

MEMORANDUM

Purchasing #16-057
March 11, 2016

To: Dennis W. Beach, City Manager

Through: Otis J. Thomas, General Services Director *OT*

From: Jeff English, Purchasing Agent

Subject: Approval to Piggyback Mecklenburg County Contract #110171 "Playground Equipment, Surfacing, Site Furnishings and Related Products and Services"

The Public Works Department recommends the City issue a Purchase Order to Kompan, Inc., to furnish and install playground equipment and surfacing at Harbor's Edge Park. Kompan, Inc. was awarded a contract for playground equipment, surfacing, site furnishings and related products and services by Mecklenburg County in North Carolina (Charlotte) which is valid through September 16, 2016. Mecklenburg County issued this contract as the lead agency, on behalf of the U.S. Communities purchasing cooperative, to be used as needed by any participating government agency. The agreement is based on a competitive RFP, and the City Code allows us to piggyback a contract of this type. Kompan, Inc. has quoted the City discounts beyond the standard requirements of their Mecklenburg County contract. The replacement playground equipment will be purchased from account 302-7199-572.65-12, Community Improvement CIP Fund / Project 02-821 City Park Amenities / Construction. Total cost is \$72,363.52.

It is recommended that the Commission approve the purchase of playground equipment and surfacing, installed, per the Mecklenburg County Contract #110171, from Kompan, Inc. Please see copies of the memorandum from the Public Works department, vendor's quotation, and applicable Mecklenburg County contract information, attached.

/je
enclosures

cc: file

Memorandum

To: Otis Thomas, General Services Director

From: Hal Beard, Assistant Public Works Director 

Cc: Robert McCaughan, Public Works Director 

Subject: Cooperative Purchase – U.S. Communities Government Purchasing Alliance and State of North Carolina, County of Mecklenburg to purchase KOMPAN playground equipment

Date: March 4, 2016

KOMPAN, Inc. Playground Equipment for Harbor's Edge Park

The Public Works Department is proposing to replace the playground at Harbor's Edge Park. The existing playground has reached its design life and needs to be replaced as soon as possible. KOMPAN, Inc. has quoted a complete turnkey replacement based on the U.S. Communities contract in the amount of \$72,363.52. The City presently has a KOMPAN, Inc. playground system at Founders Park and it has performed well, looks unique and is resistant to vandalism and graffiti. The Grounds Maintenance Division would like to proceed with a cooperative purchase from the U.S. Communities contract to purchase the new KOMPAN, Inc. playground at Harbor's Edge Park.

Procurement Background:

State of North Carolina, County of Mecklenburg in conjunction with U.S. Communities Agreement awarded KOMPAN, Inc. through the RFP process the contract (No. 110171.07) to provide playground equipment, surfacing, site furnishings and related products and services on September 17th 2010 and amended the Agreement on July 1, 2015 to renew the original Agreement for an additional one-year term to expire on September 16, 2016.

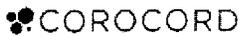
Recommendation:

Public Works Department recommends approving the cooperative purchase from the U.S. Communities Contract No. 110171.07 for the Grounds Maintenance Division to purchase a new playground from KOMPAN, Inc. in the amount of \$72,363.52. Funding is provided from City Park Amenities Account No. 302-7199-572.65-12.

Cc: Marlason Permenter, Grounds Supervisor
Mark Beaudreau, Recreation Director
File



SALES PROPOSAL



KOMPAN, INC. * 930 Broadway, Tacoma, WA 98402 * Tel 1-888-579-8223 * Fax 1-888-579-8224 * www.kompan.com

KOMPAN is a proud supplier partner of



Date 02/24/16
Expiration Date
Proposal No. SP42160
Project Harbors Edge Park
Ship to State/Zip FL 33060
Customer Service Representative Cindy Laybourn
Sales Representative Oscar Lopez
Payment Terms NET 30

Site Location: 490046
 Harbors Edge Park
 1240 NE 28th Ave
 Pompano Beach, 33060
 United States

Invoice-to: 490046
 Pompano Park & Rec
 1801 NE 6 Street
 Pompano Beach, FL 33060
 United States
 Arnold McGray

Ship-to:
 Harbors Edge Park
 1240 NE 28th Ave
 Pompano Beach, FL 33060
 United States

Qty.	Item No.	Description	Unit Price	Retail Price	Disc. %	Net Price
1	ELE400037-3717BL	Circuit, Blue	20,530.00	20,530.00	30.00	14,371.00
1	AELE400037-3717BL	InstallationELE400037-3717BL	5,132.50	5,132.50	5.00	4,875.87
2	ELE400024-3717BL	Spinner Bowl, Blue In Ground	1,030.00	2,060.00	30.00	1,442.00
2	AELE400024-3717BL	InstallationELE400024-3717BL	257.50	515.00	5.00	489.25
1	GXY916000-3417	Supernova Blue	7,820.00	7,820.00	30.00	5,474.00
1	AGXY916000-3417	InstallationGXY916000-3417	1,955.00	1,955.00	5.00	1,857.25
		Swing: 2 Bay, 2 belts, 2 infant seats				
2	SW990011-01	SWING SEAT- BELT- 8'	90.00	180.00	15.00	153.00
2	SW990021-00	INFANT SEAT- 8'	310.00	620.00	15.00	527.00
1	SW910201-0809	SWING Complete Frame Double	1,300.00	1,300.00	15.00	1,105.00
1	SW910801-0809	SWING Start-End Double	1,100.00	1,100.00	15.00	935.00
1	CUSTOMINSTALL	Installation of Custom Swing	800.00	800.00	5.00	760.00
1	GXY902012-3717	ENIF - LIME GREEN	26,020.00	26,020.00	30.00	18,214.00
1	AGXY902012-3717	InstallationGXY902012-3717	6,505.00	6,505.00	5.00	6,179.75
1	FRT-PA	Freight Middletown PA	2,643.00	2,643.00		2,643.00

Continued on page 2.....

59,026.12

		Continued from page 1.....				59,026.12
4,000	TFG-FL-14-01	EWF&FF/CFH 14'/12" comp.	1.48	5,920.00	15.00	5,032.00
1	FRT-OTHER	Freight for EWF and Filter Fabric	2,298.00	2,298.00		2,298.00
200	CUSTOMINSTALL	Installation of EWF per CY	18.46	3,692.00	5.00	3,507.40
1	ENG STAMP DRW 2	Engineer Stamp Drawing	1,500.00	1,500.00		1,500.00
1	PERMIT	Cost for installer to pull permit- This does not include the cost of the permit. That will be determined at the time the permit is pulled.	1,000.00	1,000.00		1,000.00
Total						72,363.52

Summary:

	Retail Price	Discount	Net Price
Subtotal - KOMPAN Products	59,630.00	17,409.00	42,221.00
Subtotal - Other Products	2,500.00	0.00	2,500.00
Subtotal - Surfacing	5,920.00	888.00	5,032.00
Subtotal - Installation & Other Services	18,599.50	929.98	17,669.52
Subtotal - Freight	4,941.00	0.00	4,941.00
Subtotal	91,590.50	19,226.98	72,363.52

(Applicable sales tax will be added unless a valid tax exemption certificate is provided. This amount is only an estimate of your tax liability.)

Estimated Tax Rate	0.00
Total	72,363.52

Your acceptance of this proposal constitutes a valid order request and includes acceptance of terms and conditions contained within the Master Agreement, which is hereby acknowledged. Acceptance of this proposal by KOMPAN is acknowledged by issuance of an order confirmation by an authorized KOMPAN representative. Prices in this quotation are good for 60 days.

This proposal may be withdrawn if not accepted by 04/24/16.

KOMPAN Products are "Buy American" qualified, and compliant with the Buy American Act of 1933 and the "Buy American" provision of the ARRA of 2009.

KOMPAN Authorized Signature:

Accepted By (signature): _____

Accepted By (please print): _____

Date: _____



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT # 110171.07

SEVENTH AMENDMENT TO MASTER PURCHASE AGREEMENT

THIS SEVENTH AMENDMENT to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of January 2016 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and KOMPAN, Inc., a corporation doing business in the State of North Carolina (the "Company").

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company amended the Agreement on February 1, 2012 to incorporate price adjustments.
- C. The County and the Company amended the Agreement on January 1, 2013 to incorporate price adjustments and new products.
- D. The County and the Company amended the Agreement on August 1, 2013 to incorporate new products.
- E. The County and the Company amended the Agreement on March 1, 2014 to incorporate new products.
- F. The County and the Company amended the Agreement on February 1, 2015 to incorporate new products and price lists, and the change in control in recognition of the acquisition by Kolar Invest A/S in July 2014.
- G. The County and the Company amended the Agreement on July 1, 2015 to renew the original Agreement for an additional one-year term to expire on September 16, 2016.
- H. The parties now desire to amend the Agreement by making certain changes and to the provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT

1. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.

1538 1/16/16

2. Incorporate new products and price lists for product categories including Playground Equipment, Surfacing, Turf, Site Furnishings, and Related Commodities offered in the KOMPAN 2016 catalog.
3. Incorporate 2016 pricing for all products provided under this Agreement as specified in Exhibit A.
4. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
5. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

KOMPAN, INC.

By: *Christa Regener*
Title: Vice President

Attested:

By: *J. J. Moore*
Title: Office Manager

MECKLENBURG COUNTY:

By: *J. R. Gayle*
Park and Recreation Director

Attested:

By: _____
Patricia Ann... [unclear]

By: _____
Christa Regener



Mecklenburg County

Signature Page

Contract Number: 110171

Amendment Number: 07

Contractor Name: KOMPAN, INC

MECKLENBURG COUNTY:

Handwritten signature of Leslie Johnson in cursive.

