SUBJECT: PIGGYBACK US COMMUNITIES/CITY OF CHARLOTTE/MECKLENBURG COUNTY CONTRACT #2017001135 FOR PLAYGROUND AND OUTDOOR FITNESS EQUIPMENT

BID #: PSC-0597-17 **OPEN DATE: 03/16/2017**

GENERAL GOVERNMENT AWARDS COMMITTEE

KIND AND BASIS OF CONTRACT: PIGGYBACK CONTRACT – INITIAL TERM OF FIVE (5) YEARS BEGINNING JULY 1, 2017 AND ENDING JUNE 30, 2022

AGENCY: PARKS, RECREATION AND COMMUNITY SERVICES DEPARTMENT

BASIS OF AWARD: PIGGYBACK

NUMBER OF BIDS INVITED: (N/A) **NUMBER RECEIVED:** (N/A) **OTHER** (N/A)

SUMMARY OF BIDS AND RECOMMENDED ACTIONS:
Recommend approval to amend award dated 08/24/2017 to KOMPAN, Inc. to increase the award in the amount of $3,282.51 for Mandarin Park Supernova Playground, along with adding Murray Hill Four Corners Playground in the amount of $74,639.76, for a total increase amount of $77,922.27, for the purchase and installation of playground. The total revised contract maximum indebtedness not-to-exceed $95,093.21. The period of service to remain unchanged through June 30, 2022.

Funding for this award to be encumbered by account, RPCP324F5720-06505-PR0597-01, to be executed by Formal Contract through the Office of General Counsel.

ATTACHMENTS: Recommendation Memo; Sales Proposals; Risk Approval; Contract; Previous Award

ANALYST: _____ **RESPECTFULLY SUBMITTED** _____
CHELSEY FLEMING
GREGORY PEASE, CHIEF
PROCUREMENT DIVISION

CONCURRENCE BY: Daryl Joseph, Director of Parks, Recreation & Community Services

---

(ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS)
ACTION OF GGAC COMMITTEE ON RECOMMENDATIONS ABOVE

MEMBERS APPROVING _____ MEMBERS DISAPPROVING _____ DATE: _____

_____ _____ OTHER: _____

_____ _____

_____ _____

ACTION OF AWARDING AUTHORITY DATE _____

APPROVED _____ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

City of Jacksonville, Florida

Daryl Joseph, Director

Parks, Recreation and Community Services Department
214 N Hogan Street, 4th Floor
Jacksonville, FL 32202
(904) 255-7903
www.coj.net

ONE CITY. ONE JACKSONVILLE.

April 30, 2018

04/30/18 16:48:14
Procurement Division

MEMORANDUM

TO: Gregory Pease, Chief
Procurement Division

FROM: Daryl Joseph, Director

RE: **Request Amend PSC-0597-17 Piggyback U.S. Communities/City of Charlotte/ Mecklenburg Country Contract**

The Parks, Recreation and Community Services Department respectfully request to amend PSC-0597-17 Piggyback Contract award to Kompan for the purchase and installation of playground equipment at Mandarin Park Supernova Playground and Murray Hill Four Corners Playground.

The Parks, Recreation and Community Services Department request to amend the amount of the maximum indebtedness not to exceed to $20,453.45 for the Mandarin Park Supernova Playground. The Department requests the amount of the maximum indebtedness not to exceed to be $74,639.76 for the Murray Hill Four Corners Playground.

The total not-to-exceed amount will be $95,093.21, as follows:
Mandarin Park Supernova Playground $20,453.45, the funding source will be RPCP324F5720 06505 PR0597-01.
Murray Hill Four Corners Playground $74,639.76, the funding source will be RPCP32DF5720 06505 PR0583-02.

The funds will be encumbered by purchase orders.

Your assistance in concurring with this recommendation for the respective award would be appreciated.
If you have any questions or if further information is required, please contact Rene'e Harriman at 255-8295

DJ/rlh

Attachment: Last award
Proposal SP53180

cc: Claire Stine, Parks, Recreation and Community Services Finance Manager

KOMPAN

COROCORD

SALES PROPOSAL

KOMPAN, INC. * 821 Grand Ave Pkwy, Ste 410, Pflugerville, TX 78660 * Tel 1-888-579-8223 * Fax 1-888-579-8224 * www.kompan.com

U.S. COMMUNITIES®
GOVERNMENT PURCHASING ALLIANCE

Date	04/17/18
Expiration Date	
Proposal No.	SP53180
Project	Mandarin Park
Ship to State/Zip	FL 32233
Customer Service Representative	JamMet
Sales Representative	Stacy Moseley
Payment Terms	DEP50%&N30

Site Location: 510038
Mandarin Park
14780 Mandarin Rd
Jacksonville, 32233
United States

Invoice-to: 510038
City of Jacksonville
Attention Jill Enz
214 North Hogan Street
Jacksonville, FL 32202
United States

Ship-to:
Mandarin Park
14780 Mandarin Rd
Jacksonville, FL 32233
United States

Qty.	Item No.	Description	Unit Price	Retail Price	Disc. %	Net Price
		U.S. Communities Contract #2017001135				
		Equipment:				
1	GXY960010-3417	SUPERNOVA, Night Sky Blue IG	8,170.00	8,170.00	10.00	7,353.00
1	FRT-PA	Freight Middletown PA	627.00	627.00		627.00
1	CUSTOMINSTALL	Installation of KOMPAN equipment	2,136.77	2,136.77	5.00	2,029.93
		Surfacing:				
734	TFG-FL-14-01	EWF&FF/CFH 12" comp. (37 CY)	1.48	1,086.32	10.00	977.69
1	FRT-OTHER	Freight for EWF	816.00	816.00		816.00
37	CUSTOMINSTALL	Installation of EWF	13.85	512.45	5.00	486.83
		Sitework:				
1	SITEWORK	Demo of exisiting concrete pad	5,846.15	5,846.15	5.00	5,553.84
						17,844.29

Continued on page 2.....

		Continued from page 1.....				17,844.29
		(58 SQFT @ 4" thick) Removal of 2 benches, Demolition of concrete borders, (30 LF @ 5" x 6" wide) Installation of new concrete ribbon curbing (115 LF 6" x 6" wide)				
1	SITEWORK	Excavation: 734 SQFT @ 12" deep (leaving soils on site)	1,693.85	1,693.85	5.00	1,609.16
1	PERMIT	Permit Cost for installer to pull permit. Does not include actual cost of permit. Cost will be added once determined.	1,000.00	1,000.00		1,000.00

Total **20,453.45**

Comments:
This quote assumes direct delivery.
The actual cost of the permit will be an additional charge - to be determined at the time the permit is pulled.
A deposit will be required before order can be processed.
Please provide us with a copy of your tax-exempt certificate if applicable.
Please do not install any surfacing materials prior to the equipment dig and installation process.
The site should be as level as possible, and MUST have no more than a 1" (inch) in 10' (feet) slope or change in elevation over the full length and width of the playground area.
Price assumes NO overhead (13'6" or lower) or underground (within 3'6" of surface) obstacles.
Additional charges will apply if hard rock/ledge is discovered at time of installation.
Your order includes installation of playground equipment and/or surfacing and amenities. If a delay in the installation occurs, which is not caused by KOMPAN, the order will be divided and equipment will be invoiced at the time of delivery to the site or authorized agent, and installation site amenities and related services will be invoiced when completed.
Please allow 6-8 weeks for product delivery upon order placement.
This proposal assumes that there is no Prevailing Wage requirement for this job.

Summary:

	Retail Price	Discount	Net Price
Subtotal - KOMPAN Products	8,170.00	817.00	7,353.00
Subtotal - Other Products	1,000.00	0.00	1,000.00
Subtotal - Surfacing	1,086.32	108.63	977.69
Subtotal - Installation & Other Services	10,189.22	509.46	9,679.76
Subtotal - Freight	1,443.00	0.00	1,443.00
Subtotal	**21,888.54**	**1,435.09**	**20,453.45**

Estimated Tax Rate (Applicable sales tax will be added unless a valid tax exemption certificate is provided. This amount is only an estimate of your tax liability.) 0.00

Total **20,453.45**

Your acceptance of this proposal constitutes a valid order request and includes acceptance of terms and conditions contained within the Master Argeement, 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 06/05/18.
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: _____

Mandarin Park Supernova

KOMPAN

Project:

Date: 03/29/18

Model: As Noted

Rep: KOMPAN - Stacy Mosely

Designer: mitmur

SCALE: 1/8" = 1'-0"

