

TRANSMITTAL

0150-10196-0001

TO
The City Council

DATE
1/8/18

COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT

**Agreement with Playcore Wisconsin, Inc. DBA GameTime for
as-needed purchase of playground equipment, surfacing, site furnishing
and related products and services**

Approved and transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.



(Ana Guerrero) for

ERIC GARCEATI
MAYOR

RHL:JSS:08180026t

CAO 649-d

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

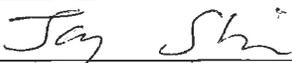
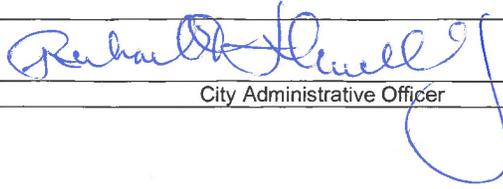
To: The Mayor	Date: 12/08/17	C.D. No. All	CAO File No.: 0150-10196-0001				
Contracting Department/Bureau: Department of Recreation and Parks		Contact: Jimmy Newsome					
Reference: Transmittal from the Board of Recreation and Park Commissioners dated November 29, 2017; referred by the Mayor on December 4, 2017							
Purpose of Contract: As-needed purchase of playground equipment, surfacing, site furnishing and related products and services							
Type of Contract: (X) New contract () Amendment		Contract Term Dates: From the date of execution of contract to June 30, 2022 (approximately 4 ½ years) with two two-year extension options					
Contract/Amendment Amount: : Up to \$7,000,000 (per year)							
Proposed amount \$ 7,000,000 + Prior award \$ 0= Total \$ 7,000,000 (per year)							
Source of funds: Including, but not limited to, Community Development Block Grant, future County Measure A, Proposition A, Proposition 1C, Proposition K, Quimby, and various grants							
Name of Contractor: Playcore Wisconsin, Inc. DBA GameTime 150 PlayCore Drive S.E. Fort Payne, Alabama 35967							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose		X		8. Business Inclusion Program			X
2. Appropriated funds are available			X	9. Equal Benefits Ordinance	X		
3. Charter Section 1022 findings completed	X			10. First Source Hiring Ordinance	X		
4. Proposals have been requested			X	11. Contractor Responsibility Ordinance	X		
5. Risk Management review completed	X			12. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts included	X			13. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: 0%				14. Prohibited Contributors (Bidders) CEC Form 55	X		
* Applicable to contracts of \$1,000,000 or more				15. CA Iran Contracting Act of 2010*	X		
				16. Arizona Policy			X

RECOMMENDATION

That the City Council approve and authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the agreement with Playcore Wisconsin, Inc. DBA GameTime for as-needed purchase of playground equipment, surfacing, site furnishing and related products and services for a period of four-and-half years with two two-year renewal options with a maximum allowable compensation of \$7,000,000 annually, subject to the approval of the City Attorney as to form.

COMMENTS

At its meeting of November 1, 2017, the Board of Recreation and Park Commissioners (Board) approved a proposed agreement with Playcore Wisconsin, Inc. DBA GameTime (Contractor) for as-needed purchase of playground equipment, surfacing, site furnishing and related products and

	
JSS Analyst 08180026	City Administrative Officer

services for a period of four-and-half years with two two-year renewal options. The annual contract ceiling amount is \$7 million, and the Contractor is not guaranteed a contract minimum or maximum. Funding for the projects will be provided from various funding sources, including, but not limited to, Community Development Block Grant, future County Measure A, Proposition A, Proposition 1C, Proposition K, Quimby, and various grants.

The Department has an on-going need for purchase of playground equipment, surfacing, site furnishing and related products and services. To address this need, the Department is proposing to “piggy-back” on a Master Agreement awarded to the Contractor by the City of Charlotte, North Carolina through a competitive selection process. The Contractor will provide a variety of turn-key designs, manufacturing and installation options for play equipment, poured-in-place surfaces, and site furnishings.

In accordance with Charter Section 1022, the Board has determined that the work can be performed more economically or feasibly by independent contractors than by City employees. The Department has indicated that it does not have in its employment personnel with the necessary expertise to complete the work.

