

**ORANGE COUNTY  
BOARD OF EDUCATION  
AGENDA ITEM ABSTRACT**

**Meeting Date: October 28, 2013**

**AGENDA ITEM No. 13-10-(2)-10**

**ACTION ITEM: (Y/N) N**

**SUBJECT: KaBOOM! Grant Update**

**INFO. CONTACT: Jonathan Blumberg, Attorney      **PHONE: 919-732-8126****

**ATTACHMENTS:**

1. Dr. Pepper Snapple Group – KaBOOM! Let's Play Construction Grant Program Grantee Letter of Agreement.

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**PURPOSE:** The purpose of this agenda item is to update the Board of Education on the negotiations surrounding the Dr. Pepper/KaBOOM! Hillsborough Elementary School (HES) playground grant.

**BACKGROUND:** The Orange County Board of Education has been awarded a grant of \$9,000 by Dr. Pepper Snapple Group - KaBOOM!, and a discount of \$6,000 from a preferred vendor, to apply toward the creation of a playground at Hillsborough Elementary School. The board attorney has been reviewing and discussing the terms and conditions of the Letter of Agreement (LOA) with respect to insurance and indemnity provisions that were an issue in the playground grant. While the grantor is still reviewing the latest proposal, it is expected Dr. Pepper Snapple Group – KaBOOM! will be fine with changes made. Below is a summary of the revisions made to the LOA, with a brief explanation of each.

1. Parties. The Grantee was changed from "Hillsborough Elementary School" to the "Orange County Board of Education" and it is specified in the grant that the funds are to be used at Hillsborough Elementary School. This change simply reflects the reality that the Board is the only body that can legally enter into a contract. It does not change the fact that the grant funds will be used to build a playground at HES.
2. Indemnity. The LOA leaves in place the indemnification clause as written in the original grant letter. We have made clear with the grantor that neither KaBOOM! nor Dr. Pepper are involved with manufacturing, designing, or constructing of the playground or playground equipment. Our concern was agreeing to indemnify a party—such as one of the vendors—that may reasonably be considered at fault if someone is injured on the playground. This indemnification clause says only that the Board will not hold responsible KaBOOM! or Dr. Pepper—the source of the funds—if someone is injured. We can still hold the vendors responsible if someone is injured.
3. Insurance. The insurance provision has been revised to reflect that the Board participates in the North Carolina School Boards Trust, that the Trust is not insurance, and that the Board is unable to

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provide insurance or add either KaBOOM! or DPS as an additional insured. The attorney contacted one of the lawyers for the Trust about the possibility of adding KaBOOM! and Dr. Pepper as additional insured parties and learned that this was not possible. The Trust itself, rather than the Board, is the entity that maintains the excess coverage for claims above \$150K and below \$850K, and participation is specifically limited to members (which are local boards of education, and no other entities). The grantor has indicated that they are fine with this reality, and only requested that language explaining this be included in the LOA.

4. **Date.** Lastly, the date by which the Board must sign the agreement has been changed to November 1 (it was initially July 19). As long as the Board is okay with these changes, it is anticipated that this date will not be a problem.

Please also keep in mind the additional funds that must be spent pursuant to this grant. Based on attorney communication through previous emails, the attorney understands that the Hillsborough Elementary PTA is prepared to spend this additional money on the playground.

**FINANCIAL IMPACT:** \$9,000 in grant funds to be received from KaBOOM! and a discount of \$6,000 from a preferred vendor to apply toward the creation of a playground at Hillsborough Elementary School. Therefore, there is no financial impact to the District.

**RECOMMENDATION:** The Superintendent recommends the Board of Education receive the KaBOOM! grant update for information.

# Dr Pepper Snapple Group – KaBOOM! Let's Play Construction Grant Program Grantee Letter of Agreement

The Orange County Board of Education ("Grantee") is hereby awarded a grant of **\$9,000** by KaBOOM!, and a discount of \$6,000 from a preferred vendor, to apply toward the creation of a playground at Hillsborough Elementary School under the terms and conditions stated in this Letter of Agreement (LOA). Failing to comply with any of the requirements stated in this LOA or providing false information may result in forfeiture of this grant.

