

**TOWN OF CUTLER BAY
OUTDOOR FITNESS EQUIPMENT & SHADE STRUCTURE
INSTALLATION AGREEMENT**

This Agreement (the "Agreement") is dated as of the ____ day of July 2016 by and between the Town of Cutler Bay (the "Town") and GameTime Playground Equipment c/o Dominica Recreation Products, Inc. (the "Contractor") located at P.O. Box 520700 Longwood, Florida 32752-0700.

1. The Work. The scope of the work (the "Work") is generally described as the installation of outdoor fitness equipment at Bel Aire Park, Blue Heron Park, Cutler Ridge Park, Lakes by the Bay Park, Saga Bay Park, Saga Lake Park, Town Center Plaza and Whispering Pines Park in Cutler Bay, Florida, including all of the terms, conditions and services described in the Request for Proposal No. 269-2010-183/Contract #110179.09 (the "RFP") issued by County of Mecklenburg, NC, which is incorporated herein for all purposes, the Contractor's proposal (the "Proposal") dated 06/24/2016 attached as Exhibit "A" incorporated herein for all purposes. Work shall commence within three (3) days after notice to proceed is provided by Town to Contractor, and all Work and requirements of this Agreement shall be completed within sixty days (60) days thereafter. The Contractor shall supply and the Work shall include all labor, materials, tools, apparatus, means of transportation, services, methods and incidentals necessary for completion of the Work. Contractor shall be accountable for the safe and proper installation of the playground equipment and related improvements in accord with this Agreement. Contractor shall ensure removal of all equipment, tools and apparatus and any debris upon delivery of the Work to the Town. Contractor shall perform all Work in the best and most workmanlike manner. Special care shall be taken in placing and removing material or equipment to avoid unnecessary injury to either persons or to property. The "Work" shall be installed as reflected in the Site Plan. Contractor shall provide Town a written warranty for the Work and all equipment incorporated therein, which warranty shall remain for the period of one (1) year after Town's acceptance of the Work.
2. Compensation. Town agrees to pay Contractor as compensation for all services and equipment provided hereunder in the amount of Four Hundred Thirty Thousand Three Hundred Two and 56/100 (\$430,302.56) which shall be payable within thirty (30) days of Town's acceptance of the Work and receipt of the warranty.
3. Required Documentation. The Contractor shall provide proof of authorization to transact business in Florida, evidence of compliance with all license requirements for the Work and evidence of all insurance required prior to commencing any Work hereunder. Failure to timely return this executed Agreement and evidence of required licensure and insurance shall result in cancellation of this Agreement, at Town's option.

4. Liquidated Damages. Unless otherwise excused by the Town in writing, in the event that the Contractor fails to meet the time specified herein for completion of the Work, the Contractor shall pay to the Town one hundred dollars (\$100.00) per day for each and every unexcused calendar day of delay beyond the required completion date, until completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable not as a penalty, but as liquidated damages representing an estimate at or before the time of this Agreement. The Town shall be entitled but not required to withhold from any amounts due otherwise to Contractor an amount then believed by the Town to be adequate to recover liquidated damages applicable to unexcused delays. All limitations of time set forth herein are of the essence.
5. Insurance. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below, naming the Town as a named insured, underwritten by a firm qualified to do business in the State of Florida. Each certificate of insurance shall include a (30) thirty-day advance notice of cancellation provision in favor of the Town. All subcontractors must provide Town evidence of compliance with all insurance requirements herein, including without limitation, the required certificates, before commencing any Work.
 - A. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and general aggregate in the amount of \$1,000,000. This liability insurance shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor.
 - B. Workers compensation insurance as required by law.
 - C. Business automobile liability with minimum limits of \$1,000,000 per person, per occurrence, combined single limit for bodily injury liability and property damage liability each. Coverage must be afforded on a form no more restrictive than the latest edition of the business automobile liability policy, without restrictive endorsements and must include owned vehicles, hired and non-owned vehicles and employers' non-ownership.
6. Clean-Up. Immediately following completion of the Work, Contractor shall remove any debris related to the Work from Town premises, using its own labor, material and tools. Town premises shall be left in the same or better condition as provided to Contractor. Prior to commencement of the Work, Contractor shall provide Town the name and location of the facility that will be used for debris placement. The Contractor shall provide the Town with copies of receipts for debris placement from the disposal facility. The Work shall be performed in such a manner as to provide a minimum of inconvenience to the residents and workers in the area. The area where Work occurs shall be cleaned daily to the satisfaction of the Town.

7. Hours. All Work must be performed between the hours of 7:30 A.M. and 6:00 P.M., Monday through Saturday. Any Work to be performed outside of these days and hours must be approved in advance, in writing, by the Town Manager.
8. Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless town, and town's officers and employees from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the work, and any acts or failures to act by the contractor or any subcontractor related thereto.. The provisions of this indemnification are solely for the benefit of the town and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
9. Termination.
 - A. This Agreement may be terminated by Town upon five (5) calendar days' written notice to the Contractor for: (i) breach of any material term or condition of this Agreement; (ii) for failure to perform the Work in a diligent, efficient, workmanlike, skillful, careful manner and in accordance with the provisions hereof; or (iii) in the event the Contractor is adjudged bankrupt or has made an assignment for the benefit of creditors. In such event, Town shall provide a description of the nature of the default in writing to Contractor, and if Contractor has not fully cured such default within the aforesaid five (5) day period, the Town shall have the right to terminate this Agreement by written notice to Contractor. Without limitation of any other remedy for damages or otherwise that may also be available, in such event Town may make good all Work, may use all equipment left remaining at no cost to Town, and may take such action as may be necessary in the circumstances to resolve any public safety or welfare issues with no liability or consequences therefore. Town shall have no liability for services provided or goods ordered or any other expenses incurred by Contractor subsequent to notice to Contractor of termination. If, after such termination, it is determined that the Contractor was not in default or sufficient cause for termination did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Town, as described below.
 - B. This Agreement may be terminated by the Town for convenience upon five (5) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding Subcontractor obligations.
 - C. The Contractor shall be compensated for all services performed to the satisfaction of the Town.