In accordance with Los Angeles Administrative Code Section 10.5(a), Council approval of the proposed agreement is required because the term exceeds three years. To the best of our knowledge, the proposed Contractor has complied with all City contracting requirements. The proposed agreement is subject to approval by the City Attorney as to form.

FISCAL IMPACT STATEMENT

The proposed agreement will be funded on a project-by-project basis from various funding sources. The contract will be subject to the availability of funds. There is no additional impact to the General Fund. This recommendation complies with the City’s Financial Policies in that one-time revenue will be used to fund one-time expenditures.

**DEPARTMENT OF RECREATION
AND PARKS**

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

MELBA CULPEPPER
PILAR DIAZ

IRIS L. DAVIS
BOARD SECRETARY (213) 202-2640

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

MICHAEL A. SHULL
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.
EXECUTIVE OFFICER &
CHIEF OF STAFF

RAMON BARAJAS
ASSISTANT GENERAL MANAGER

VICKI ISRAEL
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ
ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

November 29, 2017

Honorable Eric Garcetti, Mayor
City of Los Angeles
Room 303, City Hall

Attention: Ms. Mandy Morales

Dear Mayor Garcetti:

In accordance with Executive Directive No. 3 (Villaraigosa Series), attached herewith are three copies of a proposed Contract with the PlayCore Wisconsin Inc. D/B/A Gametime for as-needed purchase of playground equipment, surfacing, site furnishings and related products and services for the Department of Recreation and Parks.

Also attached for the assistance of your Office in reviewing the Contract is Report No. 17-228 which was adopted by the Board of Recreation and Park Commissioners at its Regular Meeting held on November 1, 2017. After your review and recommendation, the proposed Agreement will be submitted to the Board Office for final action.

If you have any questions with regard to the proposed Amendment, please contact Mr. Robert Feld, Senior Management Analyst I, at (213) 202-5621.

Very truly yours,

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

IRIS L. DAVIS
Commission Executive Assistant II

Attachments

cc: Matthew Rudnick, Chief Management Analyst, Contracts and Grants Division
Robert Feld, Senior Management Analyst I, Concessions, Contracts and Grants Division



AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
PLAYCORE WISCONSIN, INC. D/B/A GAMETIME.
FOR THE PURCHASE OF PLAYGROUND EQUIPMENT, SURFACING, SITE FURNISHINGS
AND RELATED PRODUCTS AND SERVICES

This Agreement is entered into this _____ day of _____, 20____, by and between the City of Los Angeles, (herein referred to as "CITY") a municipal corporation, Department of Recreation and Parks (hereinafter referred to as "RAP"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD"), and PlayCore Wisconsin, Inc. D/B/A GameTime, (hereinafter referred to as "CONTRACTOR"), CITY and CONTRACTOR shall be referred to hereinafter as the "Parties".

WHEREAS, the CONTRACTOR has been awarded a competitively bid contract by the City of Charlotte, in the County of Mecklenburg, North Carolina (hereinafter referred to as "Charlotte") to provide playground equipment, surfacing, site furnishings, and related products and services on an as-needed, non-exclusive basis pursuant to a Contract (hereinafter referred to as "CONTRACT") awarded on July 1, 2017 (Charlotte Master Agreement Contract No. 2017001134, attached hereto and incorporated herein by reference as Appendix A); and

WHEREAS, pursuant to Charter Section 371(e)(2), that the professional, scientific, expert, technical or other special services to be provided by CONTRACTOR are of a temporary and occasional character for which competitive bidding is not practicable or advantageous; and

WHEREAS, pursuant to Charter Section 371(e)(8) the CITY may piggyback on the Charlotte CONTRACT with CONTRACTOR, because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements, are an exception to the City's competitive bidding requirements.