INCH 1

CM 1 2

FOR QUOTING ONLY
NOT FOR CONSTRUCTION

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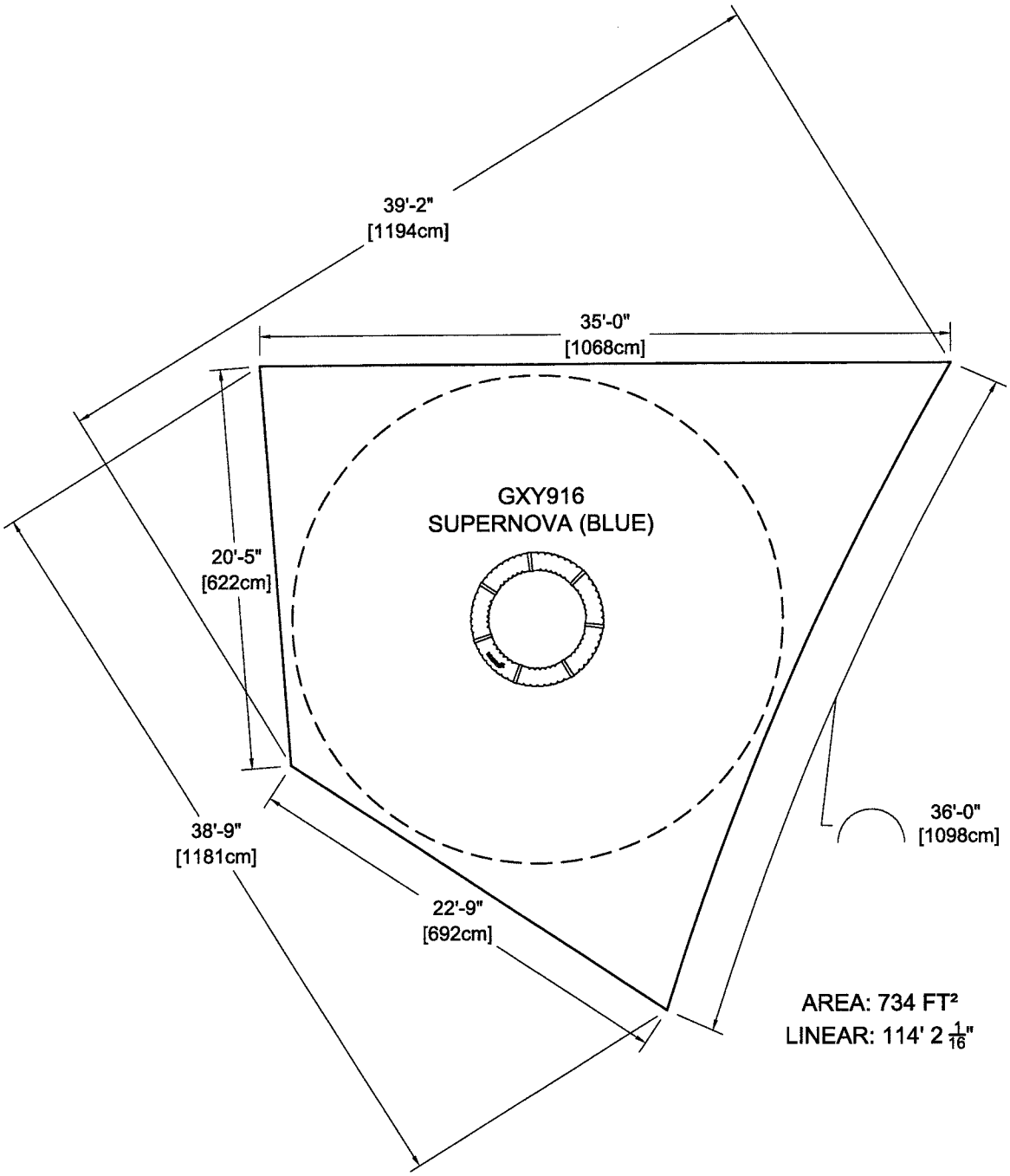
All composite structures shown require a site grade of 1% maximum.

For surface mount options, the concrete requirements may be up to 5½" of 3,500 psi minimum compressive strength. Contact KOMPAN for specific product requirements.

Site representation is based upon estimated site dimensions and cannot be used as an accurate way of determining site area.

Layout is in accordance with ASTM F1487



AREA: 734 FT²

LINEAR: 114' 2 $\frac{1}{16}$"

KOMPAN

COROCORD

SALES PROPOSAL

KOMPAN, INC. * 821 Grand Ave Pkwy, Ste 410, Pflugerville, TX 78660 * Tel 1-888-579-8223 * Fax 1-888-579-8224 * www.kompan.com

U.S. COMMUNITIES®
GOVERNMENT PURCHASING ALLIANCE

Date	04/11/18
Expiration Date	
Proposal No.	SP47898
Project	4 Corners
Ship to State/Zip	FL 32202
Customer Service Representative	JamMet
Sales Representative	Stacy Moseley
Payment Terms	NET 30

Site Location: 510038
4 Corners
TBD
Jacksonville, 32202
United States

Invoice-to: 510038
City of Jacksonville
Parks and Recreation
214 N Hogan St
4th Floor
Jacksonville, FL 32202
United States

Ship-to:
City of Jacksonville
Parks and Recreation
214 N Hogan St
Suite 312
Jacksonville, FL 32202
United States
Ivy Posey

Qty.	Item No.	Description	Unit Price	Retail Price	Disc. %	Net Price
		U.S. Communities Contract #2017001135				
		Equipment				
1	NRO912-1111	DOUBLE BAY SWING W/BELTS & BASKET Ø100CM, Brown IG	6,780.00	6,780.00	15.00	5,763.00
1	NRO806-0611	STILTS, Brown Stain IG	1,340.00	1,340.00	15.00	1,139.00
1	NRO802-0611	SINGLE BALANCE BEAM Brown Stain, IG	520.00	520.00	15.00	442.00
1	NRO817-1011	BALANCE POLES, Brown Stain IG	2,580.00	2,580.00	15.00	2,193.00
2	NRO102-0611	PONY SPRINGER, Brown Stain IG	1,290.00	2,580.00	15.00	2,193.00
1	NRO212-0511	KIDS TABLE W/4 SITTING POLES Brown Stain, IG	1,690.00	1,690.00	15.00	1,436.50
2	NRO820-0613	WATER LILY BALANCE 5 PCS Brown Stain, IG	1,020.00	2,040.00	15.00	1,734.00
1	NRO1018-1011	PLAY TOWER W/SLIDE & BANISTER BARS, Brown Stain, IG	13,360.00	13,360.00	15.00	11,356.00

Continued on page 2..... 26,256.50

		Continued from page 1.....				26,256.50
1	ELE400024-3717GR	SPINNER BOWL, Green IG	880.00	880.00	15.00	748.00
1	CUSTOMINSTALL	Installation of KOMPAN equipment	10,922.85	10,922.85	5.00	10,376.71
1	FRT-PA	Freight Middletown-PA	2,385.00	2,385.00		2,385.00
1	ROBSERV	Robinia Service Program	3,286.17	3,286.17		3,286.17
		Site Work				
1	SITEWORK	Excavate 4673 SF 12" deep- Dispose of soil.	22,498.46	22,498.46	5.00	21,373.54
1	SITEWORK	Concrete Borders 281 LF	8,646.15	8,646.15	5.00	8,213.84
1	PERMIT	Cost for installer to pull permit- This does not include the actual cost of the permit. That will be determined at the time the permit is pulled.	1,000.00	1,000.00		1,000.00
1	ENG STAMP DRW 1	Engineer Stamped Drawings	1,000.00	1,000.00		1,000.00
Total						**74,639.76**

Comments:
This quote assumes direct delivery.
This quote includes a charge for liftgate service.
The actual cost of the permit will be an additional charge - to be determined at the time the permit is pulled.
Please provide us with a copy of your tax-exempt certificate if applicable.
Customer is to provide level dirt site, free of underground obstacles.
Customer is responsible for disposal of refuse / garbage.
Customer is responsible for removal of any existing equipment / obstacles prior to installation.
Please do not install any surfacing materials prior to the equipment dig and installation process.
The site should be as level as possible, and MUST have no more than a 1" (inch) in 10' (feet) slope or change in elevation over the full length and width of the playground area.
Price assumes NO overhead (13'6" or lower) or underground (within 3'6" of surface) obstacles.
Additional charges will apply if hard rock/ledge is discovered at time of installation.
This proposal assumes that there is no Prevailing Wage requirement for this job.
Please allow 8-10 weeks for product delivery upon order placement.

Summary:

	Retail Price	Discount	Net Price
Subtotal - KOMPAN Products	31,770.00	4,765.50	27,004.50
Subtotal - Other Products	2,000.00	0.00	2,000.00
Subtotal - Surfacing	0.00	0.00	0.00
Subtotal - Installation & Other Services	42,067.46	2,103.37	39,964.09
Subtotal - Freight	2,385.00	0.00	2,385.00
Subtotal	**81,508.63**	**6,868.87**	**74,639.76**

Estimated Tax Rate	(Applicable sales tax will be added unless a valid tax exemption certificate is provided. This amount is only an estimate of your tax liability.)	0.00
Total		**74,639.76**

Your acceptance of this proposal constitutes a valid order request and includes acceptance of terms and conditions contained within the Master Argeement, 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 05/13/17.

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: _____

ACORD®

APPROVED
By Ann Willis at 9:22 am, Jun 07, 2017

CE

DATE (MM/DD/YYYY) 05/31/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Willis of Seattle, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT NAME:
PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378
E-MAIL ADDRESS: certificates@willis.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Insurance Company	16535
INSURER B: Trumbull Insurance Company	27120
INSURER C: Twin City Fire Insurance Company	29459
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Kompan, Inc.
Attn: John Swenson
930 Broadway
Tacoma, WA 98402

COVERAGES CERTIFICATE NUMBER: W2443465 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	Y	Y	GLO 1058275-02	04/01/2017	04/01/2018	EACH OCCURRENCE	$ 5,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 5,000,000
							GENERAL AGGREGATE	$ 5,000,000
							PRODUCTS - COMP/OP AGG	$ 5,000,000
								$
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	52UUNZN9337	04/01/2017	04/01/2018	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N No (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	52WECKU4349	04/01/2017	04/01/2018	X PER STATUTE OTHER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This Voids and Replaces Previously Issued Certificate Dated 05/19/2017 WITH ID: W2277300.