Leslie Johnson
Assistant County Manager

No Pre-Audit Required.

Handwritten signature of Wanda Reeves in cursive.

Wanda Reeves
Finance Director

ATTEST:

APPROVED AS TO FORM:

Handwritten signature of Tyrone Wade in cursive.

Tyrone Wade
County Attorney

APPROVED AS TO INSURANCE
REQUIREMENTS:



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT NO. 110071

**AGREEMENT TO PROVIDE PLAYGROUND EQUIPMENT,
SURFACING, SITE FURNISHINGS AND RELATED
PRODUCTS AND SERVICES**

This Agreement (the "Agreement") is entered into as of this 17th Day of September, 2010 (the "Effective Date"), by and between KOMPAN, Inc. (the "Company") a corporation doing business in North Carolina (the "Company"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

Statement of Background and Intent

- A. The County issued a Request for Proposals (RFP Number 269-2010-183) dated March 19, 2010 requesting proposals from qualified firms to provide the County and other Participating Public Agencies with Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services hereafter referred to as ("Products"). This Request for Proposals, together with all attachments and any amendments, is referred to herein as the "RFP".
- B. The Company submitted a proposal in response to RFP Number 269-2010-183 on May 5, 2010. This bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The County awarded this contract on July 6, 2010, to Company to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services to the County all in accordance with the terms and conditions set forth herein.
- D. Charlotte-Mecklenburg (herein "Lead Public Agency"), in cooperation with the U.S. Communities Government Purchasing Alliance (herein "U.S. Communities"), and on behalf of other public agencies that elect to access the Master Agreement (herein "Participating Public Agencies"), competitively solicited and awarded the Master Agreement to the Company. Lead Public Agency has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Master Agreement to Participating Public Agencies.

Lead Public Agency is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Master Agreement.

The Master Agreement shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists. Participating Public Agencies are required to register on-line with U.S. Communities at www.uscommunities.org. The registration allows the Participating Public Agency to enter into a Master Intergovernmental Cooperative Purchasing Agreement ("MICIPA"), which is intended to allow the Participating Public Agencies to meet applicable legal requirements and facilitate access to the Master Agreement and the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

AGREEMENT

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated into and made a part of this Agreement by reference:

Exhibit A:	Contract Pricing, Discount Structures and Pricing Incentives
Exhibit B:	Installation Fees
Exhibit C:	National Network of Distributors and Certified Installers
Exhibit D:	U.S. Communities Administrative Agreement
Exhibit E:	Product Warranties
Exhibit F:	Company's Proposal (not attached, but incorporated herein by reference)
Exhibit G:	RFP #269-2010-183 (not attached, but incorporated herein by reference)

Each reference to the Agreement shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement. Each reference to KOMPAN in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** As used in this Agreement (including all Exhibits), the following terms shall have the meanings set forth below:

- 2.1. **AGREEMENT.** The term "Agreement" shall mean this Agreement including the Company's Proposal, the RFP and all attachments, exhibits, and addenda (all as defined in the Statement of Background and Intent).
- 2.2. **DOCUMENTATION.** The term "Documentation" shall mean all written, electronic, or recorded works, and all enhancements and updates thereto, that describe the use, functions, features, or purpose of the Products and Services, including without limitation all functional and technical specifications, end user manuals, guides and other materials which relate to the Products and Services, or which are necessary to fully utilize the Products and Services.
- 2.3. **DELIVERABLES.** The term "Deliverables" shall mean all equipment, materials, drawings, data, wiring, cable, installation services, incidentals and all other items that the Company is required to complete and deliver to the County in connection with this Agreement.
- 2.4. **DEFECT.** The term "Defect" shall mean any failure of the Products, or any component thereof, to conform fully to the Specifications and Requirements. Non-conformity is not a Defect if it results from the County's misuse, improper use, alteration, or damage of the Products.
- 2.5. **EFFECTIVE DATE.** The term "Effective Date" refers to the date this Agreement is fully executed by all parties to the Agreement.
- 2.6. **PARTICIPATING PUBLIC AGENCY.** The term shall mean any and all states, local governments, school districts, and higher education institutions and other public agencies and nonprofit organizations that have authority to purchase from another public agency's competitively solicited contract.
- 2.7. **PRODUCTS.** The term "Products" shall mean Playground Equipment, Surfacing, Site Furnishings, and Related Products that the Company agreed to provide in the Company's Proposal.

- 2.8. **SERVICES.** The term "Services" shall include all services that the Company agreed to provide in the Company's Proposal, including all design, assembly, installation, reporting, and optional work.
- 2.9. **SPECIFICATIONS AND REQUIREMENTS.** The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products and Services which are set forth or referenced in: (a) this Agreement, including all Exhibits; (b) the Company's proposal; (c) the RFP; (d) the Documentation; and (e) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products. Notwithstanding the forgoing, if the Company improves the Products or Services over time to incorporate new technology or improved features or functionality, and provided the improved Products or Services under this Agreement, the descriptions, specifications and requirements for such improvements shall be deemed part of the Specifications and Requirements. Also notwithstanding the forgoing, the Company's Bid shall only take precedence over the ITB to the extent the Company properly took exception to the terms of the ITB in the manner required by the ITB.
3. **TERM.**
The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment to the contract signed by both parties.
4. **GENERAL DESCRIPTION OF PRODUCTS AND SERVICES.**
The Company shall provide the Products and Services in accordance with the terms of the Company's proposal, and in compliance with all other conditions, covenants, stipulations, terms and provisions contained in this Agreement.
5. **SHIPPING AND DELIVERY.**
All shipments shall be F.O.B. destination with freight charges prepaid and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's freight bill. Selection of the freight carrier shall be the option of the Participating Public Agency. Estimated freight charges shall be provided at the time of quotation. Company shall provide a freight quote calculator on the Company's website to allow Participating Public Agencies to calculate freight cost by zip code. Additional cost for expedited delivery may be added.
6. **INSTALLATION, MAINTENANCE AND SAFETY INSPECTIONS.**
The County and Participating Public Agencies shall be responsible for contracting installation services on a project-by project basis as needed. If included with purchase, all equipment shall be installed by a KOMPAN Installer in accordance with the standards established by the terms, specifications, drawings, and construction notes for each project and meet manufacturer's specifications and industry standards.
7. **COMPENSATION.**
- 7.1. The County shall pay the Company for Products and Services compliant with the Specifications and requirements of this Agreement based on the fixed percentage discounts from the current manufacturer's price index as identified and incorporated into this Agreement as Exhibit A.
- 7.2. The Company agrees the fixed percentage discounts will remain firm for the entire contract term.
- 7.3. Pricing shall remain in effect until December 31, 2011. Thereafter, the Company shall advise the Charlotte-Mecklenburg Procurement Services Department in writing of any proposed price increases no later than sixty (6) days prior to the effective date of the requested increase.
- 7.4. The Company shall be responsible for furnishing and delivering approved price lists and the most current catalogs to the County and other participating public entities, upon request.
- 7.5. The Company agrees that if a public agency is otherwise eligible for lower pricing through a federal, state, regional, or local contract, the Company will match the pricing.

8. **OPTIONAL WORK.**

The County and Participating Public Agencies may elect to request quotations for additional services not specifically listed in the Company's proposal or this Agreement. The Company shall provide quotations for optional products and services as requested, to provide a full turnkey solution.

9. **BILLING.**

Each invoice sent by the Company shall detail all items delivered which are necessary to entitle the Company to the requested payment under the terms of this Agreement. The Company shall mail all invoices to:

Mecklenburg County Park and Recreation
5841 Brookshire Blvd.
Charlotte, NC 28216

The County will pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt. Proposals may include an incentive discount for early payment. Invoices must include state and local sales tax.

10. **GENERAL WARRANTIES.**

Company represents and warrants that:

- 10.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;
- 10.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- 10.3 The execution, delivery, and performance of this Agreement have been duly authorized by Company;
- 10.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- 10.5 In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 10.6 The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

11. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

Company represents warrants and covenants that:

- 11.1 The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;
- 11.2 All work performed by the Company and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 11.3 Neither the Services, nor any Deliverables provided by the Company under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

11.4 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Agreement by virtue of interruptions in the computer systems used by the Company.

12. **TERMINATION.**

12.1. *TERMINATION WITHOUT CAUSE.* The County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company.

12.2. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
- (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

12.3. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE COUNTY.* By giving written notice to the Company, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
- (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

12.4. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**

In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

- 12.5. **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.** Any termination of the Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 12.6. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Agreement, the Company shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate the Services to a new service provider; and (d) refund to the County all pre-paid Warranty Fees (other than pre-paid Warranty Fees for the then current year).
- 12.7. **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Agreement, the Company agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 12.8. **AUTHORITY TO TERMINATE.** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.
- 12.9. **AUDIT.** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the County for the cost of the audit.
13. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Agreement, the Company shall cooperate with the County to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the County as determined by the County in its sole discretion. The transition services that the Company shall perform if requested by the County include but are not limited to:
- a. Working with the County to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
 - b. Notifying all affected service providers and subcontractors of the Company of transition activities;
 - c. Performing the transition service plan activities;
 - d. Answering questions regarding the products and services on an as-needed basis; and
 - e. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

14. **AMENDMENTS.** In the event changes to the Agreement become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Agreement (an "Amendment"). The Amendment shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on any associated price.