10. Assignment and Subcontractors. Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the Town Manager. Any such assignment without prior approval shall be void ab initio. All subcontractors shall be approved in advance by Town before providing any of the Work. The subcontractors listed below (“Approved Subcontractors”) are approved by Town, subject to the insurance requirements of Article 5. The Contractor agrees and represents that the Approved Subcontractors possess the requisite skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Town.

A. Approved Subcontractors:

- i. TBA
- ii. TBA
- iii. TBA

11. Applicable Law. Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the work required hereunder.

12. Entire Agreement. This Agreement together with exhibits and incorporated documents constitutes the final and entire agreement between the Contractor and Town and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding this Agreement or the Work shall be deemed to exist or to bind either party, unless same be in writing, dated subsequent to the date hereto, and duly executed by the party to be charged. In the event of any conflict in terms and provisions between this Agreement and the exhibits, the terms of those documents shall govern in the order of priority as set forth herein.

13. Location of Claims. This Agreement and all actions hereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Agreement shall be brought in Miami-Dade County, Florida.

14. Expenses and Delay. The Town shall have no liability to the Contractor for any damages incurred by the Contractor for delay or interruption of the Work. The Contractor's sole and exclusive remedy for any such delay, if any, shall be an extension of the time required or allowed to complete the Work. In order to obtain an extension of time, the Contractor shall request same of the Town in writing within 24 hours of any delay or interruption of the Work. In the event performance is delayed such that Town does not receive reimbursement due to Contractor's failure to meet requirements, Contractor shall be liable responsible for, and in all respects obligated to pay Town for any grant funding Town does not receive. This obligation regarding grant funding is commutative and in addition to any liquidated damages due to Town.

15. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.
16. Waiver of Jury Trial and Venue. The Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement or arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.
17. Attorneys' Fees. If either the Town or Contractor is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.
18. Public Records Law. The Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Town contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0101, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town. Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems.

Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosures requirements. Any compensation due to Contractor shall be withheld until all records are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes. If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Custodian of Public Records.

Custodian of Records: Jacqueline N. Wilson, Town Clerk

Mailing address: 10720 Caribbean Boulevard, Suite 105
 Cutler Bay, Florida 33189

Telephone number: (305) 234-4262

Email: jwilson@cutlerbay-fl.gov

19. Notice. Notice hereunder shall be provided via certified mail or hand delivery to the following:

FOR CONTRACTOR: Game Time c/o Dominica Recreation Products, Inc.
 P.O. Box 520700
 Longwood, Florida 32752-0700

FOR TOWN: Town of Cutler Bay
 Rafael G. Casals, Town Manager
 10720 Caribbean Boulevard, Suite 105
 Cutler Bay, Florida 33189

WITH COPY TO: Weiss Serota Helfman Cole & Bierman
 2525 Ponce de Leon Boulevard, Suite 700
 Miami, Florida 33134

THE CONTRACTOR'S SIGNATURE BELOW INDICATES CONTRACTOR HAS READ, UNDERSTANDS, AND ACCEPTS ALL PROVISIONS CONTAINED HEREIN, INCLUDING THE EXHIBITS AND THAT THE CONTRACTOR HAS THE REQUISITE AUTHORITY TO SIGN THIS CONTRACT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:

TOWN OF CUTLER BAY

By: _____
Jacqueline N. Wilson
Town Clerk

Rafael G. Casals
Town Manager

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Town Resolution No. 16-_____

By: _____
Weiss Serota Helfman
Cole & Bierman, P.L.
Town Attorney

CONTRACTOR:

Game Time c/o Dominica Recreation Products, Inc.

By: _____
Print Name

Signature and Title

(Corporate Seal)

By: _____
Print Name

Signature and Title

STATE OF FLORIDA
COUNTY OF MIAMI- DADE

Sworn to and Subscribed before me this ____ day of July, 2016.

_____ who is personally known to me

OR produced identification _____.

Notary Public Signature

Printed Name, Stamp or Seal

My Commission Expires: _____

END OF AGREEMENT



A PLAYCORE Company

GAMETIME 2016 U.S. COMMUNITIES PRICE LIST 1601

PARK AND PLAYGROUND EQUIPMENT

Effective Date: January 1, 2016

**GameTime Division
PlayCore Wisconsin, Inc.
150 PlayCore Drive, SE
Fort Payne, Alabama 35967**

**Telephone: 256/845-5610
Facsimile: 256/845-9361
E-mail: info@gametime.com
Web Site: www.gametime.com**



GameTime Division
PlayCore Wisconsin, Inc.
150 PlayCore Drive, S.E.
Fort Payne, Alabama 35967
Telephone: 256/845-5610
Facsimile: 256/845-9361

U.S. COMMUNITIES 2016 PRICE LIST 1600 FOR CONTRACT 110179

Pricing Schedules:

1. *GameTime 2016 U.S. Communities Contract Net Price List 1600*
2. *GameTime 2016 U.S. Communities Installation charges*
3. *GTImpax U.S. Communities Contract Net 2016 Price Lists*
4. *Snug U.S. Communities 2016 Price List*
5. *EarlyPlay U.S. Communities 2016 Price List*
6. *UltraShade U.S. Communities 2016 Price List*
7. *UltraShelter U.S. Communities 2016 Price List*
8. *UltraSite U.S. Communities 2016 Price List*
9. *Discovery Centers U.S. Communities 2016 Price List*
10. *BarkPark U.S. Communities 2016 Price List*
11. *GT Grandstands U.S. Communities 2016 Price List*
12. *UPlay U.S. Communities 2016 Price List*
13. *NRS U.S. Communities 2016 Price List*
14. *Everlast U.S. Communities 2016 Price List*
15. *Spectrum Aquatics U.S. Communities 2016 Price List*
16. *Dero U.S. Communities 2016 Price List*
17. *Colorado Time Systems Dolphin Timing Systems U.S. Communities 2016 Price Lists*
18. *Colorado Time Systems MultiSport Scoreboards U.S. Communities 2016 Price Lists*
19. *Water Odyssey Aquatic Splash Pad Play Features U.S. Communities 2016 Price List*
20. *The Fountain People Commercial Architectural Water Features U.S. Communities 2016 Price List*
21. *Can-Ice Synthetic Ice U.S. Communities 2016 Price List*

Product & Part Groups

Product Discounts:

a. Equipment (Principal & Primary Composite Components):	24% (see Quantity Discounts below)
Combined Composite Components & Apparatus	20%
Freestanding Events (Primary & Ancillary Apparatus):	16%
Snug & EarlyPlay Childhood Play Equipment:	6%
PlayWorx Custom & GFRC Products:	6%
TuffForms GFRP, Exempt, & Special Items	0%
b. Surfacing & Surfacing Accessories:	18%
c. Site Furnishings & Complimentary Products:	6%
d. Related Products & Special Accessories:	6%
Fitness and Sports	9%

DISCOUNT SCHEDULES AND TERMS OF SALE

Special Products	9%
Park Furnishings & Ancillary Components	3%
UltraSite	6%
UPlay and Discovery Centers	6%
GTShade Structures	4%
GTNets Climbing Nets	3%
Everlast Indoor Climbing Walls	10%
Everlast Pool Climbing Walls	5%
NatureROCKS Climbing Boulders	5%
Shelters	4%
BarkPark	20%
Bleachers	6%
Grandstands	6%
Scoreboards	10%
Swimming Timing Systems	10%
Spectrum Aquatic Pool Accessories	4%
Dero Bicycle Racks	5%
Water Odyssey Aquatic Play Features	8%
The Fountain People Water Features	5%
Can-Ice Synthetic Ice	5%

e. Services

All Services Net Pricing

- Playground Equipment Installation
- Safety Surfacing Installation
- Sitework Services
- Community Build Supervision
- Design Services
- Maintenance and Repairs
- CPSI Initial Playground Safety Audit
- CPSI Low-Frequency Playground Safety Inspection
- CPSI Maintenance and Inspection Training (Quotations on a case-by-case basis)

TERMS OF SALE

Volume Discounts

Volume single purchases of composite play systems at U.S. Communities net pricing shall be eligible for an additional discount of 5% for orders totaling from \$50,000 to \$75,000; 10% from \$75,000 to \$100,000 and 15% for orders exceeding \$100,000.

Installation Fees

See *GameTime U.S. Communities Installation charges*

Shipping and Delivery – Shipping Program

Shipments shall be f.o.b. destination with freight charges prepaid and added separately.



GAMETIME POLICIES

Specifications: Specifications were current at the time of publication. GameTime has an ongoing policy of product improvement and therefore reserves the right to modify specifications or discontinue products without notice.

Terms of sale: To governmental agencies and tax supported institutions, and those with approved credit, payment is due 30 days from the date of invoice. A 1.5% per month finance charge will be imposed on all past due accounts. We also accept payment by VISA, MasterCard or American Express. All other orders will require a 50% deposit at time of order entry. The balance will be due with a certified check upon receipt of shipment (C.O.D.).

Prices: Prices are F.O.B. factory and do not include freight charges. All prices were current at time of publication and quoted in U.S. Funds. Prices are subject to change without notice. Current prices will apply at the time of shipment. Due to the abnormally high cost of fuel and its impact on many of the materials used in our industry, quotations are valid for 30 days only and prices may be subject to material and fuel surcharges at time of shipment.

Freight charges: Freight charges are determined and collected by the carrier unless GameTime is requested and agrees to prepay and add these costs to the invoice.

Taxes: If applicable, taxes will be added to the invoice except when a tax exempt certificate is provided with the purchase order at the time of order entry.

Minimum Order: Our minimum order is US \$50.00.

Order cancellation: Once accepted, orders can be canceled only with the consent of GameTime, and on terms which will indemnify GameTime against loss. Canceled orders will be subject to a restocking fee. Equipment "built-to-order" is non-cancelable.

Domestic shipments: Unless specifically given routing instructions on the purchase order, shipment will be made via the carrier we consider to be the most economical and practical in reaching the final destination.

Delays in transit: GameTime is not responsible for delays in transit and such delays shall not alter our invoicing terms.

Loss or damage in transit: GameTime is not responsible for loss or damage in transit. Carefully check all materials received; any shortage, discrepancy or damage must be noted on the delivery receipt and signed by the carriers representative. Failure to note exceptions on the delivery receipt may impair your right to recovery from the carrier.

Weights: All published weights are estimated and include appropriate packing materials. Actual weights may vary slightly.