Re: City of Charlotte/Mecklenburg County contract #110171

City of Jacksonville, its members, officials, officers, employees and agents are included as an Additional Insured as respects to General Liability and Auto Liability policies.

CERTIFICATE HOLDER

City of Jacksonville
214 North Hogan Street
Jacksonville, FL 32202

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Thomas E. Fenn

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AGENCY CUSTOMER ID: _____

LOC #: _____

ACORD ADDITIONAL REMARKS SCHEDULE

AGENCY Willis of Seattle, Inc.	NAMED INSURED Kompan, Inc. Attn: John Swenson 930 Broadway Tacoma, WA 98402
POLICY NUMBER See Page 1	
CARRIER See Page 1 / NAIC CODE See Page 1	EFFECTIVE DATE: See Page 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

General Liability and Auto Liability policies shall be Primary and Non-Contributory with any other insurance in force for or which may be purchased by Additional Insureds.

Waiver of Subrogation applies in favor of City of Jacksonville, its members, officials, officers, employees and agents with respects to General Liability, Auto Liability and Worker's Compensation policies as permitted by law.

30 Day Notice of Cancellation applies on Genaral Liability, Auto Liability and Workers Compensation Coverages.

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SR ID: 14659249 BATCH: 336086 CERT: W2443465

Notification to Others of Cancellation or Nonrenewal

ZURICH

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 1058275 02	04/01/2017	04/01/2018	04/01/2017	81007000	N/A	N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part
Liquor Liability Coverage Part
Products/Completed Operations Liability Coverage Part

A. If we cancel or non-renew this Coverage Part(s) by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation or non-renewal:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and
2. At least 10 days prior to the effective date of the cancellation or non-renewal, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.

B. If we cancel this Coverage Part(s) by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.

C. If notice as described in Paragraphs **A.** or **B.** of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

SCHEDULE	
Name and Address of Other Person(s) / Organization(s):	**Number of Days Notice:**
ANY PERSON OR ORGANIZATION TO WHICH YOU ARE REQUIRED TO PROVIDE NOTICE OF CANCELLATION IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW.	
	30

All other terms and conditions of this policy remain unchanged.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

APPROVED
By Ann Willis at 9:25 am, Jun 07, 2017

EXHIBIT A
INDEMNIFICATION

Vendor shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Contract, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

EXHIBIT B
INSURANCE REQUIREMENTS

Without limiting its liability under this Contract, Vendor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Vendor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	$ 100,000 Each Accident
	$ 500,000 Disease Policy Limit
	$ 100,000 Each Employee/Disease

This insurance shall cover the Vendor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	$2,000,000	General Aggregate
	$2,000,000	Products & Comp. Ops. Agg.
	$1,000,000	Personal/Advertising Injury
	$1,000,000	Each Occurrence
	$ 50,000	Fire Damage
	$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability $1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Additional Insurance Provisions

A. Additional Insured: All insurance except Worker's Compensation shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.

B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.

C. Vendor's Insurance Primary. The insurance provided by the Vendor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.

D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Vendor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.

E. Vendor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Vendor or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.

F. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Vendor shall relieve Vendor of Vendor's full responsibility to provide insurance as required under this Contract.

G. Certificates of Insurance. Vendor shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.

H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

I. Notice. The Vendor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Vendor, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

J. Survival. Anything to the contrary notwithstanding, the liabilities of the Vendor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.

K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.

L. Special Provisions: Prior to executing this Agreement, Vendor shall present this Contract and Exhibit A & B to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and(2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Vendor.

Contract No. 2017001135
Vendor No. 303668

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT TO PROVIDE
PLAYGROUND AND OUTDOOR FITNESS EQUIPMENT, SITE ACCESSORIES, SURFACING, AND RELATED PRODUCTS AND SERVICES

This Contract (the "Contract") is entered into as of this 1st day of July 2017 (the "Effective Date"), by and between Kompan, Inc. a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP #269-2017-028) for Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services dated January 25, 2017. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

WHEREAS, the Company submitted a Proposal in response to RFP #269-2017-028 on March 16, 2017. This Proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal" and incorporated into this contract by reference.

WHEREAS, the City awarded this Contract on May 8, 2017 to Company to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services to the City all in accordance with the terms and conditions set forth herein.

WHEREAS, the City of Charlotte, on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies"), competitively solicited and awarded the Contract to the Company. The City has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Contract to Participating Public Agencies.

The City 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 (including its subsidiaries) 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 Contract.

Each Participating Public Agency enters into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA) outlining the terms and conditions that allow access to the Lead Public Agencies' Master Agreements. Under the terms of the MICPA, the procurement by the Participating Public Agency shall be construed to be in accordance with, and governed by, the laws of the state in which the Participating Public Agency resides.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to Kompan in the Exhibits and Appendices shall be deemed to mean the Company.

EXHIBIT A:	Discount Schedule and Price Lists
EXHIBIT B:	Installation Fees
EXHIBIT C:	National Network of Distributors and Installers
EXHIBIT D:	Freight Rate Schedules
EXHIBIT E:	Product Warranties
EXHIBIT F:	Scope of Services
EXHIBIT G:	U.S. Communities Administrative Agreement
EXHIBIT H:	Confidentiality Terms

2. **DEFINITIONS.**

As used in this Contract, the following terms shall have the meanings set forth below:

Acceptance:	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in this Contract.
Affiliates:	Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs Services.
Biodegradable:	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
Charlotte Business Inclusion (CBI):	Refers to the Charlotte Business Inclusion office of the City of Charlotte.
Charlotte Combined Statistical Area (CSA):	Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INClusion to determine eligibility to participate in the program.
City:	Refers to the City of Charlotte, North Carolina.
Company:	Refers to a company that has been selected by the City to provide the Products and Services of this Contract.
Company Project Manager:	Refers to a specified Company employee representing the best interests of the Company for this Project.
Contract:	Refers to a written agreement executed by the City and Company for all or part of the Services.

Deliverables:	Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.
Documentation:	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
Environmentally Preferable Products:	Refers to Products that have a lesser or reduced effect on human health and the environment when compared with competing Products that serves the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
Lead Public Agency:	Refers to the City of Charlotte, North Carolina.
Master Agreement:	Refers to the Agreement that is made available by the Lead Public Agency after the successful completion of the competitive solicitation and selection process, wherein Participating Public Agencies may utilize the agreement to purchase Products and Services.
Minority Business Enterprise/MBE:	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
MWSBE:	Refers to SBEs, MBEs and WBEs, collectively.
Participating Public Agency:	Refers to all states, local governments, school districts, and higher education institutions in the United States of American, and other governmental agencies and nonprofit organizations that elect to purchase Products and Services under the Master Agreement.
Products:	Refers to all Products that the Company agrees to provide to the City as part this Contract.
Services:	Refers to the Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services as requested in this RFP.

Specifications and Requirements: Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that 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 Deliverables or Services.

3. **TERM.** The initial term of this Contract will be for five (5) years from the Effective Date with an option to renew for two (2) additional two-year terms. This Contract may be extended only by a written amendment to the contract signed by both parties.

4. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**

   4.1 The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits when ordered from time to time by the City. Except as set forth in Exhibit A, the prices set forth in Exhibit A constitute all charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services. The Company shall perform any Services for the City on site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.

   4.2 Placement of Orders: All orders will be placed by personnel designated by the City on an as needed basis for the quantity required at the time during the term of the Contract.

5. **OPTIONAL PRODUCTS AND SERVICES.** The City may in its discretion purchase from the Company optional Products and Services beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the Proposal statutes, and provided the City is authorized by law to make such purchases without a formal Proposal process.

6. **DOCUMENTATION.** The Company will provide for all Products purchased under this Contract written or electronic documentation that is complete and accurate, and sufficient to enable City employees with ordinary skills and experience to utilize such Products for the purpose for which the City is acquiring them.

7. **COMPENSATION.** The City shall pay the Company for the Products and Services delivered in compliance with the specifications at the prices set forth in Exhibit A. This amount constitutes the maximum fees and charges payable to the company in the aggregate under this contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in Exhibit A. The Company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in Exhibit A.

8. **PRICE ADJUSTMENTS.**

   8.1 The price(s) stated in this Contract shall not increase for the entire five-year term of the Contract. The prices shall also not increase during the two (2), two-year renewal

option terms unless the City approves a price adjustment in writing in accordance with the following terms:

8.1.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials and in the cost of labor for Installation Services as set forth in Section 8.1.3 of this Contract. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs associated with the manufacture of the Products, or for additional profit.

8.1.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Management Division representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials and Installation Services. The request must state and fully justify the proposed price increase per unit or per installation over the price originally proposed.

City of Charlotte
M&FS Finance Office / Procurement Management
600 East Fourth Street
Charlotte, NC 28202

8.1.3 Except as provided below, no proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract. Price adjustments, including increases and decreases, shall be made for Installation Services in accordance with the percentage change in the U.S. Department of Labor Producer Price Index (PPI), Industry Group Construction – Item Code 2381-Foundation, Structure, and Building Exterior Contractors if such percentage exceeds two percent (2%). The percentage difference between the PPI issued for October, 2017, and the PPI issued for each October of the year of requested adjustment will determine the maximum allowable adjustment of the original Contract prices for Installation Services.

8.1.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.

8.2 If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the City with prompt written notice of all decreases in unit prices.