In the event either party desires an Amendment, the party shall submit to the other party a proposed change. If the receiving party does not accept the Contract Amendment in writing within ten (10) days, the receiving party shall be deemed to have rejected the proposed change. If the parties cannot reach agreement on a proposed change, the Company shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

15. **INDEMNIFICATION.** The Company shall indemnify, defend and hold harmless the County and the County's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) copyright, trademark or patent infringement or other infringement of proprietary rights with respect to any of the Products or Services delivered to the County pursuant to this Agreement ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Agreement; or (iii) arising from the Company's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that a Company employee or subcontractor is an employee of the County, including claims relating to worker's compensation, failure to withhold taxes and the like.

If an Infringement Claim occurs, the Company shall either: (i) procure for the County the right to continue using the affected Product or Service; or (ii) repair or replace the infringing Product or Service so that it becomes non-infringing, provided that the performance of the System or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the County is directed to cease use of a Product or Service, the Company shall promptly refund to the County all amounts paid under this Agreement, other than Extended Maintenance Fees.

16. **INSURANCE.** Throughout the term of this Agreement, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Agreement, or in the event the Company fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate this Agreement immediately upon written notice to the Company.

16.1. **General Requirements.**

- (a) The Company shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this Section and such insurance has been approved by the County. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.
- (b) All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the County with proof of insurance coverage by certificates of insurance accompanying this Agreement and shall name the County as an additional named insured under the commercial general liability.

(c) The County shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

16.2. Types of Insurance. The Company agrees to purchase and maintain during the life of this Agreement with an insurance company, acceptable to the County, authorized to do business in the State of North Carolina the following insurance:

(a) Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.

(b) Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.

(c) Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The County shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Agreement. Certificates of all required insurance shall be furnished to the County and shall contain the provision that the County will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.

17. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Agreement.

18. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Agreement without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by Company shall name the County as a third party beneficiary.

11. **NON-DISCRIMINATION.** The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.

The Company agrees that it will inform the County of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Company will also inform the County of the final disposition of such cases.

19. **AUDIT.** During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company in connection with this Agreement, to ensure the Company's compliance with all the terms and conditions of this Agreement or the County's payment obligations.
20. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the County in connection with this agreement. County data processed by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this agreement.
21. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County's project manager with respect to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.
22. **DRUG-FREE WORKPLACE.** The County is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:
 - 22.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
 - 22.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
 - 22.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
 - 22.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
 - 22.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
 - 22.6. Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be ground for suspension, termination or debarment.

23. **NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

- 23.1. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:

For The Company:	For The County:
Tom Grover, President	Karen Ruppe
KOMPAN, Inc.	Charlotte-Mecklenburg Procurement Services
930 Broadway	600 East 4 th Street
Tacoma, WA 98402	Charlotte, NC 28202
Phone: 800.426.9788	Phone: 704.336.2992
Fax: 866.943.6254	Fax: 704.632.8254
E-mail: TomG@Kompan.com	E-mail: kruppe@ci.charlotte.nc.us
With Copy To:	With Copy To:
	Tyrone Wade
	Deputy County Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704.336.4135
	Fax:
	E-mail: TyroneC.Wade@mecklenburgcountync

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

24. MISCELLANEOUS

- 24.1. **ENTIRE AGREEMENT.** This Agreement, (including all Exhibits) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 24.2. **AMENDMENT.** No amendment or change to this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.
- 24.3. **GOVERNING LAW AND JURISDICTION.** North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 24.4. **BINDING NATURE AND ASSIGNMENT.** This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 25.10 constitute an assignment.
- 24.5. **FORCE MAJEURE.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- (a) if such failure or delay:

- i. could not have been prevented by reasonable precaution;
 - ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
- (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Service Provider shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Service Provider continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) Upon the occurrence of a Force Majeure Event, the Service Provider shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Service Provider from performing its obligations for more than five (5) days, the County shall have the right to terminate this Agreement by written notice to the Service Provider.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Service Provider from the performance of its obligations under this Agreement.

An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

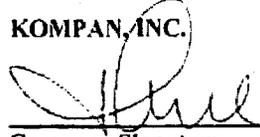
Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate this Agreement by written notice to the Company.

- 24.6. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 24.7. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the foregoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.

- 24.8. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 24.9. **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the County shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 24.10. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with this Agreement.
- 24.11. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 24.12. **TAXES.** The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.
- 22.13 **WAIVER OF RIGHT TO JURY TRIAL.** The County and Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.
25. **Non-Appropriation of Funds.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

KOMPAN, INC.

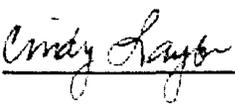


Company Signature

President

Title

ATTEST:

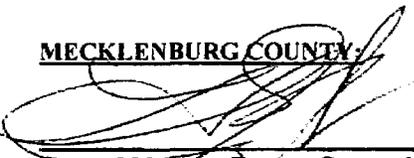


Cindy Layton

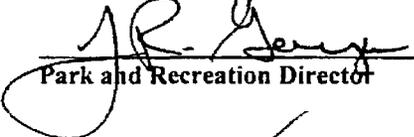
Project Support Manager

Title

MECKLENBURG COUNTY:

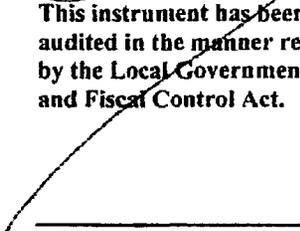


General Manager/Deputy County Manager



Park and Recreation Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.



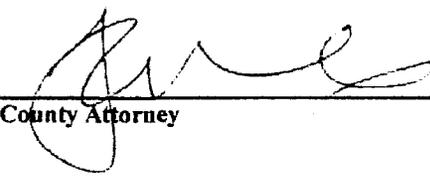
Finance Director

ATTEST:



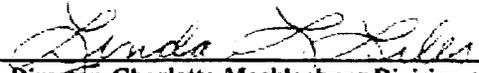
Clerk to the Board of County Commissioners

APPROVED AS TO FORM:



County Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:



Director, Charlotte-Mecklenburg Division of Insurance Risk Management

NO PRE-AUDIT REQUIRED.
DEPARTMENT(S) TO ENCUMBER
FUNDS AS NEEDED.

BY: 

DIRECTOR OF FINANCE

EXHIBIT A
Contract Pricing and Discount Structures

The attached Pricing Sheets is incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc. (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

Category	Discount
Playground Equipment Price List (including components)	10%
Surfacing Materials Price List	10%
Site Furnishings Price List	12.5%
Services Price List	5%
Related Products Price Lists	5%

Price of KOMPAN Equipment	Additional Volume Discount
\$100,000.00–\$199,999.00	2%
\$200,000.00–\$499,999.00	5%
\$500,000.00 and over	10%

4.17.2 Volume Discounts: Include any volume discounts offered to Participating Public Agencies. Volume discounts will be applied to the net contract price. For example, an order that includes \$210,000.00 of KOMPAN equipment will be calculated by first applying the 10% contract discount for a discounted price of \$189,000.00, and next the volume discount will be applied to that discounted contract price: $\$189,000.00 \times .95 = \$179,550.00$, the total volume discounted price.

EXHIBIT B

The attached Installation Rate Sheets are incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

4.17.5 Installation Fees

STATE	INSTALLATION RATE
AL	30%
AK	50%
AZ	45%
AR	30%
CA	40%
CO	37%
CT	30%
DE	30%
DC	37%
FL	30%
GA	30%
HI	50%
ID	37%
IL	40%
IN	35%
IA	35%
KS	30%
KY	30%
LA	30%
ME	30%
MD	37%
MA	30%
MI	32%
MN	50%
MS	30%
MO	30%

STATE	INSTALLATION RATE
MT	37%
NE	30%
NV	37%
NH	30%
NJ	30%
NM	45%
NY	30%
NC	30%
ND	45%
OH	30%
OK	30%
OR	30%
PA	30%
RI	30%
SC	30%
SD	45%
TN	30%
TX	30%
UT	37%
VT	30%
VA	30%
WA	30%
WV	30%
WI	35%
WY	37%

Rates are a maximum allowable percentage rate under the contract.

Minimum Installation Fee of \$1,000.00.

Installation is calculated based on retail list price of equipment, then discounted.

Example Installation Calculation in Alabama, \$50,000.00 retail list price equipment multiplied by .30 = \$15,000.00 multiplied by discounted rate .95 = \$14,250.00 net discounted installation price.

Installation rates do not include site preparation and assume a fully prepared and ready site inclusive of a level dirt site, free of overhead and underground obstacles and in the case of surface mount equipment, the prepared concrete slab.

Installation rates do not include offloading equipment, storage, security, bonds or permits.

Installation rates assume free and clear access for vehicles.

4.17.5 Installation Fees • Engineered Wood Fiber

STATE	INSTALLATION RATE
AL	\$15 CY
AK	\$25 CY
AZ	\$20 CY
AR	\$15 CY
CA	\$30 CY
CO	\$15 CY
CT	\$21 CY
DE	\$15 CY
DC	\$15 CY
FL	\$15 CY
GA	\$15 CY
HI	\$25 CY
ID	\$15 CY
IL	\$21 CY
IN	\$21 CY
IA	\$21 CY
KS	\$15 CY
KY	\$15 CY
LA	\$15 CY
ME	\$22 CY
MD	\$15 CY
MA	\$22 CY
MI	\$20 CY
MN	\$21 CY
MS	\$15 CY
MO	\$15 CY

STATE	INSTALLATION RATE
MT	\$15 CY
NE	\$15 CY
NV	\$15 CY
NH	\$22 CY
NJ	\$22 CY
NM	\$25 CY
NY	\$22 CY
NC	\$15 CY
ND	\$25 CY
OH	\$22 CY
OK	\$15 CY
OR	\$15 CY
PA	\$20 CY
RI	\$22 CY
SC	\$15 CY
SD	\$25 CY
TN	\$15 CY
TX	\$20 CY
UT	\$15 CY
VT	\$22 CY
VA	\$15 CY
WA	\$13 CY
WV	\$15 CY
WI	\$21 CY
WY	\$15 CY

Rates are a maximum allowable percentage rate under the contract.