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Part No.	Part Group	Item Description	Catalog Page No.	Weight (lbs)	Unit	Commercial Price	USC Net Price
3011	65	18 X 36 Hip 12'Hi 90/10		1,198 #	EA	\$ 4,733.00	\$ 4,543.68
3013	65	20 X 30 Hip 12' Hi 90/10		1,141 #	EA	\$ 5,410.00	\$ 5,193.60
3014	65	20 X 40 Hip 8' Hi 90/10		1,200 #	EA	\$ 4,868.00	\$ 4,673.28
3015	65	20 X 40 Hip 10' Hi 90/10		1,287 #	EA	\$ 4,954.00	\$ 4,755.84
3016	65	20 X 40 Hip 12' Hi 90/10		1,375 #	EA	\$ 5,098.00	\$ 4,894.08
3017	65	20 X 40 Hip 14' Hi 90/10		1,463 #	EA	\$ 5,243.00	\$ 5,033.28
3018	65	26 X 26 Peak 8' Hi 90/10		1,059 #	EA	\$ 4,374.00	\$ 4,199.04
3019	65	26 X 26 Peak 10' Hi 90/10		1,145 #	EA	\$ 4,496.00	\$ 4,316.16
3020	65	26 X 26 Peak 12' Hi 90/10		1,231 #	EA	\$ 4,620.00	\$ 4,435.20
3021	65	26 X 30 Hip 8' Hi 90/10		1,177 #	EA	\$ 4,666.00	\$ 4,479.36
3022	65	26 X 30 Hip 10' Hi 90/10		1,265 #	EA	\$ 4,768.00	\$ 4,577.28
3023	65	26 X 30 Hip 12' Hi 90/10		1,352 #	EA	\$ 4,892.00	\$ 4,696.32
3024	65	30 X 30 Peak 14' Hi 90/10		1,579 #	EA	\$ 5,622.00	\$ 5,397.12
3025	65	30 X 40 Hip 14' Hi 90/10		1,924 #	EA	\$ 6,882.00	\$ 6,606.72
3026	65	30 X 40 Hip 16' Hi 90/10		2,017 #	EA	\$ 7,213.00	\$ 6,924.48
3027	65	35 X 35 Peak 8' Hi 90/10		1,673 #	EA	\$ 8,140.00	\$ 7,814.40
3028	65	35 X 35 Peak 10' Hi 90/10		1,766 #	EA	\$ 8,284.00	\$ 7,952.64
3029	65	35 X 35 Peak 12' Hi 90/10		1,859 #	EA	\$ 8,448.00	\$ 8,110.08
3030	65	35 X 35 Peak 14' Hi 90/10		1,953 #	EA	\$ 8,612.00	\$ 8,267.52
3087	25	Rainbow Arch	122	176 #	EA	\$ 1,490.00	\$ 1,251.60
3129PP	70	Super Mini 1 PIP		630 #	EA	\$ 8,447.00	\$ 8,193.59
3129	70	Super Mini 1	114	270 #	EA	\$ 7,659.00	\$ 7,429.23
3137	70	OmniTri Net	113	960 #	EA	\$ 23,058.00	\$ 22,366.26
P3138	70	Wld. Angle Leg Bench Frames		40 #	EA	\$ 139.00	\$ 134.83
3138	70	Wld. Angle Leg Prk Bnch.		40 #	EA	\$ 135.00	\$ 130.95
3142	30	End Cap		0.3 #	EA	\$ 6.50	\$ 5.92
3173PP	70	Regular High Stepper PIP		1,314 #	EA	\$ 15,825.00	\$ 15,350.25
3173	70	High Stepper Regular	114	834 #	EA	\$ 14,489.00	\$ 14,054.33
3174PP	70	Medium High Stepper PIP		1,343 #	EA	\$ 22,997.00	\$ 22,307.09
3174	70	High Stepper Medium	114	863 #	EA	\$ 21,663.00	\$ 21,013.11
3177PP	70	Mini High Stepper PIP		1,188 #	EA	\$ 13,119.00	\$ 12,725.43
3177	70	High Stepper Mini	114	708 #	EA	\$ 11,784.00	\$ 11,430.48
3178PP	70	Large High Stepper PIP		1,620 #	EA	\$ 36,365.00	\$ 35,274.05
3178	70	High Stepper Large	114	1,140 #	EA	\$ 33,946.00	\$ 32,927.62
3185PP	70	Hexamid PIP		2,639 #	EA	\$ 19,933.00	\$ 19,335.01
3185	70	Hexamid Regular	114	1,919 #	EA	\$ 17,929.00	\$ 17,391.13
3302	25	4'-0" Crawl Tube W/Spy Holes		103 #	EA	\$ 775.00	\$ 651.00
M3310	25	Caterpillar Crawl Tube		203 #	EA	\$ 1,714.00	\$ 1,439.76
3310	25	Caterpillar Crawl Tube	115	203 #	EA	\$ 1,714.00	\$ 1,439.76
3337RX	05	X-Connector 4-PS		3 #	EA	\$ 108.00	\$ 82.08
3358	25	Steering Wheel	122	23 #	EA	\$ 368.00	\$ 309.12
M3396	05	60 Deg Crawl Tube Attach		112 #	EA	\$ 1,299.00	\$ 987.24
3400	65	35 X 35 Peak 16' Hi 90/10		2,046 #	EA	\$ 8,777.00	\$ 8,425.92
3401	65	40 X 40 Hip 16' Hi 90/10		2,472 #	EA	\$ 12,744.00	\$ 12,234.24
3402	65	40 X 50 Hip 16' Hi 90/10		2,919 #	EA	\$ 31,497.00	\$ 30,237.12
3403	65	50 X 50 Peak 16' Hi 90/10		3,473 #	EA	\$ 34,602.00	\$ 33,217.92
3404	65	50 X 60 Hip 16' Hi 90/10		4,022 #	EA	\$ 40,508.00	\$ 38,887.68
3405	65	60 X 60 Peak 16' Hi 90/10		4,677 #	EA	\$ 43,570.00	\$ 41,827.20
3406	65	20 X 20 Sail 8'/12' Hi 90/10		1,600 #	EA	\$ 6,637.00	\$ 6,371.52
3407	65	20 Hexagonal 8'Hi 90/10		987 #	EA	\$ 4,266.00	\$ 4,095.36
3408	65	20 Hexagonal 10'Hi 90/10		1,155 #	EA	\$ 4,800.00	\$ 4,608.00
3409	65	Hexagonal 40 14' Hi 90/10		2,546 #	EA	\$ 14,011.00	\$ 13,450.56
3410	65	Hexagonal 60 10' Hi 90/10		3,699 #	EA	\$ 21,958.00	\$ 21,079.68
3411	65	Hexagonal 60 12' Hi 90/10		3,930 #	EA	\$ 24,716.00	\$ 23,727.36