8.3 If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry

market. Any new or replacement items added may be subject to Proposal statute requirements. At no additional cost to the City, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.

9. **BILLING.** Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send one (1) copy only of each invoice using one of the following options:

   Option 1 – E-mail one copy of each invoice to cocap@charlottenc.gov . Company shall not mail invoices that have been sent via e-mail.

   Option 2 – Mail one copy of each invoice to:

   City of Charlotte Accounts Payable
   PO Box 37979
   Charlotte, NC 28237-7979
   Attn: (Insert Department)

   The City is not tax exempt from sales tax. The Company shall include all applicable State and County sales taxes on the invoice and not combined with the cost of the goods.

   Payment of invoices shall be due within thirty (30) days after the City has received all of the following: (a) an accurate, properly submitted invoice, (b) all reports due for the month covered by the invoice; and (c) any other information reasonably requested by the City to verify the charges contained in the invoice. Invoices must include state and local sales tax.

10. **CONTRACT MONITORING.** The City shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the City deems appropriate. Unless the City elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the City within thirty (30) days of notification of non-compliance.

11. **REPORTING.** The Company shall provide such written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in the Specifications.

12. **AUDIT.** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City 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 Contract or the City's payment obligations. The City 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 City in excess of $5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

13. **GENERAL WARRANTIES.** Company represents and warrants that:

    13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Washington, and is qualified to do business in North Carolina;

13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;

13.4 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 Contract;

13.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.

14. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Company represents warrants and covenants that:

14.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;

14.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

14.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

14.4 The Company and each of its subcontractors have complied and shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the Products and Services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.

15. **COMPLIANCE WITH LAWS.** All Products and Services delivered under this Contract shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.

16. **DELIVERY TIME.** When delivery time is requested in the RFP, (whether in the form of a specific delivery date or maximum number of days for delivery) time is of the essence. The Company's Proposal shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Proposal specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.

17. **QUALITY.** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and high-grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.

Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Contract.

18. **DESIGN AND/OR MANUFACTURER REQUIREMENT.** All Products and Services shall meet the Specifications set forth in Section 4 of the RFP.

19. **INSPECTION AT COMPANY'S SITE.** The City reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).

20. **PREPARATION FOR DELIVERY.**

    20.1 Condition and Packaging. All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.

    20.2 Marking. All cartons shall be clearly identified with the City purchase order number and the name of the department making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc).

    20.3 Shipping. The Company shall follow all shipping instructions included in the RFP, the City's purchase order or in the Contract.

21. **ACCEPTANCE OF PRODUCTS/SERVICES.** The Products delivered under this Contract shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of Products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.

22. **GUARANTEE.** Unless otherwise specified by the City, the Company guarantees the materials and workmanship on all Products and Services for the guarantee period associated with a specific product or services, as specified in Company documentation and quotation. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or

adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.

23. **NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.

24. **MANUFACTURER OR DEALER ADVERTISEMENT.** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.

25. **RIGHT TO COVER.** If the Company fails to comply with any term or condition of the Contract or the Company's response to the RFP, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:

    (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and

    (B) Recover from the Company the difference between what the City paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Company's response to the RFP.

26. **RIGHT TO WITHHOLD PAYMENT.** If Company breaches any provision of the Contract the City shall have the right to withhold all payments related to the breach due to the Company until such breach has been fully cured.

27. **OTHER REMEDIES.** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

28. **TERMINATION.**

    28.1 TERMINATION WITHOUT CAUSE. The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.

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

    28.2.1 The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, 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

    28.2.2 The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or

    28.2.3 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 Contract 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 Contract if the default is not cured within the specified period.

28.3 ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY. By giving written notice to the Company, the City may also terminate this Contract 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):

28.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Contract; or

28.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.

28.4 NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS. Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, 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.

28.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION. Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

28.6 NO SUSPENSION. In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract 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.

28.7 AUTHORITY TO TERMINATE. The City Manager or their designee is authorized to terminate this Contract on behalf of the City.

28.8 TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company

hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

28.8.1 Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and

28.8.2 Notifying all affected vendors and subcontractors of the Company of transition activities;

28.8.3 Performing the transition service plan activities;

28.8.4 Answering questions regarding the Products and Services on an as-needed basis; and

28.8.5 Providing such other reasonable Services needed to effectuate an orderly transition to a new system.

29. **NO DELAY DAMAGES.** Under no circumstances shall the City be liable to the Company for any damages arising from delay in performance for reasons other than a Force Majeure Event.

30. **MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The City reserves the right to award multiple contracts for the Products and Services required by this Contract if the City deems multiple Contracts to be in the City's best interest.

31. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract 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 City that may arise under law or under the terms of this Contract.

32. **INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, 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 a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City

and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts) or any other legal theory or principle, in connection with an Infringement Claim.

33. **INSURANCE.** Throughout the term of the Contract, 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 Section, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate the Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

(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 each occurrence/aggregate.

(B) Commercial General Liability: Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is 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, Services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.

(C) Workers' Compensation: Meeting the statutory requirements of the State of North Carolina and Employers Liability - $100,000 per accident limit, $500,000 disease per policy limit, $100,000 disease each employee limit, providing coverage for employees and owners.

The City shall be named as additional insured under the commercial general liability insurance for operations or Services rendered under this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees, as defined in Section 32.

The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the City. 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.

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 City with proof of insurance coverage by certificates of insurance accompanying the Contract.

All insurance certificates must include the City of Charlotte's contract number in the description field.

The City shall be exempt from, and in no way liable for any sums of money that 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.

34. **COMMERCIAL NON-DISCRIMINATION.**

As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five (5) years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

35. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.

36. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City'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 City when on the City's premises.

37. **BACKGROUND CHECKS.** The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:

    a. Criminal records search,

    b. Identification verification; and

    c. Proof of authorization to work in the United States.

    The Company agrees if any personnel does not meet the background qualifications, he/she shall not be assigned to perform Services under this Contract. The Company will notify the City immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the City immediately.

38. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

    38.1 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;

    38.2 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;

    38.3 Notify each employee that as a condition of employment, the employee will (i) aProposale by the terms of the prohibition outlined 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;

    38.4 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;

    38.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and

    38.6 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 Contract shall be ground for suspension, termination or debarment.

39. **NOTICES.** Any notice, consent or other communication required or contemplated by this Contract 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.

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

For The Company:	**For The City:**
Kerrin Smith	Karen Ewing
Kompan, Inc.	Procurement Management Division
821 Grand Avenue Parkway	600 East Fourth Street
Pflugerville, TX 78660	Charlotte, NC 28202
Phone: 888.579.8223	Phone: 704.336.2992
Fax: 888.579.8224	Fax: 704.632.8254
E-mail: kersmi@kompan.com	E-mail: kewing@charlottenc.gov
With Copy To:	**With Copy To:**
	Cindy White
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: cwhite@ci.charlotte.nc.us

    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.

40. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City 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 Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

41. **FORCE MAJEURE.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

    If such failure or delay:

    A. Could not have been prevented by reasonable precaution;
    B. Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
    C. 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.

An event that 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 City shall have the right to terminate the Contract by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the successful Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

42. **CONFIDENTIALITY.** Each party shall adhere to the Confidentiality Terms stated in Exhibit H of this Contract.

43. **MISCELLANEOUS.**

43.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments 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 Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the RFP and the Proposal are relevant in resolving any ambiguities that may exist with respect to the language of this Contract

43.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.

43.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such 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.

43.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract 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 43.8 constitutes an assignment.

43.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit 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 Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

43.6 NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.

43.7 WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract 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 Contract 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 Contract shall be effective unless in writing and signed by the party waiving the rights.

43.8 CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, 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.

43.9 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 City in connection with this Contract.

43.10 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 Contract 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.

43.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.

43.12 SURVIVAL OF PROVISIONS: Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to the following:

Section 3	"Term"
Section 12	"Audit"
Section 13	"General Warranties"
Section 14	"Additional Representations and Warranties"
Section 22	"Guarantee"
Section 27	"Other Remedies"
Section 28	"Termination"
Section 32	"Indemnification"
Section 33	"Insurance"
Section 39	"Notices"
Section 42	"Confidentiality"
Section 43	"Miscellaneous"

43.13 NON-APPROPRIATION OF FUNDS. If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City 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 City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

43.14 E-VERIFY. Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

43.15 IRAN DIVESTMENT ACT. Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or Services hereunder.

43.16 PRE-AUDIT. No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single Product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no

financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate."