Minimum Installation Fee of \$1,000.00.

Installation is calculated based on cubic yard of engineered wood fiber.

Example Installation Calculation in Alabama, 300 cubic yards multiplied by \$15.00 = \$4,500.00 multiplied by discounted rate .95 = \$4,275.00 net discounted installation price.

Installation rates do not include site preparation and assume a fully prepared and ready site inclusive of a level dirt site, free of overhead and underground obstacles.

Installation rates assume free and clear access for vehicles and ability for truck to dump fiber within 30 feet of the site.

Exhibit C

The attached Authorized Distributors and Certified Installers is incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

2.5.1-3 Authorized Installers and Distributors

AUTHORIZED INSTALLER	STATES
Cascade Mini Excavating Inc.	WA, OR, ID
Central Coast Playgrounds	CA
Community Playgrounds	CA, NV, OR
Consolidated Enterprises	AK
Creekmore Recreation Specialists	CA
Evans Recreation	NV, UT, ID, MT, WY, AZ, CO, NM
Fleming Environmental	CA
Funbuilders	FL
G.R. Morgan Construction	OR
Heisler Landscaping	CA
HH Construction	CA
Interstate Inc. (Chris Patton)	FL, VA, GA, SC, NC
Kevin O'Keefe Company	CA
Lobo Construction	NY
Miner's Service & Installation	NY, PA, WVA, OH, VA, NC, NJ
P&P Installations	NY, NJ, CT, RI, ME, MA, NH, VT, OH
PG Playgrounds	NE, KS, OK, AR, MO
Playground Guys	FL
Playgrounds of the Rockies	WY, CO, NE, UT
Playgrounds Unlimited	CA
Playtime Installs LLC	PA, DE, NJ, MD
Precision Playgrounds	GA, FL, AL, MS, LA, TN, SC, NC, AR, VA, WV, KY, MO, OK, TX
Pro Installation Plus	WI, IA, IL, IN, KY
Probuilt	MA
Quality Time Recreation	UT
R & R Construction	WA, OR, ID
Sandee Sod	FL
SeaCoast Construction	AK

continued next page

2.5.1-3 Authorized Installers and Distributors

AUTHORIZED INSTALLER	STATES
Sibley Contracting	GA, AL, MS, NC
Steve Mills	TX
The Douglas Group	FL
Trans Metro Construction	MD, DC, PA, NY, VA, NC, SC,
Triple J Construction Inc.	MD, DC, PA, NY, VA, NC, SC,
UA Construction	NY
Vela Construction	MI
Webb Irrigation	NC, SC, TN, GA
Western States	ID, UT, NV, MT, AZ, NM, SD, ND, MN, HI
Who Built Creative	CA

AUTHORIZED DISTRIBUTOR	STATES
Bliss Products and Services, Inc.	MS, AL, FL, GA, SC, TN, NC, VA, WVA, LA
Division Ten Products	AK
DP & Hoffman PlayWorks, Inc.	MI
Highwire, Inc.	WA, HI
JP LaRue, Inc.	ME, MA, CT, NY, RI, VT, NH
Made In the Shade	CO, WY
PG Playgrounds	NE, KS, OK, AR, MO
PlaySpace Designs	UT, NV, ID, MT
Recreation Republic	CA
Reese Recreation Products	IA, WI, IL, MO, IN, KY
Regan Recreation	TX
St. Croix Recreation Co., Inc.	MN

Exhibit D

U.S. Communities Administrative Agreement

Exhibit E

The attached Product Warranties are incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

4.10 Warranties

Proposals should address each of the following:

1. Applicable warranty and/or guarantees of any and all playground equipment, parts, surfacing, site furnishings, installations, and other products and services offered, including any conditions and response time for repair and/or replacement of any components during the warranty period.

- KOMPAN Warranty document attached. Equipment installation completed by a KOMPAN certified Installer has a one year guarantee-per the warranty document. Repair work provided by a certified Installer is scheduled with that Installer and is completed as their schedule permits.
- Warranty documents for surfacing, site furnishing and other related products and services offered are also attached.

2. Availability of replacement parts.

- Warranty replacement parts for KOMPAN playground structures are available for the duration of the warranty period and are typically shipped within 1-2 weeks, dependent on the part.
- Warranty replacement parts for FunTimbers are available for the duration of the warranty period and are typically shipped within 2 weeks, dependent on the part.
- Warranty replacement parts for sun shades are available for the duration of the warranty period and are typically shipped 2 weeks, dependent on the part.
- Warranty replacement parts for benches, tables, litter receptacles, recycling bins, planters, bike racks, urns, umbrellas, chairs and bollards are available for the duration of the warranty period and are typically shipped within 4 weeks, dependent on the part.
- Warranty replacement parts for gazebos and shelters are available for the duration of the warranty period and are typically shipped within 1week, dependent on the part.
- Warranty replacement parts for KOMPAN outdoor fitness equipment and Freegame courts are available for the duration of the warranty period and are typically shipped within 1-2 weeks, dependent on the part.

3. Life expectancy of equipment under normal use.

- KOMPAN has been producing playground equipment since the 1970's and some of that equipment is still in the field today. Local climate conditions and maintenance can affect the life expectancy of equipment. Equipment is built to last through several generations and will last over 20 years if well maintained.
- Engineered Wood Fiber has a life expectancy of twenty five years but will need additions approximately every three years to maintain safety standards.
- Rubber tiles have a life expectancy of five to fifteen years.
- Poured in Place rubber surfacing has a life expectancy of ten years.
- Mats have a life expectancy of five years.
- Court surfaces have a life expectancy of ten years.
- FunTimbers have a life expectancy of ten years.

4.10 Warranties

- Sun shades have a life expectancy of ten years for the fabric and twenty years for the steel.
- Benches, tables, litter receptacles, recycling bins, planters, bike racks, urns, umbrellas, chairs and bollards have a life expectancy of fifteen to twenty years.
- Shelters and Gazebos have a life expectancy of ten years.
- KOMPAN outdoor fitness equipment has a life expectancy of 20 years if well maintained.
- KOMPAN Freegame multi sports courts have a life expectancy of 20 years if well maintained.

4. Detailed information as to proposed return policy on all equipment

- Except as agreed to in writing, all items returned will be subject to inspection and approval by Company prior to acceptance and will result in a restocking charge for all costs associated with the return, but not less than 15% of the full list price of such returned KOMPAN items or 25% for custom or third party items. Returned goods must be securely packaged to endure long haul shipping and avoidance of damage.
- On new or unused products, the inventory label must remain on the part.
- Credit for returns is subject to the final inspection at our facility. Improper or inadequate packaging may result in damage to parts which may not be eligible under freight claim rules.

Warranty • KOMPAN Play and Fitness Equipment

Classification of material in relation to years of warranty

The warranty with respect to failure due to material or production defects on HDPE and HPL panels, and galvanized structural parts such as poles, cross beams, floor frames and top brackets, is limited to 20 years commencing on the date of delivery.

The warranty with respect to failure due to material or production defects on all other galvanized parts, non-painted steel and metal parts, and hollow plastic parts is limited to 10 years commencing on the date of delivery.

The warranty with respect to failure due to material or production defects on springs, painted metal parts, ball bearing assemblies, and net constructions is limited to 5 years commencing on the date of delivery.

The warranty with respect to failure due to material or production defects on moveable plastic and metal parts and all ICON electrical components is limited to 2 years commencing on the date of delivery.

Limited Warranty coverage of damaged parts

The warranty covers all KOMPAN products. Such damaged parts will be replaced by KOMPAN and will be delivered to the customer's address free of charge. ICON electrical components will be installed free of charge by a qualified contractor.

Limited Warranty coverage of labor

In cases where KOMPAN invoices for installation, the labor warranty with respect to failure due to installation defects is limited to 1 year commencing on the date of completed installation.

Warranty coverage applies only if products have been properly installed and maintained

The warranty is not effective if products have not been installed properly according to the instructions provided by KOMPAN, or maintained correctly according to the KOMPAN Maintenance Manual.

No coverage for wear, tear misuse, or vandalism

The warranty does not cover normal wear and tear, surface corrosion on metal parts, discolored surfaces and other cosmetic issues, or failures due to misuse or vandalism.

TFG INSTALLATIONS, INC. PERFORMANCE WARRANTY

L I M I T E D W A R R A N T Y

Effective April 15, 2010

TWENTY-FIVE YEAR GS Package 03 Series Engineered Wood Fiber Performance Limited Warranty

This 25-year Limited Warranty applies only to GS Package 03 Series.

GS Package 03 Series is warranted by TFG INSTALLATIONS, INC. to the original purchaser, to meet or exceed Playground Surfacing Guidelines of the U.S. Consumer Product Safety Commission using ASTM Standard F 1292 for a period of twenty-five (25) years from the certified date of installation, subject to the conditions and exclusions listed below.

TWENTY YEAR GS Package 02 Series FIFTEEN YEAR GS Package 01 Series

Engineered Wood Fiber Performance Limited Warranty:

This Limited Warranty applies to GS Package 02 Series and GS Package 01 Series. GS Package Series 02 and 01 are warranted by TFG Installations, Inc. to the original purchaser, to meet or exceed Playground Surfacing Guidelines of U.S. Consumer Product Safety Commission using ASTM Standard F 1292 for a period of twenty (20) years for the 02 Series and fifteen (15) years for the 01 Series from the certified date of installation, subject to the conditions and exclusions listed below.