## Scope of Project

1. The final Build Day on which the playground is constructed and fully completed must be on or before **June 30, 2014**.
2. The playground must be built using the KaBOOM! community-build model, defined in summary here as the method of using community volunteers to plan for, design, fundraise for, and build a community playground.
3. \$9,000 will be applied toward the purchase of playground equipment from any one of the following Preferred Vendors: BCI Burke, Landscape Structures, Inc, Miracle Recreation Equipment Company, or Playworld Systems. **Grantee must work directly with a local representative of the selected Preferred Vendor.**
4. The total playground equipment expenditure for this project from the single manufacturer toward whom this grant is applied must be no less than \$24,000 and not more than \$40,000, inclusive of grant monies.

## Disbursement and Verification of Grant Funds

5. Grantee must alert KaBOOM! when they are prepared to purchase their equipment so that KaBOOM! can contact the vendor's national headquarters to apply the \$6,000 equipment discount.
6. Grant funds will be disbursed directly to the equipment manufacturer selected by the Grantee, once the Grantee has submitted the following documentation to KaBOOM!:
  - a) An invoice verifying the amount of the equipment order,
  - b) Verification that the equipment has been delivered to the Grantee
  - c) Submit proof of funds raised for the project (verified through a bank statement)
  - d) A final invoice showing the equipment order, the Grantee's payment, and a remaining balance of \$9,000.
7. In the event that KaBOOM! submits payment of grant funds to equipment manufacturer, for purchase of playground equipment on behalf of Grantee based on information provided by Grantee and Grantee does not complete a playground build, Grantee will reimburse KaBOOM! for the amount of the payment.
8. During any time of the grant program the grant can be withdrawn due to incomplete benchmarks during the planning process.

## Ongoing Participation of the Grantee During the Grant Period

9. Grantee agrees to meet the timelines established for the submission and/or completion of the following key project benchmarks. In the case of submissions of reports or documents, they should be sent to the attention of the KaBOOM! Grants Manager. Failure to submit any such report by the appointed deadline may result in forfeiture of the grant.
  - a) Grantee must sign this LOA and return the signed, original hard copy to KaBOOM! by November 1, **2013**.
  - b) At least 4 weeks prior to the Build Date, grantee must place equipment order directly with the local representative of the equipment manufacturer and submit proof of playground equipment order in the form of an itemized equipment invoice from the representative.
  - c) At least 4 weeks prior to the Build Date:

- i. Grantee must submit their **Build Day Plan of Action** report, outlining the roles and responsibilities of all community volunteers, along with time breakdowns illustrating how volunteers will be engaged in the build day process from the kick-off to the ribbon-cutting.
  - ii. Grantee must submit a **programming plan** detailing how different segments of the community will use the playground at different times.
  - iii. Grantee must submit an ongoing **maintenance plan** detailing how the playground will be maintained, who will conduct the maintenance, and how the maintenance plan will be budgeted.
- d) No later than 2 weeks after the Build Date:
- i. Grantee must submit the equipment invoice showing the equipment order, their payment, and a remaining balance of \$9,000.
  - ii. Grantee must submit Grantee Completion Report. A portion of the report consists of a post-build survey, which will be provided by KaBOOM!. In addition, the grantee must include a project summary, photographs, and media stories that document the project's progress and execution. **Payment will not be sent to the equipment vendor until all Post Build documents are received.**

The grantee must:

- 10. Agree to purchase playground equipment from a KaBOOM! Preferred Vendor.
- 11. Participate in regularly scheduled planning calls.
- 12. Complete steps of planning by established timelines (this will be provided to selected grantees).
- 13. Submit proof of funds raised for the project (grant funds will only be released at this time).
- 14. Post new pictures and information in Our Dream Playground on a regular basis and on the Map of Play after the playground is completed.