WHEREAS, pursuant to Charter Section 371(e)(10), that the services to be provided by CONTRACTOR are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law; and

WHEREAS, the RAP desires to secure the technical, expert and professional services of a qualified contractor on an occasional and as-needed basis in order to enhance the recreational experience of the public; and

WHEREAS, pursuant to Charter Section 1022 the RAP does not have available in its employ personnel with the necessary expertise to undertake the specialized professional tasks sought and the work can be performed more economically or feasibly by and independent contractor, and

WHEREAS, CONTRACTOR is experienced in providing the services of the type required, is willing to perform such service, and can provide such services to the RAP; and

WHEREAS, it is in the DEPARTMENT's best interest to secure these services from CONTRACTOR; and

WHEREAS, the DEPARTMENT has the need for the playground equipment, surfacing, site furnishings and related products and services on an as-needed basis; and

WHEREAS, RAP has registered on-line with the U.S. Communities, which a prerequisite for Participating Public Agencies who wish to access Charlotte's Master Agreement (i.e. Contract No. 2017001134); and

WHEREAS, the CONTRACTOR has agreed to provide such park and playground purchases and related products/services to the RAP; and

WHEREAS, CONTRACTOR by written communication dated July 10, 2017 attached hereto and incorporated by reference herein as Appendix B, has expressly authorized the RAP as a Participating Public Agency, to utilize Contract No. 2017001134 between CONTRACTOR and Charlotte for the purchase of playground equipment, surfacing, site furnishings and related products and services; and

NOW THEREFORE, the RAP and the CONTRACTOR hereby agrees as follows:

SECTION 1 – PARTIES TO THE AGREEMENT, REPRESENTAIVES AND NOTIFICATION.

1.1 Parties

The Parties to this Agreement are:

CITY – The City of Los Angeles, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS on behalf of the RAP, has its principal office at 221 North Figueroa Street, Suite 300, Los Angeles, CA 90012.

CONTRACTOR – PlayCore Wisconsin, Inc. DBA GameTime, a North Carolina Corporation, having its principal office at 150 PlayCore Drive S.E., Fort Payne, Alabama 35967.

1.2 Representatives

The City's representative will be (or any other RAP Management or City designee):

Jimmy Newsom, Senior. Management Analyst II
City of Los Angeles, Department of Recreation and Parks
6335 Woodley Ave
Van Nuys, CA 91406

Email: jimmy.newsom@lacity.org
Telephone Number: (818) 756-9294
Fax Number: (818) 908-9786

With Copies to:

**Ramon Barajas, Assistant General Manager
City of Los Angeles, Department of Recreation and Parks
Planning, Construction and Maintenance Branch
221 N. Figueroa Street, Suite 350
Los Angeles, CA 90012**

**Email: Ramon.Barajas@lacity.org
Telephone Number (213) 202 - 2661
FAX Number (213) 202 - 2612**

With Additional Copies to:

**Michael A. Shull, General Manager
City of Los Angeles, Department of Recreation and Parks
221 N. Figueroa Street, Suite 350
Los Angeles, CA 90012**

The Contractors representative will be:

**Mr. Donald R. King, Director of Sales Administration
PlayCore Wisconsin, Inc. D/B/A GameTime
150 PlayCore Drive, S.E.
Fort Payne, AL 35967**

**Email: dking@gametime.com
Website: www.gametime.com
Direct Telephone (423) 648 - 5891
Fax Number (423) 648 - 5903**

1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effect by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or if the address of such person is changed, written notice of such changes shall be given, in accordance with the Section, within five (5) working days of the change.

CONTRACTOR shall address all questions and correspondence concerning plans to (or any other RAP Management designee):

**Jimmy Newsom, Senior Management Analyst II
City of Los Angeles, Department of Recreation and Parks
6335 Woodley Ave
Van Nuys, CA 91406**

Email: jimmy.newsom@lacity.org
Telephone Number: (818) 756-9294
Fax Number: (818) 908-9786

SECTION 2 – TERMS OF THE AGREEMENT

2.1 Term

The term of this Agreement shall commence on the date of execution and expire June 30, 2022, the expiration date of the Charlotte CONTRACT with CONTRACTOR.

2.2 Extension of Term

Charlotte has a two (2), two-year renewal options which if exercised would extend the term of the CONTRACT to June 30, 2024 and June 30, 2026 respectively. In the event the Charlotte exercises its options, then the General Manager of the RAP may, at his sole discretion, by written amendment to this Agreement, extend the term of the RAP's Agreement with CONTRACTOR for two (2), two-year additional terms expiring on June 30, 2024 and June 30, 2026 respectively.