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Part No.	Part Group	Item Description	Catalog Page No.	Weight (lbs)	Unit	Commercial Price	USC Net Price
13244S	30	Chest Press (Surface Mount)		245 #	EA	\$ 3,113.00	\$ 2,832.83
13245F	30	Cardio Walker (Footing Mount)		277 #	EA	\$ 3,660.00	\$ 3,330.60
13245I	30	Cardio Walker (InGround Mount)		302 #	EA	\$ 3,815.00	\$ 3,471.65
13245S	30	Cardio Walker (Surface Mount)		269 #	EA	\$ 3,724.00	\$ 3,388.84
13246F	30	Hand Cycle (Footing Mount)		201 #	EA	\$ 3,779.00	\$ 3,438.89
13246I	30	Hand Cycle (InGround Mount)		227 #	EA	\$ 3,937.00	\$ 3,582.67
13246S	30	Hand Cycle (Surface Mount)		194 #	EA	\$ 3,875.00	\$ 3,526.25
13247F	30	Leg Extension (Footing Mount)		184 #	EA	\$ 3,201.00	\$ 2,912.91
13247I	30	Leg Extension (InGround Mount)		210 #	EA	\$ 3,356.00	\$ 3,053.96
13247S	30	Leg Extension (Surface Mount)		177 #	EA	\$ 3,238.00	\$ 2,946.58
13248F	30	Recumbent Cycle (Footing Mount)		218 #	EA	\$ 3,464.00	\$ 3,152.24
13248I	30	Recumbent Cycle (InGround Mount)		244 #	EA	\$ 3,620.00	\$ 3,294.20
13248S	30	Recumbent Cycle (Surface Mount)		211 #	EA	\$ 3,558.00	\$ 3,237.78
13249F	30	Sit-up/ Back Ext (Footing Mount)		274 #	EA	\$ 3,225.00	\$ 2,934.75
13249I	30	Sit-up/ Back Ext (InGround Mount)		321 #	EA	\$ 3,484.00	\$ 3,170.44
13249S	30	Sit-up/ Back Ext (Surface Mount)		263 #	EA	\$ 3,240.00	\$ 2,948.40
13250F	30	Upright Cycle (Footing Mount)		173 #	EA	\$ 3,210.00	\$ 2,921.10
13250I	30	Upright Cycle (InGround Mount)		199 #	EA	\$ 3,367.00	\$ 3,063.97
13250S	30	Upright Cycle (Surface Mount)		166 #	EA	\$ 3,246.00	\$ 2,953.86
13251F	30	Captains Chair (Footing Mount)		219 #	EA	\$ 2,288.00	\$ 2,082.08
13251I	30	Captains Chair (InGround Mount)		245 #	EA	\$ 2,443.00	\$ 2,223.13
13251S	30	Captains Chair (Surface Mount)		212 #	EA	\$ 2,301.00	\$ 2,093.91
13252	65	Inground Mount Package		26 #	EA	\$ 192.00	\$ 184.32
13253F	30	Lat Pull Down (Footing Mount)		218 #	EA	\$ 3,195.00	\$ 2,907.45
13253I	30	Lat Pull Down (InGround Mount)		244 #	EA	\$ 3,351.00	\$ 3,049.41
13253S	30	Lat Pull Down (Surface Mount)		211 #	EA	\$ 3,250.00	\$ 2,957.50
13254F	30	Leg Press (Footing Mount)		219 #	EA	\$ 3,214.00	\$ 2,924.74
13254I	30	Leg Press (InGround Mount)		245 #	EA	\$ 3,370.00	\$ 3,066.70
13254S	30	Leg Press (Surface Mount)		212 #	EA	\$ 3,250.00	\$ 2,957.50
13255F	30	Elliptical (Footing Mount)		255 #	EA	\$ 4,089.00	\$ 3,720.99
13255I	30	Elliptical (InGround Mount)		281 #	EA	\$ 4,246.00	\$ 3,863.86
13255S	30	Elliptical (Surface Mount)		248 #	EA	\$ 4,222.00	\$ 3,842.02
13271F	30	Chest Press - ADA (Footing Mount)		232 #	EA	\$ 4,325.00	\$ 3,935.75
13271I	30	Chest Press - ADA (In-Ground Mount)		258 #	EA	\$ 4,545.00	\$ 4,135.95
13271S	30	Chest Press - ADA (Surface Mount)		225 #	EA	\$ 4,302.00	\$ 3,914.82
13272F	30	Lat Pull Down - ADA (Footing Mount)		229 #	EA	\$ 4,341.00	\$ 3,950.31
13272I	30	Lat Pull Down - ADA (In-Ground Mount)		254 #	EA	\$ 4,560.00	\$ 4,149.60
13272S	30	Lat Pull Down - ADA (Surface Mount)		221 #	EA	\$ 4,317.00	\$ 3,928.47
13274F	30	Vertical Press - ADA (Footing Mount)		228 #	EA	\$ 4,323.00	\$ 3,933.93
13274I	30	Vertical Press - ADA (In-Ground Mount)		254 #	EA	\$ 4,542.00	\$ 4,133.22
13274S	30	Vertical Press - ADA (Surface Mount)		221 #	EA	\$ 4,298.00	\$ 3,911.18
13275	30	Plyometric Box (6")		85 #	EA	\$ 431.00	\$ 392.21
13276	30	Plyometric Box (12")		89 #	EA	\$ 454.00	\$ 413.14
13277	30	Plyometric Box (18")		93 #	EA	\$ 478.00	\$ 434.98
13278	30	Plyometric Box (24")		96 #	EA	\$ 502.00	\$ 456.82
13279	30	Balance Plank Station		40 #	EA	\$ 248.00	\$ 225.68
13280	30	Balance Board Station		49 #	EA	\$ 301.00	\$ 273.91
13282	65	Plyometric Box Station Sign Package		16 #	EA	\$ 186.00	\$ 178.56
13283	65	Balance Plank Station Sign Package		16 #	EA	\$ 186.00	\$ 178.56
13284	65	Balance Board Station Sign Package		16 #	EA	\$ 196.00	\$ 188.16