LIFETIME Drain Strip and Filter Fabric Materials

Limited Warranty:

This Limited Warranty applies to GS Drain Strip Material and GS Filter Fabric Material ("Materials"). These Materials are warranted by TFG Installations, Inc. to the original purchaser of the materials to be free from defects, including decay and biological degradation, for life from the certified date of installation, subject to the conditions and exclusions listed below.

THREE YEAR Mat Limited Warranty:

This Limited Warranty applies to GS Mats. These Mats are warranted by TFG Installations, Inc. to the original purchaser of the Mats to be free from defects in material and workmanship for a period of three (3) years from the certified date of installation, subject to the conditions and exclusions listed below.

Warranty Performance:

The entire liability of TFG Installations, Inc. and the purchaser's sole remedy in the event the Materials do not

conform, the Limited Warranty shall be limited to replacement of the defective Materials and shall not include installation or consequential damages or refund. This Limited Warranty does not cover normal wear.

Conditions:

This Limited Warranty is conditioned upon the Materials being properly installed and maintained by the purchaser in accordance with the written instructions provided by TFG Installations, Inc.

Acts Invalidating Warranty:

Incorrect installation, failure to install all material delivered, failure to maintain the surface depth thereof, failure to use GS Mats at slide exits, under all swings and tire swings [except enclosed or bucket tot swings], use of Materials with others not provided by TFG Installations, Inc., abnormal use, lack of or improper maintenance, or vandalism shall void this Limited Warranty and TFG Installations, Inc. shall have no responsibility with respect to damage resulting therefrom. In addition, changed impact attenuation characteristics created by sand or other materials tracked into the Materials are not covered by this Warranty.

Disclaimers:

No other Warranties. TFG Installations, Inc. disclaims all other Warranties expressed or implied, including but not limited to implied Warranties of fitness or merchantability and fitness for a particular purpose. In no event shall TFG Installations, Inc. or its suppliers be liable for any damages whatsoever (including, without limitation, indirect, special, incidental, or consequential damages arising out of the use of or inability to use the Materials, even if TFG Installations, Inc. has been advised of the possibility of such loss). Because some states do not allow the exclusion of limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

Legal Remedies:

This Limited Warranty gives you specific legal rights, and you may have other rights that vary from state to state.

Prior Statements of Warranty:

This warranty supersedes and replaces any previous warranties.

Customer Service: For emergency service: Contact TFG Installations, Inc., 80 Business Park Drive, Suite 300, Armonk, NY 10504-1705. Call toll-free 800-342-2721 or 914-273-8770 / Fax: 914-273-8659.

Warranty • ECOPE Rubber Tiles

KOMPAN Safety Surfacing is guaranteed by ECOPE to be free of manufacturing defects in both material and workmanship. If such a defect is discovered, the customer must notify ECOPE directly or through the contracting installer or distributor. If found to be defective within 5 years, the sole remedy against the seller will be either replacement or repair of the defective goods, or at the seller's option, credit may be issued not exceeding the selling price of the defective goods. If product type or color purchased are no longer available at time of warranty claim, ECOPE at its discretion may substitute a product determined by ECOPE to be of comparable quality and price.

The KOMPAN warranty shall not cover dissatisfaction due to improper maintenance, installation, or usage, or general misuse, including and without limitation: burns, cuts, tears, scratches, scuffs, normal abrasion from pedestrian traffic, damage, or discoloration from cleaning products not recommended by ECOPE, or color change due to initial or extended exposure to direct sunlight or differences in color between samples or photographs and actual flooring.

ECOPE International reserves the right to make updates to this manual at any time.

PlayGuard®

PLAYGROUND SAFETY SURFACING

ECORE International Increases Warranty

PlayGuard now offers the industry's first 15-year limited warranty

Lancaster, PA, April, 2010 - Ecore International announces the extension of its PlayGuard safety surfacing warranty, the first and only of its kind in the industry. PlayGuard leads the modular playground surfacing industry with patented technology for unparalleled durability in heavy traffic areas. Specifically designed to meet 6, 8 and 10 foot fall ratings, PlayGuard's recycled rubber tiles feature unsurpassed versatility and easy adhesive-free installation.

The modular tiles are created by laminating a colorful wear layer to a thick-footed base tile. Each tile is manufactured from recycled rubber for total recycled content ranging from 85-90%. The tiles also feature 22 standard color patterns with custom design capabilities and are FloorScore certified for low VOC emissions when installed indoors.

PlayGuard is manufactured in the U.S.A. and has gained a reputation as the highest quality molded product on the market. As a testament to that quality, Ecore International has done extensive testing to raise its former 10 year warranty to a 15 year limited warranty. The warranty continues to cover abnormal surface wear due to ordinary abrasion and installation inconsistency (when installed according to the provided manufacturer instructions). However, the new time specifications ensure more complete quality assurance for customers, delivering peace of mind.

"We pride ourselves on quality products here at Ecore," states Rich Campbell, EVP Sales & Marketing, Ecore International. "PlayGuard's increased warranty solidifies our role as the industry leader in product durability and superior quality."

PlayGuard's new 15 year limited warranty includes impact attenuation (to ASTM F1292) and operates on a prorated schedule, providing adjusted coverage correlating to the product's expected wear over time. For the initial six years, PlayGuard now offers 100% reimbursement of the purchase price according to the outlined terms as stated in the full warranty. Thereafter, the product is reimbursed according to adjusted percentages per year of application not exceeding 15 years.

For a more comprehensive version of PlayGuard's new warranty see the PlayGuard Technical Manual available at:

<http://www.playguardsurfacing.com>

About Ecore International

ECORE International, manufacturer of PlayGuard safety surfacing, has been at the forefront of recycling efforts since its inception in 1989. Twenty years ago, Ecore pioneered the recycled rubber flooring category. Today, as North America's largest user of recycled scrap tire rubber, Ecore processes more than 80 million pounds of scrap tire rubber each year and helps to conserve more than one million barrels of oil in the process to convert pliable treads into durable product solutions for commercial, industrial, and architectural applications.

1818 Flite Acres Road
Wimberley, Texas 78676



p 512.847.2473
f 512.847.9577
www.duraplay.net

2 YEAR
DURAPLAY SAFETY SURFACE
WARRANTY
(50%Black & 50% Color Surfaces &
Water Applications)

Project: _____
Project Owner: _____
Site: _____
Date Installation Completed: _____
Final Inspection By: _____
Date Inspected: _____
Contractor: _____
DuraPlay Representative: _____
DuraPlay Surfacing Description: _____
Square Footage: _____

SAMPLE

DuraPlay, Inc. warrants to the owner of the project described above, subject to the terms, conditions, and limitations stated herein, as follows:

That the DuraPlay Surfacing System will be in complete compliance with ASTM standards for the duration of the warranty period. That the surfacing system will not crack as a result of normal weather conditions and will withstand negative or positive deck movement. That the surface includes DuraPlay Primer, DuraPlay Base, and DuraPlay Wearing Surface.

The foregoing warranty shall continue for a period of 2 years commencing from the date of final inspections of the DuraPlay Surfacing System as shown above, provided that the Owner gives DuraPlay written notice of any defects in the surfacing system within thirty days from the discovery of such defects.

The foregoing Warranty does not cover defects of damage caused by (1) structural or design defects; (2) misuse, vandalism, civil disobedience, acts of war; (3) any condition caused by any negligence or accidents in maintaining the Surfacing System; (4) acts of God, including lightning, hurricanes, tornados, earthquakes, fumes, flood, chemical fumes, foreign substances in the atmosphere or by other unusual natural occurrences. The obligations contained herein do not cover any material used on the Surfacing System which was not supplied by DuraPlay unless specifically identified above.

1818 Flite Acres Road
Wimberley, Texas 78676



p 512.847.2473
f 512.847.9577
www.duraplay.net

5 YEAR
DURAPLAY SAFETY SURFACE
WARRANTY
(100% Color Surfaces)

Project: _____
Project Owner: _____
Site: _____
Date Installation Completed: _____
Final Inspection By: _____
Date Inspected: _____
Contractor: _____
DuraPlay Representative: _____
DuraPlay Surfacing Description: _____
Square Footage: _____

SAMPLE

DuraPlay, Inc. warrants to the owner of the project described above, subject to the terms, conditions, and limitations stated herein, as follows:

That the DuraPlay Surfacing System will be in complete compliance with ASTM standards for the duration of the warranty period. That the surfacing system will not crack as a result of normal weather conditions and will withstand negative or positive deck movement. That the surface includes DuraPlay Primer, DuraPlay Base, and DuraPlay Wearing Surface.

The foregoing warranty shall continue for a period of 5 years commencing from the date of final inspections of the DuraPlay Surfacing System as shown above, provided that the Owner gives DuraPlay written notice of any defects in the surfacing system within thirty days from the discovery of such defects.

The foregoing Warranty does not cover defects of damage caused by (1) structural or design defects; (2) misuse, vandalism, civil disobedience, acts of war; (3) any condition caused by any negligence or accidents in maintaining the Surfacing System; (4) acts of God, including lightning, hurricanes, tornados, earthquakes, fumes, flood, chemical fumes, foreign substances in the atmosphere or by other unusual natural occurrences. The obligations contained herein do not cover any material used on the Surfacing System which was not supplied by DuraPlay unless specifically identified above.

Any claim of defect in material in the Surfacing System must be made in writing to DuraPlay as set forth above within the Warranty Period. This Warranty will not cover damage resulting from the application, repairer or subsequent work on the project without written approval from DuraPlay of the methods and materials to be used and the party who will apply those materials. During the term of the Warranty, DuraPlay, its agents, employees and assigns shall have free access to inspect the Surfacing System during business hours.