43.17 UNIFORM ADMINISTRATIVE REQUIREMENTS
By entering into this Contract, the Company agrees to comply with all applicable provisions of *Title 2, Subtitle A, Chapter II, Part 200* – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards *contained in Title 2 C.F. R. § 200 et seq.*

43.18 COUNTERPARTS.
This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]

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

COMPANY:

BY: Kerrin Smith

PRINT NAME: KERRIN SMITH

TITLE: PRESIDENT

DATE: APRIL 26th, 2017

CITY OF CHARLOTTE
CITY MANAGER'S OFFICE:

BY: Randy J. Harrington

PRINT NAME: Randy Harrington

TITLE: CFO

DATE: 5/15/17

CITY OF CHARLOTTE
RISK MANAGEMENT DIVISION:

BY:

PRINT NAME: Christee Gibson

TITLE: Ins Mgr

DATE: 5/11/17

Shelter Price List #3000-2017

Item No.	Description	Diameter	Price
SII-8032D-MR29	Steel Frame, 8000 Series, Double Tier Hexagonal, with Metal Roof and Tongue & Groove Roof Decking	32'	$27,272
SII-8516P	Pittsburgh, 8500 Series, Octagonal Shelter, All Steel with 24 Guage Pre-Cut Metal Roof	16'	$9,997
SII-8524P	Pittsburgh, 8500 Series, Octagonal Shelter, All Steel with 24 Guage Pre-Cut Metal Roof	24'	$16,363
SII-8516-FS	Steel Frame, 8500 Series, Octagonal Shelter with Fiberglass Shingles & Tongue & Groove Roof Decking	16'	$10,139
SII-8524-FS	Steel Frame, 8500 Series, Octagonal Shelter with Fiberglass Shingles & Tongue & Groove Roof Decking	24'	$17,191
SII-8516-MR29	Steel Frame, 8500 Series, Octagonal Shelter with Metal Roof and Tongue & Groove Roof Decking	16'	$10,935
SII-8524-MR29	Steel Frame, 8500 Series, Octagonal Shelter with Metal Roof and Tongue & Groove Roof Decking	24'	$18,226
SII-8524DP	Pittsburgh, 8500 Series, Octagonal Shelter, All Steel with 24 Guage Pre-Cut Metal Roof	24'	$18,592
SII-8532DP	Pittsburgh, 8500 Series, Octagonal Shelter, All Steel with 24 Guage Pre-Cut Metal Roof	32'	$28,164
SII-8524D-FS	Steel Frame, 8500 Series, Double Tier Octagonal w Fiberglass Shingles & Tongue & Groove Roof Decking	24'	$17,168
SII-8532D-FS	Steel Frame, 8500 Series, Double Tier Octagonal w Fiberglass Shingles & Tongue & Groove Roof Decking	32'	$29,285
SII-8524D-MR29	Steel Frame, 8500 Series, Double Tier Octagonal, with Metal Roof and Tongue & Groove Roof Decking	24'	$20,055
SII-8532D-MR29	Steel Frame, 8500 Series, Double Tier Octagonal, with Metal Roof and Tongue & Groove Roof Decking	32'	$32,040
Prices do not include freight, installation or engineered drawings			

Musical Pieces Price List #4000-2017

Item No.	Description		Price
FRN-CADENCE	13 Note Tenor Marimba	In Ground	$3,790.00
FRN-CONTRABASSCHIMES	7 Aluminum Chimes	In Ground	$5,678.00
FRN-DUET	18 Note Resonated Xylophone/Marimba	In Ground	$3,726.00
FRN-IMBARIMBA	22 Note Resonated Marimba	In Ground	$4,682.00
FRN-LILYPADCYMBALS	10 Note Aluminum Discs	In Ground	$2,800.00
FRN-MANTARAY	36 Note Metallophone	In Ground or Surface Mount	$4,695.00
FRN-PAGODABELLS	8 Stainless Steel Bells	In Ground	$3,718.00
FRN-PEGASUS	23 Note Resonated Metallophone	In Ground	$4,549.00
FRN-SWIRL	26 Note Resonated Metallophone	In Ground	$5,652.00
FRN-TUNEDDRUMS	Set of 5 PVC Hand Drums-Normal	In Ground	$3,218.00
FRN-TODDTUNEDDRUMS	Set of 5 PVC Hand Drums-Toddler	In Ground	$3,609.00
FRN-YANTZEE	10 Bass Note Resonated Metallopho	In Ground	$4,308.00
FRN-ARIA	9 Note Non-resonated Xylophone	In Ground	$1,938.00
FRN-GRIFFIN	11 Note Resonated Metallophone	In Ground	$3,252.00
FRN-JACK	11 Note Resonated Metallophone on molded plastic frame	In Ground	$2,585.00
FRN-JILL	11 Note Resonated Marimba	In Ground	$2,585.00
FRN-MELODY	9 Note Resonated Xylophone	In Ground	$1,783.00
FRN-MERRY	11 Note Resonated Metallophone	In Ground	$2,619.00
FRN-RHYTHM	9 Note Resonated Marimba	In Ground	$1,783.00
FRN-PIPER	11 Note Resonated Marimba, fiberglass keys	In Ground	$2,602.00
	ENSEMBLES		
FRN-WEENOTES	Griffin, Merry & Piper	3 Weenotes	$7,702.00
FRN-STARTER	Duet, Drums & Yantzee	3 Instruments	$10,175.00
FRN-DELUXE	Imbarimba, Swirl, Yantzee, Drums	4 Instruments	$15,922.00
FRN-PREMIUM	Contrabass Chimes, Imbarimba, Swirl, Pegasus, Drums	5 Instruments	$21,194.00
FRN-SCULPTURAL	Contrabass Chimes, Lilypad Cymbals, Manta Ray, Swirl, Pagoda Bells & Aria	6 Instruments	$21,896.00
Prices do not include freight or installation			

Park Furniture Installation Price List #5000

STATE	DESCRIPTION	RATE
INSTALLATION	Installation of Park Benches	$270.00
INSTALLATION	Installation of Picnic Tables	$310.00
INSTALLATION	Installation of Litter Receptacles	$230.00
INSTALLATION	Installation of Bike Racks	$425.00
INSTALLATION	Installation of Swing Benches	$540.00
INSTALLATION	Installation of Planters	$310.00

Rates are a maximum allowable percentage rate under the contract.

Minimum Installation Fee of $5,000.00

Installation rates do not include Prevailing Wages. Please ask for a quote with Prevailing Wage Rates, if applicable.

Unless otherwise noted in the quote, the installation charge includes the below:

- Receiving shipment on site and off-loading equipment
- Layout and excavation of footing holes for equipment provided by KOMPAN
- Assembly of equipment provided by KOMPAN
- Concrete footings (where applicable)

Below is a list of services that are not automatically included in the quote for product installation, but may be available for an extra charge
Please inquire with your local KOMPAN sales associate for details:

- Off-site disposal of packaging from delivered equipment
- Removal of excavated soil from site
- Additional site excavation not involving equipment footings
- Permits
- Storage of Equipment
- Site Fence – Security
- Installation in stages
- Non-standard working hours (i.e. nights, weekends, holidays)

Unless otherwise noted, the quoted installation charge assumes the following site conditions:

- Adequate access to the site for vehicles and equipment
- A flat, level site (less than 1% grade) with no existing surfacing, drain rock, or other landscaping material
- Clear markings of play site borders and finished grade height
- Good soil conditions for excavation (i.e. no large rocks, tree roots, underground structures, etc.)
- All underground utilities marked clearly by customer prior to installation crew arriving on site and without those utilities interfering with necessary footing holes
- If products are ordered as "surface mount" and will be anchored to an existing concrete slab, that the slab meets the thickness and strength requirements associated with the equipment.

If any of the above site conditions are not met, this may result in an inability to complete the installation and/or may result in additional installation charges.

EXHIBIT B
INSTALLATION FEES

The following Installation Fees are an Exhibit to and are incorporated into the Contract to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte and Kompan, Inc.

EXHIBIT C
NATIONAL NETWORK OF DISTRIBUTORS AND INSTALLERS

The following National Network of Distributors and Installers is an Exhibit to and are incorporated into the Contract to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte and Kompan, Inc.

- **By partnering with best in class suppliers of site amenities, surfacing and other associated playground products, KOMPAN ensures that we always offer the best quality and highest technologically advanced products in their class to the market.**

Qualifications, Experience and Project Management Capabilities

1. Identify your company's authorized distributors and installers by U.S. state:

KOMPAN's Authorized Distributors by U.S. state	
Distributor (Agency Partner)	**Territory by State**
ABC Playgrounds	Arkansas
All Play+	Pennsylvania
American Athletix	Ohio, Michigan
Creative Recreational Design, Inc.	New Mexico
Custom Playground Solutions	Missouri
Highwire	Washington, Hawaii, Alaska
Imagine Nation	Illinois, Iowa
K2 Recreation	Oregon, Idaho, Washington
Latta's	West Virginia
Meaning 2 Play	South Carolina
Playspace Design	Utah, Idaho, Montana, Nevada
Practice Sports	Nebraska
Recreation Insights	Kentucky, Indiana
Recreation Republic	California
Summit Recreation	Colorado, Wyoming
Ultimate Playgrounds	Wisconsin, Minnesota, North Dakota, South Dakota
Versa Sport	Kansas

Scope of Services Section 4

All equipment must be IPEMA Certified. Certification must be included with your proposal submission.

IPEMA certificates for the sample playgrounds are attached, labeled Exhibit 28

4.7 Installation.

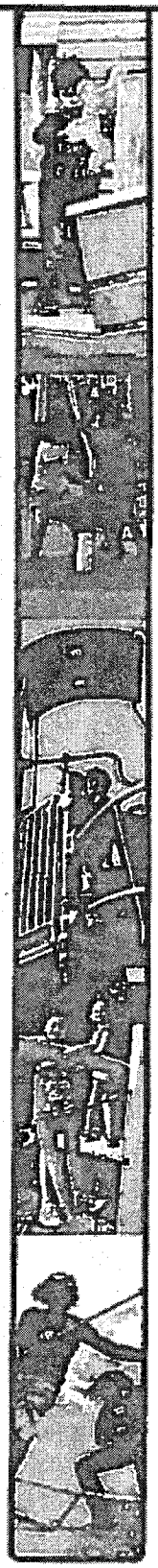
All Products provided under this Contract that require assembly and installation should be performed by the awarded manufacturers' certified installers. Company must provide the names and addresses of each certified installer/subcontractor by geographical area.