2.3 Standard Provisions

CONTRACTOR agrees to comply with the Standard Provisions for City Contracts (Rev. 10/17) attached hereto and incorporated herein by reference as Appendix C.

Such provisions include but are not limited to, Los Angeles Municipal Lobby Ordinance, Contractor Government Project Reference Sheet, Living Wage Ordinances, Service Contractor Worker Retention Ordinance, Equal Benefits Ordinance, Non-Discrimination Equal Employment-Affirmative Action Plan, Slavery Disclosure Ordinance, Minority Business Enterprise/Women Business Enterprise/Other Business Enterprise Subcontractor Outreach Program, City Insurance Requirements, Child Care Policy Program, Child Support Obligations, Americans with Disabilities Act, Prohibition Against Retaliations Notice and any additional Bonding requirements (See Appendix D Compliance Documents) and including Exhibit 1 Insurance Contractual Requirements.

2.4 Termination

CITY shall have the right to terminate this Agreement for its convenience, upon thirty (30) calendar days written notice to CONTRACTOR.

SECTION 3 - SCOPE OF SERVICES

3.1 Services to be provided by CONTRACTOR

Upon receipt from the RAP of a Notice to Proceed (NTP) with specified work, the CONTRACTOR has agreed by letter dated July 10, 2017 attached hereto and incorporated by reference herein as Appendix B, to provide playground equipment, surfacing, site furnishings, and related products and services to the RAP on an occasional and as-needed basis on the same terms and conditions as CONTRACTOR's

CONTRACT with Charlotte (Contract No. 2017001134, attached hereto and incorporated herein by reference as Appendix A).

3.2 Services to Be Provided by CITY

The RAP's authorized agent (or other RAP management designee) will issue a Notice to Proceed (NTP) to the CONTRACTOR prior the start of any work.

RAP personnel will work cooperatively with CONTRACTOR to ensure timely review of all services provided by CONTRACTOR under this Agreement.

The RAP will promptly act, review and make decision as necessary to permit the orderly progress of CONTRACTOR's work under this Agreement.

SECTION 4 – COMPENSATION AND INVOICING

4.1 Compensation

CITY will pay CONTRACTOR an amount for services outlined in the NTP for each individual project. The total amount for this CONTRACT will not exceed Seven Million Dollars (\$7,000,000.00) annually. The Contract amount is an estimate, and the RAP does not guarantee that the Contract maximum amount will be reached. The professional service that the RAP is requesting shall be on an occasional and as-needed basis and the CITY, by entering into this Contract, guarantees no minimum amount of business or compensation: RAP staff will monitor this not-to-exceed aggregate total.

4.2 Invoicing

Prior to the start of any work, CONTRACTOR must receive a NTP from an authorized agent of the RAP. In lieu of the following terms in Paragraph 9 of the CONTRACT between CONTRACTOR and Charlotte, CONTRACTOR shall submit invoices to the RAP for all work performed. Once work has been completed to the satisfaction of RAP, CONTRACTOR may submit and invoice for the agreed amount on the CONTRACTOR'S original proposal, as stated on the NTP. Invoices must include the CONTRACTOR'S name, date, address, contact phone number. Summary of work completed, address/location of work completed, dollar amount originally proposed and the agreed on by the RAP.

4.2.1 Invoices must be submitted to (or other RAP management designee):

Jimmy Newsom, Senior Management Analyst II
City of Los Angeles, Department of Recreation and Parks
6335 Woodley Ave
Van Nuys, CA 91406

Email: jimmy.newsom@lacity.org
Telephone Number: (818) 756-9294
Fax Number: (818) 908-9786

4.3 Compensation and schedule of payments_

The CONTACTOR's invoice will be reviewed and approved for payment by the RAP'S designated Project Manager (PM). Once signed off by the PM, payment will be processed by the RAP'S Accounting Section for payment. RAP may take up to thirty

(30) days for payment of invoice properly submitted, unless CONTRACTOR offers a discount for an early processed payment.

SECTION 5 - NON-EXCLUSIVITY

The RAP and the CONTRACTOR understand and agree that this is a non-exclusive Agreement to provide services to the RAP and that the RAP may contract with other contractors to provide similar services during the term of this Agreement. CITY does not guarantee, and CONTRACTOR shall not expect, any minimum level of work or service under the Agreement.