Upon completion of the installation of the Surfacing System, DuraPlay or their representatives shall inspect the installation to ascertain if the surfacing system is installed in accordance with the proper specifications and details provided by DuraPlay, Inc. This Warranty shall become effective only upon approval of the installation and when all bills for the components of the Surfacing System and for the application of the Surfacing System have been paid.

The Warranty shall become null and void if, in the sole judgement of DuraPlay, any of the following events shall occur: (1) if, after installation of the Surfacing System, there are any alterations or repairs made to the project that affect any component of the Surfacing System in any way; (2) failure by the Owner or any of the Owner's tenants to use reasonable care in maintaining the Surfacing System; or (3) Owner fails to comply with every term or condition stated herein.

DuraPlay's failure at any time to enforce any of the terms or conditions stated herein shall not be construed to be a waiver of such provision.

This Warranty shall apply only to the original project Owner as set forth above, and any assignment of any rights hereunder by the Project Owner without the express written consent of DuraPlay shall be null and void. In the event that a majority of the authorized or issued capital stock of the Project Owner shall have been sold or otherwise transferred or disposed of the new holder of the stock shall not be deemed to be the original Project Owner.

This Warranty shall not cover or apply to:

This warranty is exclusive and is in lieu of any implied warranty of merchantability, fitness for a particular purpose, or other warranty of quality, whether express or implied, DuraPlay shall not be liable under any circumstances for any indirect or consequential damages to any party whatsoever, including, but not limited to, obligation or liability of any kind, and it is further agreed and understood that the price stated for the Surfacing System is consideration for the limitation of DuraPlay's liability hereunder. The sales personnel of DuraPlay are not authorized to make warranties about the merchandise described in this contract. DuraPlay's employees oral statements do not constitute warranties, shall not be relied upon by the project owner or any third party, and are not part of the contract sale. The entire contract is embodied in this writing and no other warranties are given beyond those set forth in this written contract. This writing constitutes the final expressions of the parties' agreement and it is a complete and exclusive statement of the terms of that agreement.

DuraPlay, Inc.

By: _____

Project Owner: _____

By: _____

Rebound Ace Sports Pty LTD

Product Performance Warranty Rebound Ace Court Surfacing System

We, Rebound Ace Sports Pty Ltd, the manufacturers of REBOUND ACE COURT SURFACING SYSTEMS certify that these products are made from specified high quality raw materials and are manufactured to conform to each product's Quality assurance Standard under our Total Quality Management program.

The REBOUND ACE SURFACING SYSTEMS, when applied to a properly prepared surface to manufacturers written specifications by an Approved Registered Applicator shall provide a long wearing, cushioned, weather and UV light stable court surface coating suitable for tennis, netball and related activities, for a minimum period of five (5) years in normal domestic and commercial applications.

This product Performance Warranty is to be read in conjunction with the Company's standard PRODUCT PERFORMANCE WARRANTY (AVS 01/90) and in addition is exclusive of normal wear and tear, or of any failure of the SYNPAVE REBOUND ACE SURFACING SYSTEM due to movement or failure of the base condition (concrete or asphaltic concrete), inadequate drainage, misuse, mechanical or chemical damage, or factors which were or are outside of the control of the Approved Registered Applicator for Rebound Ace Sports Pty Ltd.

No warranty attaches to or is given by Rebound Ace Sports Pty Ltd in relation to the workmanship of the Applicator but Rebound Ace Sports Pty Ltd insists that each Approved Registered Applicator warrant his workmanship.

JOB SITE/LOCATION

.....

.....

COMPLETION DATE EXPIRY DATE

DATE AND SIGNED

APPROVED REGISTERED APPLICATOR:

.....

POSITION HELD: President – Ace Surfaces NA Inc.....

DATE:



TERRA PAD, Inc. carries a one (1) year limited warranty resulting from normal wear and tear, guaranteeing that the product will be free from material defects and workmanship.



PA office: 1-800-346-8524
Fax: 1-717-944-7681
KY office: 1-800-296-9227
Fax: 1-270-586-4493

Conditional Limited Warranty

Zeager warrants its products to be free from defect in materials and workmanship and to meet our published specifications when received by Zeager's customer.

Zeager further warrants its WoodCarpet system 1, during normal use, to meet ASTM F1292 at an 8 foot fall height when using an 8 inch layer of WoodCarpet or at a 12 foot fall height when using a 12 inch layer of WoodCarpet, for a period of 15 years from the date of the Zeager invoice, or for a period of 3 years from date of Zeager invoice if the WoodCarpet has been bonded.

Zeager further warrants its WoodCarpet system 11, during normal use, to meet ASTM F1292 at a 12 foot fall height when using a 10 inch layer of WoodCarpet, for a period of 20 years from the date of the Zeager invoice, or for a period of 3 years from date of Zeager invoice if the WoodCarpet has been bonded.

Zeager further warrants its foam and pvc WoodCarpet Mat to be free from defect in materials or workmanship during normal use for a period of 5 years from the date of the Zeager invoice.

Zeager further warrants its RecMat system 71 during normal use to meet ASTM F1292 at a 6 foot fall height when using a 1 inch layer of RecBase underneath, at an 8 foot fall height using a 2 inch layer of RecBase and a 2 inch layer of gravel underneath and at a 10 foot fall height when using two 1 inch layers of RecBase underneath, for a period of 10 years from the date of the Zeager invoice. Zeager further warrants its RecMat, during normal use, that wear due to ordinary abrasion from pedestrian traffic will not penetrate completely through the wear course of the surface of the RecMat and that the locking system, when installed according to manufacturer's specifications, will ensure the surface remains fixed and functional.

Zeager further warrants its RecGrass system 81 during normal use to meet ASTM F1292 at a 4 foot fall height when using a 1 inch layer of RecBase and a 2 inch layer of gravel underneath or at a 6 foot fall height when using a 2 inch layer of RecBase and a 2 inch layer of gravel underneath, for a period of 3 years from the date of the Zeager invoice. Zeager further warrants that its RecGrass color loss will not exceed 15%, based on an acceptable gray scale, and that its tensile strength and pile height will not decrease by more than 50%, for a period of 10 years from the date of the Zeager invoice. This warranty does not cover damage caused by failure to maintain appropriate infill levels where applicable, continued exposure to reflective light from windows and other objects, the use of improper cleaning agents, the exposure to chemicals containing elements from the halogen group (such as chlorine, fluorine, bromine or iodine), herbicides, pesticides or other inappropriate chemicals. Chemical exposure can also result from run-offs from neighboring properties.

This warranty is valid only if the product(s) are installed and maintained in accordance with Zeager's written specifications and government guidelines, using approved materials; has been subjected to normal use for the purpose for which the goods were designed; has not been subject to burns, cuts, vandalism, abuse, misuse, negligence, neglect, acts of God or accident; has not been subjected to addition or substitution of material; and has not been modified, altered, or repaired by persons other than Zeager or its designees in any respect which, in the judgment of Zeager, affects the condition or performance of the product. This warranty does not cover scratches, fading other than on RecGrass, weathering, discoloring other than on RecGrass, biological degradation, or normal wear and tear. RecMat and RecGrass used in high traffic areas only, in combination with other surfacing products not sold by Zeager are excluded from this warranty.

Should any failure to conform to this express warranty occur, Zeager shall, upon written notification of the defect, correct such nonconformity, either by repairing the defective product, supplying replacement product, or by refunding the purchase price by issuing a credit to the customer's account, at Zeager's election and within 60 days of the written notification. This shall be the purchaser's sole remedy and Zeager will not be responsible for any consequential damage attributed to the defective product. If Zeager elects to supply replacement product, Zeager shall deliver the replacement product to the site free of charge, but will not be responsible for providing labor or the cost of the removal of the defective product and the installation of any replacement product. If Zeager elects to supply replacement product for its foam WoodCarpet Mat, pvc WoodCarpet Mat, or RecMat, Zeager shall deliver the replacement product to the site, but the customer will be responsible to pay all shipping and handling charges as well as the prorated price of the replacement product, and Zeager will not be responsible for providing labor or the cost of the removal of the defective product and the installation of any replacement product. If Zeager elects to refund the purchase price of its foam WoodCarpet Mat, pvc WoodCarpet Mat, or RecMat, Zeager will refund the prorated purchase price as a credit to the customer's account. In the event of repair or replacement under this warranty, the warranty applicable to the replacement material, repaired product, or replacement product will extend only for the time remaining under the original warranty.

This warranty is exclusive and is in lieu of all other warranties, whether express or implied, including by not limited to any warranty of merchantability or fitness for a particular purpose. There are no warranties, which extend beyond this warranty. Further, no representation, oral or written, of any Zeager representative may be substituted for the aforesaid exclusive limited warranty. To the extent permitted by law, Zeager shall not be liable for any direct, indirect, special, incidental, or consequential damages, which are expressly excluded from this sale. To make claims under the terms of this warranty, the buyer's written statement of claim, along with a copy of the invoice, and supporting photographs and samples, must be sent to Zeager Bros., Inc. 4000 East Harrisburg Pike, Middletown, PA 17057-4697 USA. Supporting documentation must be provided to Zeager Bros., Inc. within 10 days of receipt of product or within 10 days of failure of product to meet Zeager's specifications or ASTM F1292.

Terms and Conditions

Prices: Subject to change without notice.

Funds: All communications and transactions are in U.S. funds unless otherwise noted.

Split loads: Each truck will unload at only one location. Some trucks can unload at more than one location if this request is made at the time the order is placed with Zeager. Zeager will charge a split drop fee for each additional drop.

