04-R-1404	58. 04-R-1335	
19. 04-R-1304		
20. 04-R-1392		
21. 04-R-1393		
22. 04-R-1394		
23. 04-R-1395		
24. 04-R-1396		
25. 04-R-1397		
26. 04-R-1398		
27. 04-R-1355		
28. 04-R-1356		
29. 04-R-1373		
30. 04-R-1308		
31. 04-R-1309		
32. 04-R-1310		
33. 04-R-1311		
34. 04-R-1349		
35. 04-R-1367		
36. 04-R-1370		
37. 04-R-1312		
38. 04-R-1313		
39. 04-R-1315		
40. 04-R-1316		

04-R-1356

(Do Not Write Above This Line)

A RESOLUTION BY NATALYN ARCHIBONG
A RESOLUTION AUTHORIZING THE
MAYOR OR HER DESIGNEE TO ENTER
INTO AN AGREEMENT TO ACCEPT THE
DONATION OF IMPROVEMENTS TO BESSIE
BRANHAM PARK FROM KIRKWOOD NEIGHBORS
ORGANIZATION, AND FOR OTHER PURPOSES.

ADOPTED BY
AUG 16 2004
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 7/19/04

Referred To: CD/HR

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred to _____

Committee CD/HR
Date 7/27/04
Chair [Signature]
Action: Fav, Adv, Hold (see rev. side)
Other:
Members Natalyn Archibong, Mayor [Signature], [Signature], [Signature]
Refer To _____

Committee _____
Date _____
Chair _____
Action: Fav, Adv, Hold (see rev. side)
Other:
Members _____
Refer To _____

Committee _____
Date _____
Chair _____
Action: Fav, Adv, Hold (see rev. side)
Other:
Members _____
Refer To _____

Committee _____
Date _____
Chair _____
Action: Fav, Adv, Hold (see rev. side)
Other:
Members _____
Refer To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
Readings
 Consent V Vote RC Vote

CERTIFIED

CERTIFIED
AUG 16 2004

[Signature]
COUNCIL PRESIDENT

CERTIFIED
AUG 16 2004

[Signature]
MUNICIPAL CLERK

MAYOR'S ACTION

[Signature]
AUG 20 2004

MAYOR