WEST ZONE	
Installer Name	**Installer Address**
PSI	1747 Colgate Dr. Thousand Oaks, California 91360
Central Coast Playgrounds	4285 Parkdale Lane, Santa Maria, California 93455
Cicero Engineering	1372 East Valencia Drive, Fullerton, California 92831
Who Built Creative	P.O. Box 5207, Petaluma, California 94955
Zasuetta Contracting Inc.	Po Box 866, Spring Valley, California 91976
Recreation Science	1310 Sierra Oaks Lane, Colfax, California 95713
T.J Janca Construction Inc.	2328 N. Batavia Street, Orange County, California 92865-2026
Playgrounds Unlimited	980 Memorex Dr. Santa Clara, California 95050
Perpetual Parks and Playgrounds	43407 Tylman Street, Temecula, California 95292
Creative Contractors	PO Box 80784, Rancho Santa Margarita, California 92688

(list continued next page...)

WEST ZONE	
Installer Name	**Installer Address**
Creekmore Recreation Specialists	3203 California Ave, Carmichael, California 95608
K2 Recreation Inc.	7227 N Philadelphia St #403, Portland, Oregon 97203
Takamine Construction	851 Leilani Street, Hilo, Hawaii 96720
Cascade Mini Excavating Inc.	1266 Bay Loop Southwest, Tumwater, Washington 98512
Cascadian Landscaping	21510 NW Farm Park Dr. Hillsboro, Oregon 97124
Community Playgrounds	200 Commercial, Vallejo, California 94589
G.R. Morgan Construction	10536 S.W. 25th Avenue, Portland, Oregon 97219
Goto Construction Inc.	42-273 Old Kalanianaole Hwy, Kailua, Hawaii 96734
Jayne's Brothers	704 Cayo Grande Court, Newbury Park, California 91320
R&R Construction Inc.	P.O. Box 8236, Bonney Lake, Washington 98390
Playco Park Builders Inc.	155 South Garrison Street, Lakewood, Colorado 94954
Progressive Playgrounds	12784 N. 3rd Street, Parker, Colorado 80134
Quality Time Recreation	PO Box 471, Clearfield, Utah 84089

(list continued next page...)



Scope of Services Section 4 (continued)

CENTRAL ZONE	
Installer Name	**Installer Address**
Midwest Playground Contractors	500 N. Pine St Suite 104, Chaska, Minnesota 55318
PG Playgrounds	5615 E. Huffman Drive , Kechi, Kansas 67067
Pro Installation Plus	5807 Hibiscus Trail, Crystal Lake, Illinois 60012
Vela Construction	24830 Outer Dr. Lincoln, Michigan 48146
Versasport	2705 N. Pepper Ridge, Wichita, Kansas 67205

EASTERN ZONE	
Installer Name	**Installer Address**
Avon Corporation	5621 Vine Street, Alexandria, Virginia 22310
Buzz Burger Inc.	500 S Whitehorse Rd, Phoenixville, Pennsylvania 19428
Custom Park Services	8019 E. Old Jessup Road, Jessup, Maryland 20794
Gassner Contracting	122 Markle Road, Belle Vernon, Pennsylvania 15012
Green Acres Landscape & Construction Co. Inc.	21 Malbone Street, Lakeville, Massachusetts 02347
Level Ground	6251 80th Street, Middle Village, New York 11379
Meaning 2 Play	106 Casco Bay Rd, Irmo, South Carolina 29063
P&J Lawn Landscaping Inc.	P.O. Box 104, Harwington, Connecticut 06791

(list continued next page...)

Scope of Services Section 4 (continued)

EASTERN ZONE	
Installer Name	**Installer Address**
P&P Installations	617 Tim Hill Rd (P.O Box 222), Marathon, New York 13803
Pat Corsetti Inc.	610 Fenimore Ave, Mamaroneck, New York 10543
Playtime Installs LLC	501 Maplewood Ave., Mohnton, Pennsylvania 19540
Probuilt	P.O. Box 991, Marshfield, Massachusetts 02050
Reale Associates Inc.	PO Box 2316, Ocean Bluff, Massachusetts 02065
Reese Construction	3720 Lucky Dr. Apex, North Carolina 27539
Rich Picerno Builders	500 Holles Drive, Kenilworth, New Jersey 07033
UA Construction	71 West 23rd Street, New York, New York 10010
Dicarlo Home Improvements	9974 Blackberry Lane, Great Falls, Virginia 22066

MULTIPLE ZONE	
Installer Name	**Installer Address**
Evans Recreation	P.O. Box 42607, Las Vegas, Nevada 89116
Playgrounds of the Rockies	3295 South Fairplay St, Aurora, Colorado 80014
Green Apex Roofing & Construction LLC	5333 Richmond Ave #15, Houston, Texas 77056
JP and Sons Contracting Inc.	18937 E Via Del Verde, Queen Creek, Arizona 85142
Michigan Recreational Construction Inc. (MRC)	P.O. Box 2127, Brighton, Michigan 48116
Precision Playgrounds Holdings	6440 Southpoint Parkway, Floor 3, Jacksonville, Florida 32216
The Playground Guys Inc.	5600 SE Lamay Drive, Stuart, Florida 34997

Contract No. 2017001135
Vendor No. 303668

EXHIBIT D
FREIGHT RATE SCHEDULES

The following Freight Rate Schedules are an Exhibit to and are incorporated into the Contract to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte and Kompan, Inc.

All freight charges are prepaid to the carrier by KOMPAN and added to the invoice as a separate line item to the customer.

EXHIBIT E
PRODUCT WARRANTIES

The following Product Warranties are an Exhibit to and are incorporated into the Contract to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte and Kompan, Inc.

Scope of Services Section 4 (continued)

4.12 Warranty.
Proposals should address each of the following:

1. **Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.**

Warranty documents for all proposed products attached.

Warranty Response Time	
Product	**Response Time**
KOMPAN Playground Equipment	4 -8 business days*
KOMPAN Outdoor Fitness Equipment	4 -8 business days*
Engineered Wood Fiber	5 business days
Pour In Place Rubber	5-10 business days
Rubber Mulch	5 business days
Artificial Turf	5-10 business days
Rubber Tiles	5-10 business days
Site Amenities	5-10 business days
Shelters	5-10 business days
Shades	5-10 business days
Installation Services	1- 3 business days
	*For customized or discontinued products additional time may be required.

2. Warranty period start date. The City desires the warranty start at the time of substantial completion.
KOMPAN's Warranty period start date will be at time of substantial completion.

3. Availability of replacement parts.
Replacement parts will at the minimum, be available for the duration of the warranty period.

4. Life expectancy of equipment under normal use.
KOMPAN has been producing playground equipment since the 1970's and we still have some equipment in the field from that time period. Local climate conditions, maintenance, and usage can affect the life expectancy of equipment. Equipment is built to last through several generations, and can last over 20 years if properly maintained.
The life expectancy of surfacing products is based on the climate, environment, proper drainage, usage and maintenance. The minimum life expectancy matches the number of years the product is under warranty. Site amenities have varied life expectancy based upon the type of materials and the care and maintenance of the product. The minimum life expectancy matches the number of years the product is under warranty.

5. Detailed information as to proposed return policy on all equipment.
Except as agreed to in writing, all items of Product returned will be subject to inspection and approval by KOMPAN prior to acceptance and will result in a restocking charge for all costs associated with the return, but not less than 50% of the full list price of such returned KOMPAN items or 75% for custom or third party items

EXHIBIT F
SCOPE OF SERVICES

The following Scope of Work is an Exhibit to and incorporated into the Contract to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte and Kompan, Inc.

4. SCOPE OF SERVICES.

4.1 General Scope.

The Company shall provide various Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services that meets or exceeds the following requirements to the City and Participating Public Agencies nationwide.

Participating Public Agencies may have additional specific requirements that might not be a requirement of the Lead Public Agency. The Company agrees to provide additional information or documentation to Participating Public Agencies as may be required per the Master Intergovernmental Cooperative Purchasing Agreement (between the Lead Public Agency and the Participating Public Agency).

4.2 Product Standards and Guidelines.

It is essential that all Playground Equipment, Outdoor Fitness Equipment, Site Accessories, Surfacing, and Related Products and Services be in compliance with all current and applicable Consumer Product Safety Commission (CPSC), Americans with Disabilities Act (ADA) and ADA Accessibility Guidelines (ADAAG), and ASTM Standards and other applicable laws and regulations in the state of North Carolina or in accordance with the laws and applicable purchasing policies of the State and locality where the Participating Public Agencies exists.

Manufacturers must be a member of the International Play Equipment Manufacturers Association (IPEMA) and ISO 9001 and 14001 certified. All equipment must be IPEMA Certified and meet all current American Society of Testing and Materials (ASTM), Consumer Product Safety Commission (CPSC), and IPEMA standards.

4.2.1 American Society for Testing and Materials (ASTM):

ASTM-F1487- 11	Standard Consumer Safety Performance Specification for Playground Equipment for Public use.
ASTM-F1292-13	Standard Specification for Impact Attenuation of Surface Systems within the Use Zone of Playground Equipment.
ASTM 1951-09	Standard Specifications for Determination of Surface Systems Under and Around Playground Equipment.