Settling: WoodCarpet volume is measured when the truck is loaded. Settling will occur during shipping.

Shipping: Zeager is not responsible for loss or damage in transit when shipped via a common carrier or when shipped via a trucker that Zeager did not contract. When a Zeager contracted trucker is used, Zeager's responsibility ends when the shipping ticket is signed by the person receiving the shipment. It is the customer's responsibility to check quantity. Any shortages, damages, or defects should be noted on the shipping ticket before it is signed. Zeager and its contracted truckers are not responsible for any damages, losses, etc., that may occur if our trucks leave a hard surface to unload. It is not Zeager's responsibility to provide a suitable location for the truck to unload.

Returns: Returns are subject to outbound and return shipping and handling charges, along with payment for used or damaged goods.

Cancellations: Cancellations less than 24 hours before delivery are subject to shipping and handling charges.

**Childforms®
Commercial Playground Equipment**

LIMITED WARRANTY

Childforms® warrants that its products shall conform to those specifications and uses as outlined in any Childforms® catalog, promotional material, on our website (www.childforms.com), or documentation accompanying the product at the time of purchase. Childforms® products will not be warranted unless the product(s) is registered with Childforms® by the end user at the time of installation. Registration of Childforms® product(s) is the sole responsibility of the end user. This limited warranty is non-transferable and only applies to the end user that purchased new product for personal or business use and not for the purpose of distribution or resell.

Childforms offers a ten (10) year limited warranty on the following commercial playground equipment components: all polyethylene components, all roto-molded components, all slides, all Child Tread™ decks, all fasteners, all ChildShapers™ structures, all 8" and 12" Funtimbers, and all Wheelchair/ADA Accessible Ramp Systems. All product warranties are conditioned upon the products being properly installed and maintained by the end user as outlined in the Childforms® installation and maintenance guidelines as outlined at the time of purchase.

Upon receipt of an eligible warranty claim and within a reasonable time after receipt, Childforms® will replace the Childforms® product determined to be non-conforming on a pro-rated basis. Any replacement is subject to the examination of and written approval by Childforms® and is limited to the exclusions set forth below. Any replacement furnished by Childforms® in fulfillment of this limited warranty are only warranted for the unexpired portion of the original warranty. In the unlikely event a product manufactured by Childforms® does not conform to this guarantee, Childforms® liability shall be limited to replacement of the defective product or product part and shall not include removal, disposal, loss of use, shipping, or installation costs of the replacement product. Any replacement product shall carry the same limited warranty as set forth herein from the date that it is issued by Childforms®.

Childforms® does not warrant its products against any product damage by the following: (1) Any misuse, tampering, or abuse by the end consumer or any third party, (2) Exposure to or application of chemical compounds, including but not limited to cleaning solvents, (3) Abnormal

weather exposure, (4) Alterations to or improper installation of any Childforms® product, (5) Physical loss, (6) Accident or negligence of the end consumer or any third party, (7) Disasters including but not limited to fire, flood, wind, or lightening, and (8) Disposal of Child Turf™ in question by the end consumer or any third party prior to an inspection by and approval from Childforms®. Childforms® also does not warrant its polyethylene or metal components against fading due to sun exposure or harsh environments.

If the end consumer discovers that any Childforms® product does not conform to the product's specifications that were in effect at the time of purchase within its limited warranty period, the end consumer must promptly notify Childforms® in writing within thirty (30) days of defect discovery. Upon investigation, Childforms® will determine the appropriate course of action and notify the end consumer in writing of such determination.

Childforms makes no warranty in connection with the use of its products, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose, and of infringement, property damage, or personal injury. The direct purchaser of this product affirms that it has relied on its skill and judgment in selecting the product and determining appropriateness for its needs.

No distributor, salesperson, dealer, retailer, or other representative of Childforms® has the authority to make warranties of fitness for a particular purpose or to change these warranties either orally or in writing.

The limited warranties and performance of Childform® shall be governed by the laws of the state of North Carolina, without reference to conflicts of law provisions. The direct purchaser submits to the jurisdiction of and agrees that any lawsuit relating to any matter arising under this limited warranty initiated by or on behalf of the direct purchaser in a state or federal court in the County of Iredell, State of North Carolina, United States of America. If the direct purchaser is located outside of the United States, the provisions of the United Nations Convention for the International Sale of Goods shall be expressly excluded from the terms of sale.

Effective 10/25/04.

WARRANTY REGISTRATION

To validate warranty of Childforms® products, the end user must complete the information below and return it to:

Childforms® Warranty Department

110 Charleston Drive, Suite 106 • Mooresville, NC 28117

Company Name: _____	Date of Order: _____	Date of Installation: _____
Contact Name: _____	Product(s) Ordered: _____	
Mailing Address: _____	Childforms® Representative: _____	
Physical Address: _____	Installer: _____	
Phone: _____ Fax: _____	For Use By Childforms® Warranty Department ONLY	
E-mail: _____	Original Order: _____	Warranty #: _____
Customer Signature: _____	Date Received: _____	Filed By: _____



Our Warranty

Landscape Forms, Inc. warrants all products (other than noted exceptions) to be free from defects in material and/or workmanship for a period of three years from date of invoice.*

This warranty does not apply to damage resulting from accident, alteration, misuse, tampering, negligence, or abuse. Landscape Forms, Inc. will, at its option, repair, replace, or refund the purchase price of any items found defective upon inspection by an authorized Landscape Forms, Inc. service representative.

Our Pledge

Your complete satisfaction and future business are our goals. Standing behind our products has been a cornerstone of our commitment to quality and service since our founding in 1969. Our products will satisfactorily perform their intended function, under normal conditions, for many years. If you are ever dissatisfied with one of our products, please contact us and let us demonstrate our commitment.

* Noted exceptions: Marketplace umbrellas are warranted for one year from date of invoice.

Corporate Headquarters
8505-A Chancellor Row, Dallas, TX 75247
P 214.905.9500 F 214.905.9514 TF 800.986.5005



USA SHADE
& Fabric Structures, Inc.

West Coast Headquarters
350 Mulmus Drive, Costa Mesa, CA 92626
P 714.427.6931 F 714.427.6932 TF 800.50.SHADE

May 2009

Statement of Warranty for USA SHADE brands Shade Structures - Sun Ports - VPS - Shade Concepts

General:

- USA SHADE provides a limited warranty on all USA SHADE-supplied labor and materials. No other warranty is implied.
- The warranty set forth shall be the purchaser's sole and exclusive warranty, and is void if structures are not paid for in full.
- The warranty is void if any changes, modifications, additions or attachments are made to the structures without the prior written consent of USA SHADE.
- The warranty is void if the structures are not assembled in strict compliance with USA SHADE specifications.
- The warranty will be void if regular maintenance is not performed. This is particularly critical in regions where dirt/sand may cause abrasion of fabric.
- The warranties below are effective from the date of sale, or, if assembled by USA SHADE, the date of construction completion.
- USA SHADE reserves the right to repair or replace any item covered by this warranty.
- Purchaser shall notify USA SHADE in writing, detailing any defects for which a warranty claim is being made.
- USA SHADE shall not in any event be liable for indirect, special, consequential, or liquidated damages.
- USA SHADE specifically denies the implied warranties of fitness for a particular purpose and merchantability.
- No signs, objects, fans, light fixtures, etc., may be hung from the structures, unless specifically engineered by USA SHADE. These items may interfere with the fabric, voiding the warranty.
- The warranty shall be void if damage to the steel frame or fabric top is caused by misuse, willful or intentional damage, vandalism, any Act of God (ie. hurricane, tornado, micro/macroburst), including, but not limited to, ice, snow, or wind in excess of applicable building code parameters.
- For all units assembled by USA SHADE the "Customer Checklist and Sign-off" form must be signed and returned to USA SHADE within 10 business days from the date of construction completion, or USA SHADE will not be held responsible for any damage to the structures. The warranty will also be considered null and void until this checklist is received by USA SHADE.

Shadesure™ Fabric:

- Shadesure™ fabrics carry a 10-year limited manufacturer's warranty from the date of assembly, against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold, or discoloration, with the exception of Red and Coolbrella™ fabrics, which carry a 3-year limited warranty. Should the fabric need to be replaced under the warranty, USA SHADE will manufacture and ship a new fabric at no charge for the first 6 years, thereafter pro-rated at 18% per annum over the last 4 years.
- This warranty shall be void if damage to the fabric is caused by contact with chemicals, misuse, vandalism, any Act of God (ie. hurricane, tornado, micro/macroburst), including, but not limited to, ice, snow, or wind in excess of the applicable building code parameters.
- All fabric tops are warranted for winds/gusts up to 90mph and prior to snow or ice accumulation.
- All fabric curtains, valances and flat vertical panels are not covered under the warranty.

Doc#: 20090505mi_fabwarr_r1_pg1



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- USA SHADE structures are designed to eliminate friction between the rafters and fabric. The warranty will be voided if any modification or attachment is made to the rafter(s). The fabric will wear/tear should any object be placed between the rafter and the fabric, voiding the warranty.
- Labor for the removal, assembly, and/or freight will be covered for a period of 1 year, where the structures supplied and assembled by USA SHADE are defective. In all cases where the structures are not assembled by USA SHADE, or its agents, all labor for the removal, assembly, and/or freight will be at the customers' expense, and the warranty will only be applicable to the repair or replacement of the defective materials.
- USA SHADE reserves the right, in cases where certain fabric colors have been discontinued, to offer the customer a choice of available colors to replace the warranted fabric of the discontinued color. USA SHADE does not warrant that any particular color will be available for any period of time, and reserves the right to discontinue any color for any reason, without recourse by the owner of the discontinued fabric color.