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Part No.	Part Group	Item Description	Catalog Page No.	Weight (lbs)	Unit	Commercial Price	USC Net Price
13285	30	Chin-Up Station		15 #	EA	\$ 258.00	\$ 234.78
13295	30	Push-Up Station		15 #	EA	\$ 258.00	\$ 234.78
13296	30	Horizontal Chin-Up Station		104 #	EA	\$ 679.00	\$ 617.89
G13297	30	3 1/2"Uprt Ass'Y Galv 15'		64 #	EA	\$ 256.00	\$ 232.96
13297	30	3 1/2"Uprt Ass'Y Alum 15'		29 #	EA	\$ 306.00	\$ 278.46
13298F	30	Hand Cycle (Accessible) -Footing Mount		110 #	EA	\$ 3,644.00	\$ 3,316.04
13298I	30	Hand Cycle (Accessible) - In-Grd Mount		136 #	EA	\$ 3,864.00	\$ 3,516.24
13298S	30	Hand Cycle (Accessible) - Surf Mount		103 #	EA	\$ 3,708.00	\$ 3,374.28
13299F	30	Shoulder Rotator (Acc) - Foot Mount		98 #	EA	\$ 3,060.00	\$ 2,784.60
13299I	30	Shoulder Rotator (Acc) - In-Gr Mount		124 #	EA	\$ 3,218.00	\$ 2,928.38
13299S	30	Shoulder Rotator (Acc) - Surf Mount		91 #	EA	\$ 3,082.00	\$ 2,804.62
13395	05	2' Crawl Tube Attachment		70 #	EA	\$ 922.00	\$ 700.72
13396	05	60 Deg Crawl Tube Attachment		112 #	EA	\$ 1,273.00	\$ 967.48
13540	05	Crunch Bar		3 #	EA	\$ 97.00	\$ 73.72
13547	05	Horiz Loop Ladder, 36" Dk		47 #	EA	\$ 493.00	\$ 374.68
13548	05	Horiz Loop Ladder, 45 1/2" Dk		51 #	EA	\$ 493.00	\$ 374.68
13549	30	Athlex		3,507 #	EA	\$ 40,788.00	\$ 37,117.08
13550	30	Champions		2,177 #	EA	\$ 23,504.00	\$ 21,388.64
13551	30	Generations		899 #	EA	\$ 10,749.00	\$ 9,781.59
13552	30	Leverte		1,796 #	EA	\$ 24,957.00	\$ 22,710.87
13553	30	Sundance		1,528 #	EA	\$ 19,070.00	\$ 17,353.70
13554	30	Triple Play		608 #	EA	\$ 6,765.00	\$ 6,156.15
13600	30	Floating Boards (Pro)		1,076 #	EA	\$ 9,905.00	\$ 9,013.55
13601	30	Sway Steps (Pro)		1,262 #	EA	\$ 13,456.00	\$ 12,244.96
13602	30	Vault Wall		314 #	EA	\$ 2,575.00	\$ 2,343.25
13603	30	Traverse Wall (Pro)		674 #	EA	\$ 9,466.00	\$ 8,614.06
13604	30	Corridor (Pro)		1,760 #	EA	\$ 13,907.00	\$ 12,655.37
13605	30	Ninja Steps (Pro)		1,381 #	EA	\$ 10,624.00	\$ 9,667.84
13608	30	Agility Trainer		239 #	EA	\$ 2,717.00	\$ 2,472.47
13609	30	Ninja Steps (Youth)		831 #	EA	\$ 6,638.00	\$ 6,040.58
13610	30	Half Rounds		51 #	EA	\$ 662.00	\$ 602.42
13611	30	Corridor (Youth)		804 #	EA	\$ 9,563.00	\$ 8,702.33
13612	30	Sway Steps (Youth)		1,245 #	EA	\$ 10,031.00	\$ 9,128.21
13613	30	Floating Boards (Youth)		738 #	EA	\$ 9,186.00	\$ 8,359.26
13614	30	Up & Over (Youth)		277 #	EA	\$ 3,405.00	\$ 3,098.55
13615	30	Balance Walk		278 #	EA	\$ 2,119.00	\$ 1,928.29
13616	30	U-Turn Ramp		1,257 #	EA	\$ 6,284.00	\$ 5,718.44
13617	30	Traverse Wall (Youth)		544 #	EA	\$ 6,738.00	\$ 6,131.58
13619	30	Up & Over (Pro)		314 #	EA	\$ 4,632.00	\$ 4,215.12
13620	30	Pro 3000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13621	30	Pro 3000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13622	30	Pro 4000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13623	30	Pro 4000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13624	30	Pro 5000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13625	30	Pro 5000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13626	30	40 Yard Dash Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13627	30	40 Yard Dash Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13628	30	Youth 3000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13629	30	Youth 3000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13630	30	Youth 4000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13631	30	Youth 4000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12
13632	30	Youth 5000 Welcome Sign (Std)		200 #	EA	\$ 1,620.00	\$ 1,474.20
13633	30	Youth 5000 Welcome Sign (Custom)		200 #	EA	\$ 1,732.00	\$ 1,576.12