ASTM F2049-11	Fences/Barriers for Public, Commercial, and Multifamily Residential Use Outdoor Play Areas.
ASTM F2075	Standard Specifications for Engineered Wood Fiber for Use as a Playground Safety Surface and Around Playground Equipment.

4.2.2 Printed Handbook for Public Playground Safety (CPSC)
Equipment must meet all guidelines stated in the "Handbook for Public Safety" published by the Consumer Product Safety Commission. Copies of publication No. 325 may be obtained from U.S. Consumer Product Safety Commission, Washington, DC 20207.

4.2.3 International Play Equipment Manufacturers Association (IPEMA)
IPEMA provides third-party Product Certification services for U.S. and Canadian public play equipment and U.S. public play surfacing materials. The services provide for the validation of a participant's certification of conformance to the standards referenced above. Both certifications are administered by Detroit Testing Laboratory, Inc. For more information on certification and membership, visit IPEMA's website at: www.ipema.org.

All equipment must be IPEMA Certified. Certification must be included with your proposal submission.

4.3 Environmental Purchasing Requirements.
The Company must provide documentation of their environmental sustainability policies, measures, and initiatives with their Proposal response per Section 2.6.15 and Section 7 - U.S. Communities Requirements of this RFP.

4.4 New Products and Services.
New Products and Services may be added to the resulting Contract(s) during the term of the Contract by written amendment, to the extent that those Products and Services are within the scope of this RFP and include, but will not be limited to, new Product added to the Manufacturer's listing offerings, and services which reflect new technology and improved functionality. All requests are subject to review and approval of the City of Charlotte.

4.5 Replacement Parts.
The Company must stock replacement parts for a minimum of 15 years on all play systems and provide parts within two (2) weeks (14 calendar days) from the time an order is placed by the Participating Public Agency. Some parts may take longer than two weeks, and that will be communicated at the time the order is placed.

4.6 Surfacing Material.
Surfacing Material must meet all guidelines stated in the Handbook for Public Playground Safety, and most current versions of ASTM-F1292-13, F2075-15, F3012-14, and all other applicable ASTM standards and guidelines as certified by an independent laboratory conforming to IPEMA safety standards as identified for the playground industry.

4.7 Installation.

All Products provided under this Contract that require assembly and installation should be performed by the awarded manufacturers' certified installers. Company must provide the names and addresses of each certified installer/subcontractor by geographical area.

All work must be performed according to the standards established by the terms, specifications, drawings, and construction notes for each project, and meet manufacturer's specifications and industry standards. It shall be the obligation of the Installer to obtain clarification from the Project Coordinator concerning questions or conflicts in the specifications, drawings and construction notes in a timely manner as to not delay the progress of the work.

4.8 Design.

The Company must have the capability to recommend and design appropriate play systems/structures to fit the need of the site for age groups to be determined by Participating Public Agency. Company must provide drawings (plan and elevation) of all pertinent aspects of the play equipment and its method of connection to the work. Final playground layout drawings shall be to scale and legible and must show location of play equipment and dimensions of use zones. All designs shall indicate ADA accessible routes, and percentage of ADA accessible components.

4.9 Project Management.

The Company must have the ability to provide project management services to help Participating Agencies complete their projects on-time and within budget.

4.10 Safety.

The Company and installers or subcontractors performing services for Charlotte-Mecklenburg are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. The Company and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

4.11 Literature and Catalogs.

The Company will be required to furnish and/or update all price lists, listings, color charts and other literature as requested within fifteen (15) days after notification of award. All catalogs may be electronic versions.

4.12 Warranty.

The Company should address each of the following:

1. Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
2. Warranty period start date. The City desires the warranty start at the time of substantial completion.
3. Availability of replacement parts.
4. Life expectancy of equipment under normal use.
5. Detailed information as to proposed return policy on all equipment.

4.13 Lead Time and Delivery.

1. Company must provide a four (4) week lead time on limited number of configurations, with no up charge. Participating Public Agencies should consult with their local Sales Representative for Lead times for specific products as times vary based upon type of product.

    a. Most of the Company's bestselling Products are stocked in our Middletown, Pennsylvania storage facility and can be shipped for immediate delivery – one to seven days, dependent upon the delivery location.

    b. 64% of the Company's Products will be shipped for delivery from the east coast within five weeks.

    c. 26% of the Company's Products will be shipped for delivery from the east coast within eight weeks.

    d. The remaining 10% of the Company's Products have delivery times that are dependent on the customizations, color and material selections as these Products are highly specialized and a result of project collaboration with the customer.

2. Deliveries may be made typically between the hours of 8:30 a.m. and 3:30 p.m., local time, on regular business days unless other arrangements have been made. Delivery location shall be stated on each purchase order issued by Participating Agencies.

3. The Company will ensure that all items are delivered fully assembled or assembled by vendor or its designated subcontractor on site as may be designated by the Participating Public Agency. The Company will assure that all items are packed in accordance with prevailing commercial practices and delivered and assembled and installed in the first class condition.

4. When the purchase order calls for delivery to a specific location (other than door delivery) the vendor will deliver in accordance with the delivery instructions provided by the Participating Public Agency and shall perform inside delivery, assembly, set in place in proper location, make ready for use and remove all debris.

5. The Company shall authorize immediate replacement of any item that has been damaged in transit.

6. If deliveries are required in the evenings or weekends, or designated holidays, special installation charges will be negotiated. It is expected that the pricing will be fair and reasonable based upon specific requirements.

4.14 Optional Work.

Company will be required to provide quotations on a case-by-case basis for optional related work such as, but not limited to, removal and/or reinstallation of Playground & Fitness Equipment, timbers, and fencing as may be required to provide a full turnkey solution to Participating Public Agencies.

4.15 Material Specifications.

Equipment material specifications may vary between cities, counties, schools and states. Each Participating Entity will provide required specifications to include, but not be limited to, acceptable material, finish, diameters, thickness, gage, and angles of all components when placing orders or as necessary.

4.16 Additional Requirements.
The Company may be required and agrees to comply with additional state, or local laws and policies of the individual Participating Public Agencies.

4.17 Performance Bond.
The Company may be required to provide a performance bond as required by Participating Public Agencies for each project as required by local or state laws and policies.

4.18 Reports.
The Company must maintain all records in compliance with federal and state regulations. A statistical report and an annual tabulated report must be submitted electronically to the Lead Public Agency upon request.

4.19 Pricing.
The Company must submit a cost proposal fully supported by data adequate to establish the reasonableness of the proposed fee. One (1) firm fixed percentage discount off of a verifiable list price for each category (defined in Section 1.3): 1) Playground Equipment (including components, replacement parts); 2) Outdoor Fitness Equipment: 3) Site Accessories; 4) Surfacing Materials; 5) all other related Products (Shade Structures, Skate Parks, and other categorized Products); and 6) Services offered by the Company, for the life of the contract is preferred.

Prices must include manufacturer mark up, profit, item cost and storage to allow each customer the ability to calculate and verify discount. All manufacturer price lists must be identified in the Proposal response.

Proposals must include an itemized list of any Products and Services that the Company intends to include in the Master Agreement and assume responsibility for as prime contractor, but are offered by the individual authorized distributors and not included in the Company's catalog. The list must identify the distributors name and location that offers each product and service included. The Company shall be the prime contractor and remain solely responsible for contractual performance, and reporting, per Section 2.6.7 of this RFP for any Products and Services offered by the authorized distributor.

Proposals shall not include Products and Services the Company does not intend to offer, or take responsibility for, as prime contractor.

4.19.1 Volume Discounts: Please include any volume discounts offered to the Lead Public Agency and Participating Public Agencies.

4.19.2 Rebates: Please include any rebates offered to Lead Public Agency and Participating Public Agencies..

4.19.3 Product, Design and Price Comparison.

For comparison purposes only, the Company must provide the following information for the three (3) sample playground designs included in Section 6, Form 4:

1. Cost breakdown of all components using proposed discounts and list prices;
2. Manufacturer Price List ID

3. Three dimensional drawings
4. Number of kids that can use the playground;
5. Total number of play components:
   - Number of ground level components
   - Number of accessible ground level components
   - Number of elevated components
   - Number of accessible elevated components
6. Play Structure Size
7. Deck Sizes
8. Diameter of Uprights
9. Color options
10. Minimum time needed from date of design to delivery of equipment.

4.20 Installation.
Company response must include a defined installation fee program. If a percentage of total dollar amounts of each order are proposed, the Company must submit one (1) fixed percentage for all installation services for all Participating Public Agencies, regardless of location, for the life of the contract.

4.21 Shipping and Delivery.
Company must include a defined shipping program with their Proposal responses. If shipping is charged separately, only the actual cost of the freight may be added to an invoice. Shipping charges calculated as a percentage of the product price **cannot be used.**

1. Unless specifically stated otherwise in the "Shipping Program" included in the Company's Proposal response, all prices quoted must be F.O.B. destination with freight prepaid by the Company.
2. Additional costs for expedited deliveries may be added.
3. Selection of a carrier for shipment will be the option of the Participating Public Agency paying for said shipping.

4.22 Price Adjustments.
All proposed pricing shall remain firm for the first year of the subsequent Contract (through June 30, 2018). Company may request price increases for consideration at least sixty (60) days prior to each anniversary of the Contract effective date. All requests must be submitted in writing to City of Charlotte Procurement Management along with documentation of bona fide materials and labor increases for the cost of Products. No adjustments shall be made to compensate a Company for inefficiency in operation or for additional profit. Price decreases shall be accepted at any time during the term of the contract.