SECTION 6 - RATIFICATION

At the request of the RAP, and because of the urgent need therefore, CONTRACTOR began performance of services required hereunder prior to the execution of this Agreement. By its execution hereof, RAP hereby accepts such services from CONTRACTOR subject to all of the terms, covenants and conditions of this Agreement, and CONTRACTOR's performance as such services.

SECTION 7 - INCORPORATION OF DOCUMENTS

This Agreement, appendices and incorporated documents represents the entire agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. This Agreement may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONTRACTOR, The following documents are incorporated and made a part hereof by reference:

Appendix A. CONTRACT No. 2017001134 awarded on July 1, 2017 between the Charlotte and GameTime.

Appendix B. Written authorization dated July 10, 2017 for the RAP to utilize Contract No. 2017001134 between the Charlotte and GameTime.

Appendix C. Standard Provisions for City Contracts. (REV. 10/17)

Appendix D CITY Compliance Documents

Exhibit 1 Insurance Contractual Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Agreement, incorporating Exhibit 1 and Appendix D; (2) Appendix C; (3) Appendix B; and (4) Appendix A.

IN WITNESS THEREOF, the parties hereto have executed this Agreement to be executed by their duly authorized representatives on the dates indicated:

Executed this _____ day
of _____, 20____

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 20____

PLAYCORE WISCONSIN, INC. DBA GAMETIME.

By _____
PRESIDENT

By _____
CFO/TREASURER

Approved as to Form:
Date: _____

Michael N. Feuer
City Attorney

By _____
DEPUTY CITY ATTORNEY



May 18, 2017

Mr. Don King
Playcore Wisconsin Inc. d/b/a GameTime
150 Playcore Drive SE
Fort Payne, AL 35967

RE: Contract No. 2017001134

Dear Don:

Please find enclosed your fully executed copy of the subject Contract for providing Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories, and Related Products and Services to the City of Charlotte and other participating public agencies nationwide through U.S. Communities.

This Contract becomes effective on July 1, 2017 for a term of five years with the option to renew for two additional two-year terms.

A copy has been sent to U.S. Communities that will be posted on their website.

Should you have questions or concerns, please contact me at (704) 336-2992.

Sincerely,

Karen Ewing C.P.M., CLGPO, CPPB
Deputy Chief Procurement Officer

Enc: Contract

cc: File

**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 Playcore Wisconsin, Inc. d/b/a GameTime, 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 is 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 GameTime 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 Work
EXHIBIT G:	U.S. Communities Administrative Agreement

2. DEFINITIONS.

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

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in this Contract.
<i>Affiliates:</i>	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.
<i>Biodegradable:</i>	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
<i>Charlotte Business Inclusion (CBI):</i>	Refers to the Charlotte Business Inclusion office of the City of Charlotte.
<i>Charlotte Combined Statistical Area (CSA):</i>	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.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>Company:</i>	Refers to a company that has been selected by the City to provide the Products and Services of this Contract.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Contract.
<i>Contract:</i>	Refers to a written agreement executed by the City and Company for all or part of the Services.

<i>Deliverables:</i>	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.
<i>Documentation:</i>	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.
<i>Environmentally Preferable Products:</i>	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.
<i>Lead Public Agency:</i>	Refers to the City of Charlotte, North Carolina.
<i>Master Agreement:</i>	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.
<i>Minority Business Enterprise/MBE:</i>	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.
<i>MWSBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.
<i>Participating Public Agency:</i>	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.
<i>Products:</i>	Refers to all Products that the Company agrees to provide to the City as part this Contract.
<i>Services:</i>	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 ADJUSTMENT.**

- 8.1 The price(s) stated in this Contract shall remain firm through December 31, 2017. Company may request price increases 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. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.
 - 8.1.2 To obtain approval for a price increase, the Company shall submit a written request at least sixty (60) days prior to each calendar year during the term of the contract. All requests must be submitted 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. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

City of Charlotte
M&FS Finance Office / Procurement Management
600 East Fourth Street
Charlotte, NC 28202
 - 8.1.3 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.
 - 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 Alabama, 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 highest 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 unconditionally guarantees the materials and workmanship on all Products and Services. 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 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, whether caused by the City or not.
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.