#### Partner Recognition

- 15. Grantee must send out the preapproved press release template to a minimum of one local media outlet. Reference to the Dr Pepper Snapple Group – KaBOOM! grant program and their sponsorship in other forms such as newsletters, web stores, or other promotional materials is subject to review and approval.
- 16. All grantees will automatically be signed up to receive information by email from Let's Play. If requested, grantee agrees to collaborate with a representative from the Dr Pepper Snapple Group to plan and host a grant award presentation, prior to, on, or just following their Build Day.

#### Certification Requirements

- 17. Grantee agrees to purchase only surfacing that meets ADA Guidelines (Americans with Disabilities Act), is IPEMA (International Play Equipment Manufacturers Association) certified and meets and/or exceeds the standards set forth by ASTM (American Society for Testing Materials) and CPSC (Consumer Product Safety Commission).
- 18. Grantor acknowledges that Grantee participates in the North Carolina School Boards Trust (NCSBT), a risk-management program that provides local boards of education the opportunity to budget funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or employees or former members and employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of the local board of education or as an employee. Grantor further acknowledges that the NCSBT is not an insurance company and is not authorized to execute insurance contracts, that Grantee's participation in the NCSBT is not a waiver of governmental immunity, and that Grantee is unable to add KaBOOM! or DPS as additional insured to its agreement with the NCSBT.
- 19. Grantee will look solely to Vendor for performance of, and for payment and/or satisfaction of any obligation or claim arising out of, or in connection with, this Agreement and hereby covenants that it will not assert any claims against KaBOOM!, inc. or any of its affiliates, nor look to KaBOOM! or any such affiliates for satisfaction of any such obligation.
- 20. Grantee must ensure that an installer representing the selected manufacturer will be on site on Build Day to oversee the installation of the playground and to review the playground structure to ensure that it is safe and built to all appropriate standards and guidelines. Grantee acknowledges that neither KaBOOM!, Dr Pepper

Snapple Group nor their respective officers, directors, employees, or agents are in any way responsible or liable for action, inaction or negligence of the playground installer. In the event that the Build Day is delayed or not completed on the scheduled day, Grantee acknowledges that it will be the responsibility of Grantee to secure an installer representing the selected equipment manufacturer to review the completed playground.

**Indemnification**

21. By accepting the Grant, the Grantee acknowledges that neither KaBOOM! nor DPS nor their respective subsidiaries and affiliates, and their officers, directors, employees or agents shall be liable for any acts, omissions, injuries, errors or damages, whether direct, indirect, incidental or consequential, associated with the use of the Grant funds or the Grant sponsored project. The Grantee irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless KaBOOM!, DPS and its subsidiaries, and their respective officers, directors, employees and agents, from and against any and all claims, liabilities, losses, damages (including incidental, consequential, special and punitive damages) and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of the Grantee, its employees, or agents, in applying for or accepting the Grant, in expending or applying funds furnished pursuant to the Grant or in carrying out the Grant sponsored project, except to the extent that such claims, liabilities, losses, damages or expenses arise from or in connection with any willful misconduct of KaBOOM!, DPS, their respective subsidiaries and affiliates, and their respective officers, directors, employees or agents.

**General**

- 22. KaBOOM! has the sole right, at its discretion, to waive or postpone any deadline or requirement stipulated in this Letter of Agreement.
- 23. Grantee agrees to have their contact information shared with representatives from the Dr Pepper Snapple Group for award purposes.

I have read and attest that my organization is willing to comply with the Dr Pepper Snapple Group - KaBOOM! Let's Play Construction Grant requirements outlined in the Letter of Agreement.

**Please return a signed copy of this Letter of Agreement to: ATTN: Deva Jones, Grants Manager, KaBOOM!, 4301 Connecticut Avenue, Suite ML-1, Washington, DC 20008.**

Authorized Signature for Challenge Grantee	Date	Printed Name
Name of Challenge Grantee Organization	Job Title	
Phone Number	Fax Number	E-Mail Address
Mailing Address	City	State      Zip
Federal ID #	Non-profit Status (e.g. 501(c)(3))	

KaBOOM! CFO	Date	George T. Megas
KaBOOM! 4301 Connecticut Ave., NW Suite ML-1 Washington, DC 20008 202.659.0215 fax: 202.659.0210		