4.23 References.
Proposals must include a minimum of five (5) customer references (see Section 6, Form 7) that Company has provided products and services similar to those outlined in this RFP.

4.24 Prevailing Wages.
Company must comply with the prevailing wage requirements of each state. Please include any exceptions to this requirement in your proposal response, per Section 2.6.12 of the RFP.

EXHIBIT H
CONFIDENTIALITY TERMS

This Exhibit H is an exhibit to the Contract to Provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services (the "Contract") between the City of Charlotte, a North Carolina municipal corporation (the "City"), and Kompan.Inc., a corporation doing business in North Carolina (the "Company"). Unless otherwise stated in this Exhibit, the defined terms stated herein shall have the same meanings ascribed to them in the main body of the Contract.

1. **CONFIDENTIAL INFORMATION.** "Confidential Information" means any information, in any medium (whether written, oral or electronic), obtained from the City or the Company or any of their respective suppliers, contractors or licensors which falls within any of the following general categories:

   1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of information of the City or the Company or any of their respective suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

   1.2. *Information marked "Confidential" or "Proprietary."*

   1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*

   1.4. *Any attorney / client privileged information disclosed by either party.*

   1.5. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.*

   1.6. *Personal identifying information about individuals that the City is prohibited from disclosing by law*, including:
   (a) Social security or employer taxpayer identification numbers.
   (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.
   (c) Checking account numbers.
   (d) Savings account numbers.
   (e) Credit card numbers.
   (f) Debit card numbers.
   (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
   (h) Digital signatures.
   (i) Any other numbers or information that can be used to access a person's financial resources.
   (j) Biometric data.
   (k) Fingerprints.
   (l) Passwords.

   1.7. *The security features of the City's electronic data processing systems, information technology systems, telecommunications networks, and electronic security systems,*

including passwords, security standards, security logs, procedures, processes, configurations, software and codes.

1.8. *Local tax records of the City that contain information about a taxpayer's income or receipts.*

1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*

1.10. *Building plans of City-owned buildings or structures, as well as specific details of public security plans.*

1.11. *Billing information of customers compiled and maintained in connection with the City providing utility services.*

1.12. *Plans to prevent or respond to terrorist activity*, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).

1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

The information described in Sections 1.1 through 1.13 is a subcategory of Confidential Information called "Highly Restricted Information." Highly Restricted Information is subject to all requirements applicable to Confidential Information, but is also subject to additional restrictions as set forth in this Exhibit H.

The parties acknowledge that Confidential Information includes information disclosed prior to execution of this Contract as well as information disclosed after execution.

Notwithstanding the above, contracts between the Company and the City are not Confidential Information and will be considered public records, except for attached exhibits that: (a) meet the legal requirements for trade secrets; and (b) are clearly identified as such.

2. **RESTRICTIONS AND REQUIREMENTS.** Each party shall comply with the following restrictions and requirements regarding Confidential Information:

2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by written agreement of the parties or by the written consent of the other party.

2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party, other than an agent, subcontractor or vendor of the City or the Company who: (a) has a need to know such Confidential Information for purposes contemplated by this Contract, and (b) has executed a confidentiality agreement incorporating substantially the form of this Exhibit H. Notwithstanding the foregoing, Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted of the other to any third party without the City's prior written consent.

2.3. Neither party shall use any Confidential Information of the other for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

2.5. Each party shall use reasonable efforts to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.

2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall notify the other party of the demand, and shall cooperate with and reasonably assist the other party in seeking a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information.

2.8. Each party shall restrict employee access to the Confidential Information of the other party to those employees having a need to know for purposes of carrying out the business relationships contemplated by this Contract.

2.9. The Company shall comply with the City's Restricted Data Policy, a copy of which is posted on the City's website, and with any instructions or procedures issued by City key business units from time to time with respect to protecting specific types of Confidential Information.

2.10. Each party shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Exhibit H. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Exhibit H, including compliance with the City's Restricted Data Policy.

2.11. The Company shall further ensure that each person who obtains access to Confidential Information through the Company (including but not limited to Company's employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to this Exhibit H and the City's Restricted Data Policy.

3. **EXCEPTIONS.** The disclosing party to this Contract agrees that the receiving party ("Recipient") shall have no obligation with respect to any Confidential Information that the Recipient can establish:

3.1. was already known to Recipient prior to being disclosed by the disclosing party;

3.2. was or becomes publicly known through no wrongful act of Recipient;

3.3. was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;

3.4. was used or disclosed by Recipient with the prior written authorization of the other party;

3.5. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Recipient shall first give to the other party notice of such requirement or request;

3.6. was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

4. **DATA.** The Company will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Contract (including metadata). Such data shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

5. **PUBLIC RECORDS.** Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the City is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. Gen. Stat. 132-1 et seq. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the City pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Contract, nor shall the City be liable to the Company for such release or disclosure.

   In the event the City receives a request for disclosure of Confidential Information which the Company has specifically marked "Confidential" or "Proprietary" the City shall give the Company written notice of such request (the "Notice of Request for Disclosure"). In the event the Company has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Company shall within ten (10) days after receipt of the Notice of Request for Disclosure notify the City in writing of its objection to disclosure and the basis therefor. The Company shall indemnify, defend and hold harmless the City from and against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the City in connection with any refusal by the City to disclose Confidential Information after receiving an objection to disclosure from the Company. If the City receives no written objection from the Company within ten (10) days after the Company's receipt of a Notice of Request for Disclosure, the City shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.

   Notwithstanding the foregoing, the parties agree that the computer database information that the City is required to disclose under N.C. Gen. Stat. §132-6.1 shall not be deemed Confidential Information, and that the City shall be entitled to disclose such information without notice to the Company.

6. **REMEDIES.** Each party acknowledges that the unauthorized disclosure of the Confidential Information of the other will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if a party breaches its obligations hereunder, the other party

shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

Nothing in this Contract shall be deemed to eliminate or lessen any obligation either party may have at law with respect to protecting the confidentiality of Confidential Information, except as the provisions of this Contract expressly authorize the release of Confidential Information.

SUBJECT: PIGGYBACK US COMMUNITIES/CITY OF CHARLOTTE/MECKLENBURG COUNTY CONTRACT #2017001135 FOR PLAYGROUND AND OUTDOOR FITNESS EQUIPMENT

BID #: PSC-0597-17 **OPEN DATE: 03/16/2017**

GENERAL GOVERNMENT AWARDS COMMITTEE

KIND AND BASIS OF CONTRACT: PIGGYBACK CONTRACT – INITIAL TERM OF FIVE (5) YEARS BEGINNING JULY 1, 2017 AND ENDING JUNE 30, 2022

AGENCY: PARKS, RECREATION AND COMMUNITY SERVICES DEPARTMENT

BASIS OF AWARD: PIGGYBACK

NUMBER OF BIDS INVITED: (N/A) **NUMBER RECEIVED:** (N/A) **OTHER** (N/A)

SUMMARY OF BIDS AND RECOMMENDED ACTIONS:
Recommend approval to award KOMPAN, Inc. in the amount of $17,170.94, for the purchase and installation of playground equipment at Mandarin Park Supernova Playground. The total maximum indebtedness not to exceed $17,170.94.

Funding for this award to be encumbered by account, RPCP324F5720-06505-PR0597-01to be executed by Purchase Order.

ATTACHMENTS: Recommendation Memo; Sales Proposal; Risk Approval

ANALYST: STEVEN BURAKOWSKI **RESPECTFULLY SUBMITTED** GREGORY PEASE, CHIEF PROCUREMENT DIVISION

CONCURRENCE BY: Daryl Joseph, Director of Parks, Recreation & Community Services

(ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS)
ACTION OF GGAC COMMITTEE ON RECOMMENDATIONS ABOVE
MEMBERS APPROVING 3 MEMBERS DISAPPROVING Ø DATE: 08/24/17

OTHER:

ACTION OF AWARDING AUTHORITY DATE 8/24/17

APPROVED DISAPPROVED

OTHER

SIGNATURE OF AUTHENTICATION

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of:
Executive Order No. 2015-05

QWS3270X 5/4/2018 2:00 PM
FAML6350 V5.1 ** NW COJ FAMIS PRODUCTION ** 05/04/2018
LINK TO: ACCOUNT SUMMARY INQUIRY 2:00 PM

FISCAL MO/YEAR : 08 2018 CURRENCY CODE :
INDEX CODE : RPCP324F5720 PARKS/REC/ENTER CAPITAL PROJECTS (F5720)
SUBOBJECT : 06505 OTHER CONSTRUCTION COSTS
PROJECT :
PROJECT DETAIL :
GRANT :
GRANT DETAIL :
USER CODE :

S	MAY 2018	ANNUAL BALANCE	ALL YEARS BALANCE
ESTIMATED REVENUES	.00	.00	.00
REVENUES	.00	.00	.00
UNREALIZED REVENUES	.00	.00	.00
BUDGET	.00	.00	3,102,365.59
EXPENDITURES	.00	490,839.89	1,947,131.29
ENCUMBRANCES	185,053.00	-28,740.62	365,276.71
PRE-ENCUMBRANCES	.00	-12,859.00	4,977.20
REMAINING BALANCE	-185,053.00	-449,240.27	784,980.39

F1-HELP F2-SELECT F4-PRIOR F5-NEXT
F9-LINK F10-PRIOR-MO F11-NEXT-MO

G014 - RECORD FOUND