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Part No.	Part Group	Item Description	Catalog Page No.	Weight (lbs)	Unit	Commercial Price	USC Net Price
13634	45	40 Yard Dash Scoreboard Pkg (Dbl)		175 #	EA	\$ 12,302.00	\$ 12,302.00
13636	30	Photo Booth	91	192 #	EA	\$ 10,484.00	\$ 9,540.44
13638	45	40 Yard Dash Scoreboard Pkg (Sgl)		100 #	EA	\$ 7,291.00	\$ 7,291.00
13639	30	40 Yard Dash Scoreboard Upright		95 #	EA	\$ 670.00	\$ 609.70
13640	45	Challenge Course Timing Scorebd Pkg		35 #	EA	\$ 3,471.00	\$ 3,471.00
13641	30	Challenge Course Timing Uprt Pkg		186 #	EA	\$ 2,912.00	\$ 2,649.92
X13988	85	GTShade Shop Drawings		0 #	EA	\$ 400.00	\$ 400.00
X13998	85	GTShade Custom Shop Drawings		0 #	EA	\$ 950.00	\$ 950.00
FT14001	30	Alton Park	98	2,793 #	EA	\$ 38,690.00	\$ 35,207.90
FT14002	30	Ocala	99	3,031 #	EA	\$ 37,930.00	\$ 34,516.30
FT14003	30	Circuit	100	1,063 #	EA	\$ 12,945.00	\$ 11,779.95
FT14004	30	Endeavor	100	1,530 #	EA	\$ 19,078.00	\$ 17,360.98
FT14005	30	Advantage	100	1,584 #	EA	\$ 20,520.00	\$ 18,673.20
FT14006	30	Paramount	100	2,178 #	EA	\$ 23,525.00	\$ 21,407.75
FT14007	30	Vitality	101	3,510 #	EA	\$ 40,853.00	\$ 37,176.23
14900	30	Assisted Balance Walk		130 #	EA	\$ 1,395.00	\$ 1,269.45
14901	30	Assisted Step Trainer		344 #	EA	\$ 2,610.00	\$ 2,375.10
14902	30	Assisted Functional Trainer		167 #	EA	\$ 1,980.00	\$ 1,801.80
14903	30	Step Around Station		185 #	EA	\$ 1,671.00	\$ 1,520.61
14904	30	Skill Trainer		149 #	EA	\$ 2,246.00	\$ 2,043.86
14905	30	Shoulder Rotator		178 #	EA	\$ 3,038.00	\$ 2,764.58
14906	85	NDS Play On Sign Package		19 #	EA	\$ 0.02	\$ 0.02
14907	85	NDS Pathways to Play Sign Pkg		18 #	EA	\$ 0.02	\$ 0.02
14908	85	NDS 7 Principles Sign Package		18 #	EA	\$ 0.02	\$ 0.02
FT15001	30	Ranger Fitness Station	96	2,652 #	EA	\$ 38,804.00	\$ 35,311.64
FT15002	30	Northdale	97	1,509 #	EA	\$ 22,228.00	\$ 20,227.48
FT15004	30	Affinity	101	1,760 #	EA	\$ 23,671.00	\$ 21,540.61
FT15005	30	Dynasty	101	2,268 #	EA	\$ 30,634.00	\$ 27,876.94
FT15006	30	Training Center	101	1,798 #	EA	\$ 24,832.00	\$ 22,597.12
X15272	65	Two-Post Anchor Bolt Pkg (8)		100 #	EA	\$ 384.00	\$ 368.64
X15273	65	Four-Post Anchor Bolt Pkg (16)		160 #	EA	\$ 1,147.00	\$ 1,101.12
X15274	65	Six-Post Anchor Bolt Pkg (24)		240 #	EA	\$ 1,720.00	\$ 1,651.20
15503	30	Opportunity		2,198 #	EA	\$ 30,506.00	\$ 27,760.46
15504	30	Parallel Bar (Accessible)		155 #	EA	\$ 1,182.00	\$ 1,075.62
15505	30	Embark		1,186 #	EA	\$ 14,030.00	\$ 12,767.30
15506	30	Level Up		1,582 #	EA	\$ 20,651.00	\$ 18,792.41
15507	30	Ascend		2,057 #	EA	\$ 22,763.00	\$ 20,714.33
CC16001	30	Challenge Course Youth 3000	93	5,775 #	EA	\$ 52,393.00	\$ 52,393.00
IX16001	05	Celestial	69	2,664 #	EA	\$ 47,986.00	\$ 36,469.36
PS16001	05	Sky Ridge	8	6,833 #	EA	\$ 58,519.00	\$ 44,474.44
PSG16001	05	Sky Ridge	8	7,796 #	EA	\$ 58,373.00	\$ 44,363.48
PT16001	05	Ridgeside	55	2,987 #	EA	\$ 29,884.00	\$ 22,711.84
PTG16001	05	Ridgeside	55	3,308 #	EA	\$ 29,300.00	\$ 22,268.00
CC16002	30	Challenge Course Youth 4000	93	6,791 #	EA	\$ 59,589.00	\$ 59,589.00
IX16002	05	Apollo	68	1,829 #	EA	\$ 24,990.00	\$ 18,992.40
PT16002	05	Pinewood	53	2,157 #	EA	\$ 20,062.00	\$ 15,247.12
PTG16002	05	Pinewood	53	2,475 #	EA	\$ 19,450.00	\$ 14,782.00
CC16003	30	Challenge Course Youth 5000	93	8,076 #	EA	\$ 75,205.00	\$ 68,436.55
IX16003	05	Skyward	63	5,961 #	EA	\$ 76,148.00	\$ 57,872.48
PS16003	05	Dominica	10	3,921 #	EA	\$ 46,373.00	\$ 35,243.48
PSG16003	05	Dominica	10	4,302 #	EA	\$ 46,311.00	\$ 35,196.36
PT16003	05	Scots Ridge	53	2,156 #	EA	\$ 22,355.00	\$ 16,989.80
PTG16003	05	Scots Ridge	53	2,489 #	EA	\$ 21,742.00	\$ 16,523.92
CC16004	30	Challenge Course Pro 3000	93	6,810 #	EA	\$ 63,251.00	\$ 63,251.00