Colourshade® FR Fabric:

- Colourshade® FR fabrics carry a 5-year limited manufacturer's warranty from the date of assembly, against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold, or discoloration, with the exception of FR Red and Coolbrella™ fabrics, which carry a 3-year limited warranty. Should the fabric need to be replaced under the warranty, USA SHADE will manufacture and ship a new fabric at no charge for 5 years.
- This warranty shall be void if damage to the fabric is caused by contact with chemicals, misuse, vandalism, any Act of God (ie. hurricane, tornado, micro/macrobust), including, but not limited to, ice, snow, or wind in excess of the applicable building code parameters.
- All fabric tops are warranted for winds/gusts up to 90mph and prior to snow or ice accumulation.
- All fabric curtains, valances and flat vertical panels are not covered under the warranty.
- USA SHADE structures are designed to eliminate friction between the rafters and fabric. The warranty will be voided if any modification or attachment is made to the rafter(s). The fabric will wear/tear should any object be placed between the rafter and the fabric, voiding the warranty.
- Labor for the removal, assembly, and/or freight will be covered for a period of 1 year, where the structures supplied and assembled by USA SHADE are defective. In all cases where the structures are not assembled by USA SHADE or its agents, all labor for the removal, assembly and/or freight will be at the customers' expense, and the warranty will only be applicable to the repair or replacement of the defective materials.
- USA SHADE reserves the right, in cases where certain fabric colors have been discontinued, to offer the customer a choice of available colors to replace the warranted fabric of the discontinued color. USA SHADE does not warrant that any particular color will be available for any period of time and reserves the right to discontinue any color for any reason, without recourse by the owner of the discontinued fabric color.

NOTE: Shadesure™ and Colourshade® FR fabric warranties cover fabric tops up to 40' in length. Fabric tops over 40' in length are covered by a non-prorated 5-year warranty. Additionally, fabric tops made from other fabric types (ie. Sunbrella®) will include their respective manufacturer's warranty.

Shadesure and Coolbrella are trademarks of USA SHADE & Fabric Structures, Inc.
Colourshade is a registered trademark of Multiknit Pty. Ltd.
Sunbrella is a registered trademark of Glen Raven Custom Fabrics, LLC.

Doc#: 20090505mi_fabwarr_r1_pg2



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Steel:

- The structural integrity of the steel is warranted for 10 years.
- Workmanship and powder coated surfaces are warranted for 1 year.
- This warranty shall be void if damage to the steel frame is caused by misuse, vandalism, any Act of God (ie. hurricane, tornado, micro/macroburst), including, but not limited to, ice, snow, or wind in excess of applicable building code parameters.

Thread:

- USA SHADE warrants its sewing thread for a period of 8 years.
- The thread will be free from defects in material/workmanship and will not be damaged by exposure to sunlight, weather, or water.
- This warranty does not cover damage from fire, cuts, vandalism, misuse, or any Act of God (ie. hurricane, tornado, micro/macroburst), including, but not limited to, ice, snow, or wind in excess of the applicable building code.
- Labor for the removal, assembly and/or freight of tops with damage caused by thread, will only be covered in instances where USA SHADE has assembled the unit. In all cases where units were not assembled by USA SHADE, all labor for the removal, assembly and/or freight will be for the customers account and the warranty will only be applicable to the repair or replacement of defective materials.

Doc#: 20090505mi_fabwarr_r1_pg3



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Poli-5000 Paint System 10 Year Limited Warranty for Structural Steel Shelters

Poli-5000 powder coat paint system by PorterCorp of Holland, Michigan has been applied to steel entirely as a 'in-house" process with Quality Control procedures based on the ISO9001 Standard.

Poli-5000 finish was applied over hot rolled structural steel parts for testing to ASTM Standards as noted on back page.

This pro-rated limited 10 year warranty is intended to define the obligations and limitations of the purchaser as well as the obligations and limitations of the supplier. This limited warranty is only valid if PorterCorp has been paid in full for the cost of the shelter. This limited warranty is for the factory applied finish only. This limited warranty does not cover Pergolas or Trellises; limited warranty for these jobs will be issued separately upon request.

Damage occurring from shipping, erection, vandalism, accidents, or field modifications will require field touch-up immediately and periodically thereafter which is not covered in this limited warranty.

A signed copy of this limited warranty must be submitted to PorterCorp within 30 days after installation. The limited warranty will first be signed by the owner, after receipt by PorterCorp a corporate official will sign same and return to customer. The warranty will note any defects in powder coat at time of completion and note touch-up procedure.

Nuts and bolts are supplied with a light plating and must be painted by contractor after erection and maintained by the customer.

The 10 year limited warranty will exclude buildings erected at sites where salt air, corrosive atmosphere, high humidity causing condensation, or sprinkler systems come in contact with the shelter.

Failure to maintain finish system with annual touch-up and documented maintenance procedures will void the limited warranty.

Not covered by this limited warranty are acute angles, welds, and endplates that are prone to minor defects on occasions and will require touch-up by owner.

A failure in the powder coat paint system will be defined if there is in excess of 8% of the structure has failure to the paint system.

Rust stains from roof trim, screws, and screw holes do not constitute a failure. If a claim is made for paint failure a complete document must be provided by owner. If a site visit is required by PorterCorp the expense will be covered by PorterCorp but if failure is not covered under warranty the building owner will be required to cover all costs incurred by PorterCorp for the site visit.

In case of a failed paint system, PorterCorp will repaint the structure with its best in-house system providing that the owner dismantles the structure and returns it to PorterCorp. PorterCorp will refinish the structure and ship it back to job site at their expense. The refinishing will not extend the original warranty of the paint system. The owner is responsible for erecting the building at their expense. As an alternative, PorterCorp will pay customer up to the cost of the original paint system on a pro-rated basis.

Covers only sites within the immediate 48 states.

Poli-5000 Finish System Performance and Specifications

Test Description	Test Method	Poli-5000 Results
Salt Spray Resistance	ASTM B 117/ ASTM D 1654 Method 2 (scrapping)	5,000 hours, no creep from scribe line, rating of 10
Humidity	ASTM D2247-02	3,000 hours with no loss of adhesion or blistering
Light UV/Resistance	ASTM G154-04 2000 hours exposure. Alternate cycles (4 hours UVC and 4 hours condensation)	a) No chalking b) 75% color retention c) Color variation-maximum 3.0 E variation CIE formula (before and after 2,000 hours exposure)
Stain Resistance	ASTM D1308-02e1 24 hours exposure with 10% concentration	No stain from following: Mustard, Tannic Acid, Catsup, Citric Acid, Coffee, Tartaric Acid, Pepsi Cola, Beer, Oleic Acid, Lactic Acid, Orange Juice
Scratch Resistance	Hoffman Scratch Hardness Tester	No substrate appearance with 1,000 gram load
Adhesion	ASTM D3359-02	ASTM Class 4B rating or better
Resistance Impact	ASTM D2794-93	100 in-lbs. w/o cracking
Hardness	ASTM D3363-92a	2H min-no indentation
Flexibility	ASTM D522-93a	1/8" no cracking/loss of adhesion at bend
Abrasion	Taber abraser CS10 Wheel (1,000 mg load)	14 mg. max weight loss per cycle
Solvent Resistance	50+ MEK rubs	Minimal to no dulling or color removal

Poli-5000 Paint System 10 Year Limited Warranty Implementation

PorterCorp Job#: _____

Component	Description of Defect	Repair Method	Name

Customer Name

Signature

Date

Return implemented limited warranty to (put address or fax number)

PorterCorp Officer Name

Signature

Date

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Poligon, Parasol, and Pinnacle
Limited Warranty and Limitations

PorterCorp warrants the building structure for 10 years from shipping date with the following limitations. (Paint System Warranty 7.2fm24 is a separate document.) PorterCorp limits its warranty to the supply of materials that will fit, be structurally sound, and can be assembled with normal expertise and with tools required and found in the construction trades. It is expressly understood that PorterCorp's Liability be limited to repair or replacement of nonconforming material at time of delivery.

PorterCorp does not warrant product for defects caused by erection, harsh site conditions, lack of maintenance, and/or other conditions beyond PorterCorp's control.

PorterCorp shall not be held liable for field alterations. PorterCorp shall not be held liable for meeting unspecified building codes or for updating designs or specifications to meet new building codes or insurance standards either existing or updated. PorterCorp shall not be responsible for delays due to missing and/or nonconforming parts. Parts short-shipped and non-conforming parts will be replaced or reworked by PorterCorp as a top priority. Any rework of non-conforming parts by the contractor must be authorized by PorterCorp prior to rework. PorterCorp shall not be liable for any act of God, fire, vandalism, settlement, incidental or consequential damages, erosion of foundation, or extreme site conditions.

This Limited Warranty supersedes all other warranties expressed or implied.

The warranty on metal roofing, fabric, and shingles will be as passed through PorterCorp's Supplier as per their warranty, contact Customer Service for Supplier Warranty.

This Limited Warranty is conditional upon payment in full to PorterCorp within terms. PorterCorp will not be held responsible for any materials that were not properly stored prior to installation. Liability under this Warranty is limited in that it shall not exceed the original sales price of the components as supplied by PorterCorp.

Exhibit F

Company's Response to RFP # 269-2010-183, dated May 5, 2010 is not attached but is incorporated by reference and made a part of this Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

Exhibit G

RFP # 269-2010-183, dated March 19, 2010 together with all addenda, amendments, exhibits, and attachments issued by the County (collectively, the "ITB") is not attached but is incorporated herein by reference and made a part of this Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and KOMPAN, Inc. (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.