This indemnification requirement is not intended to cover, and the Company is not responsible for, any damages that result from lack of maintenance; inadequate supervision; negligence; intentional misconduct of anyone other than the Company, its subcontractors, or their affiliates; inadequate surfacing that was not provided by or recommended by the Company, its subcontractors, or their affiliates; or vandalism.

It is the intent of any insurance provided by Company to protect the Company and any subcontractor performing work under the Contract for

- (1) Product liability Claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by the Company, Company's subcontractors, or their affiliates pursuant to this Contract;
- (2) Claims arising from any act of negligence or wilful 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; and
- (3) Claims relating to worker's compensation for any employee or subcontractor of the Company;

This clarifies and supersedes any other section of the Contract concerning indemnification that could be interpreted otherwise.

- 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 during and until completion of the work 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.

Since the playground and the play equipment will be in the care, custody, and control of the end user following installation, it is understood the Company cannot additionally insure the eventual owners of the equipment for any damages that result from:

- 1) Lack of maintenance for which the Company or its subcontractors are not contractually obligated to perform, where such lack of maintenance is not as a result of instructions or manuals provided by the Company or its subcontractors ;
- 2) Inadequate supervision;
- 3) Negligence (other than negligence of the Company or its subcontractors);
- 4) Intentional acts of anyone other than the Company, its subcontractors or their affiliates;
- 5) Inadequate surfacing that was not provided by or recommended by the Company, its subcontractors, or their affiliates; or
- 6) Vandalism.

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) abide 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:
Donald R. King	Karen Ewing
PlayCore Wisconsin, Inc. d/b/a Gametime	Procurement Management Division
150 Playcore Drive SE	600 East Fourth Street
Fort Payne, Alabama 35967	Charlotte, NC 28202
Phone: 423.648.5891	Phone: 704.336.2992
Fax: 423.648.5903	Fax: 704.632.8254
E-mail: dking@playcore.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 Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

42. CONFIDENTIALITY.

- 42.1 **DEFINITIONS.** As used in this Contract, The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, that is obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:
- 42.2 **Trade secrets.** For purposes of this Contract, trade secrets consist of information of the City or any of its 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.
- 42.3 **Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."**
- 42.4 **Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.**
- 42.5 **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.**
- 42.6 **Citizen or employee social security numbers collected by the City.**
- 42.7 **Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.**
- 42.8 **Local tax records of the City that contains information about a taxpayer's income or receipts.**
- 42.9 **Any attorney / client privileged information disclosed by either party.**
- 42.10 **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.**
- 42.11 **The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.**
- 42.12 **Building plans of City-owned buildings or structures, as well as any detailed security plans.**

- 42.13 Billing information of customers compiled and maintained in connection with the City providing utility services
- 42.14 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 42.1 through 42.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one (1) year prior to the date of this Contract.

43. RESTRICTIONS. Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 43.1 Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 43.2 Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
- 43.3 Company shall not use any Confidential Information 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.
- 43.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 43.5 Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 43.6 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 43.7 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, and unless otherwise agreed, all such materials shall be

returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

- 43.8 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
 - 43.9 Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. 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 Contract.
44. **EXCEPTIONS.** The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 44.1 Was already known to Company prior to being disclosed by the City;
 - 44.2 Was or becomes publicly known through no wrongful act of Company;
 - 44.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
 - 44.4 Was used or disclosed by Company with the prior written authorization of the City;
 - 44.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
 - 44.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company 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.
45. **MISCELLANEOUS.**
- 45.1 **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.
 - 45.2 **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.
 - 45.3 **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.

- 45.4 **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 45.8 constitutes an assignment.
- 45.5 **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.
- 45.6 **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.
- 45.7 **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.
- 45.8 **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.
- 45.9 **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.
- 45.10 **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.

- 45.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.
- 45.12 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 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 45 "Miscellaneous"
- 45.13 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.
- 45.14 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.
- 45.15 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.
- 45.16 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.”

45.17 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.*

45.18 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.

PLAYCORE WISCONSIN, INC. D/B/A GAMETIME:

BY: *Robert V. Barron*

PRINT NAME: ROBERT V. BARRON

TITLE: SENIOR V. P. of SALES

DATE: 05-03-2017

CITY OF CHARLOTTE
CITY MANAGER'S OFFICE:

BY: *Randy J. Harrington*

PRINT NAME: Randy Harrington

TITLE: CEO

DATE: 5/15/17

CITY OF CHARLOTTE
RISK MANAGEMENT DIVISION:

BY: *Christee Gibson*

PRINT NAME: Christee Gibson

TITLE: Asst Mgr

DATE: 5/16/17

Contract No. 2017001134
Vendor No. 121531

**EXHIBIT A
DISCOUNT SCHEDULE, PRICE LISTS**

The following Discount Schedule and Price Lists is an Exhibit to and is 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 Playcore Wisconsin, Inc. d/b/a GameTime.

**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 Playcore Wisconsin, Inc. d/b/a GameTime.

**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 Playcore Wisconsin, Inc. d/b/a GameTime.

**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 Playcore Wisconsin, Inc. d/b/a GameTime.

**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 Playcore Wisconsin, Inc. d/b/a GameTime.

**EXHIBIT F
SCOPE OF WORK**

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 Playcore Wisconsin, Inc. d/b/a GameTime.

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.

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 standard product, unlimited configurations, with no up charge.

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; and 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 through December 31, 2017. 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 G
U.S. COMMUNITIES ADMINISTRATIVE AGREEMENT

The following U.S. Communities Administrative Agreement 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 Playcore Wisconsin, Inc. d/b/a GameTime.

150 PlayCore Drive, S.E.
Fort Payne, Alabama 35967
Direct telephone: 423/648-5891
Facsimile: 423/648-5903
Email: dking@gametime.com
Website: www.gametime.com/



July 10, 2017

Mr. Robert Field
City of Los Angeles
Department of Recreation and Parks
221 N. Figueroa St.
Los Angeles, CA 90012

AUTHORIZATION TO UTILIZE CONTRACT 2017001134

PlayCore Wisconsin, Inc., d/b/a GameTime, is pleased to authorize the City of Los Angeles Department of Recreation and Parks, as a Participating Public Agency, to utilize Contract No. 2017001134 between GameTime and the City of Charlotte, North Carolina for the purchase of playground equipment, surfacing, site furnishings and related products and services.

GameTime agrees to enter into agreement with the City of Los Angeles Department of Recreation and Parks in accordance with the terms and conditions of Contract No. 2017001134.

GAMETIME DIVISION



Donald R. King
Director of Sales Administration

Required Insurance and Minimum Limits

Name: Playcore Wisconsin, Inc. DBA Gametime

Date: 08/16/2017

Agreement/Reference: For the purchase of playground equipment, surfacing, site furnishings and related products and services
Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	<u>Limits</u>
<hr/>	
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	EL <u>\$1,000,000</u>
<input type="checkbox"/> Longshore & Harbor Workers	
<input type="checkbox"/> Jones Act	
<hr/>	
<input checked="" type="checkbox"/> General Liability <u>City of Los Angeles must be named as an Additional Insured</u>	<u>\$2,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct _____
<input type="checkbox"/> Fire Legal Liability _____	
<input checked="" type="checkbox"/> with \$4,000,000 aggregate	
<hr/>	
<input checked="" type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	<u>\$1,000,000</u>
<hr/>	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	_____
Discovery Period <u>12 Months After Completion of Work or Date of Termination</u>	
<hr/>	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	_____
<input type="checkbox"/> All Risk Coverage	<input type="checkbox"/> Boiler and Machinery
<input type="checkbox"/> Flood _____	<input type="checkbox"/> Builder's Risk
<input type="checkbox"/> Earthquake _____	<input type="checkbox"/> _____
<hr/>	
<input type="checkbox"/> Pollution Liability	_____
<input type="checkbox"/> _____	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	_____

Other: Sent to Robert Feld @ RAP

1) If a contractor has no employees and decides to not cover herself / himself for worker's compensation, please complete the form entitled "Release for Waiver of Workers' Compensation Insurance Requirement" located at <http://cao.lacity.org/risk/InsuranceForms.htm>

2) In the absence of imposed auto liability requirement, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.