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT NO. 110179

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

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

Statement of Background and Intent

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

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

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

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

A G R E E M E N T

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

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

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

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Agreement (including all Exhibits):

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

- 2.7. **PRODUCTS.** The term "Products" shall mean Playground Equipment, Surfacing, Site Furnishings, and Related Products that the Company agreed to provide in the Company's Proposal.
- 2.8. **SERVICES.** The term "Services" shall include all services that the Company agreed to provide in the Company's Proposal, including all design, assembly, installation, reporting, and optional work.
- 2.9. **SPECIFICATIONS AND REQUIREMENTS.** The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products and Services which are set forth or referenced in: (a) this Agreement, including all Exhibits; (b) the Company's proposal; (c) the RFP; (d) the Documentation; and (e) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products. Notwithstanding the forgoing, if the Company improves the Products or Services over time to incorporate new technology or improved features or functionality, and provided the improved Products or Services under this Agreement, the descriptions, specifications and requirements for such improvements shall be deemed part of the Specifications and Requirements. Also notwithstanding the forgoing, the Company's Bid shall only take precedence over the ITB to the extent the Company properly took exception to the terms of the ITB in the manner required by the ITB.
3. **TERM.**
The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment to the contract signed by both parties.
4. **GENERAL DESCRIPTION OF PRODUCTS AND SERVICES.**
The Company shall provide the Products and Services in accordance with the terms of the Company's proposal, and in compliance with all other conditions, covenants, stipulations, terms and provisions contained in this Agreement.
5. **SHIPPING AND DELIVERY.**
All shipments shall be F.O.B. destination with freight charges prepaid and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's freight bill. Estimated freight charges shall be provided at the time of quotation utilizing the freight rate schedules incorporated into this Agreement as Exhibit E.
6. **INSTALLATION, MAINTENANCE AND SAFETY INSPECTIONS.**
The County and Participating Public Agencies shall be responsible for contracting installation services on a project-by project basis as needed. If included with purchase, all equipment shall be installed by a GameTime Installer in accordance with the standards established by the terms, specifications, drawings, and construction notes for each project and meet manufacturer's specifications and industry standards. County and Participating Public Agencies shall be responsible for scheduling coordination and site preparation. Site should be level and permit installation equipment access. Participating Public Agency shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional labor or material costs.
7. **COMPENSATION.**
- 7.1. The County shall pay the Company for Products and Services compliant with the Specifications and requirements of this Agreement based on the fixed percentage discounts from the current manufacturer's price index as identified and incorporated into this Agreement as Exhibit A.
- 7.2. The Company agrees the fixed percentage discounts will remain firm for the entire contract term.
- 7.3. Pricing shall remain in effect until December 31, 2011. Thereafter, the Company shall advise the Charlotte-Mecklenburg Procurement Services Department in writing of any proposed price increases no later than sixty (6) days prior to the effective date of the requested increase.

- 7.4. The Company shall be responsible for furnishing and delivering approved price lists and the most current catalogs to the County and other participating public entities, upon request.
- 7.5. The Company agrees that if a public agency is otherwise eligible for lower pricing through a federal, state, regional, or local contract, the Company will match the pricing.

8. **OPTIONAL WORK.**

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

9. **BILLING.**

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

Mecklenburg County
Finance - Accounts Payable
600 East 4th St.
Charlotte, NC 28202

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

10. **GENERAL WARRANTIES.**

Company represents and warrants that:

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

11. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

Company represents warrants and covenants that:

- 11.1 The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;

- 11.2 All work performed by the Company and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 11.3 Neither the Services, nor any Deliverables provided by the Company under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 11.4 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Agreement by virtue of interruptions in the computer systems used by the Company.

12. TERMINATION.

- 12.1. *TERMINATION WITHOUT CAUSE.* The County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company.
- 12.2. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:
 - (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
 - (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
 - (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

- 12.3. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE COUNTY.* By giving written notice to the Company, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
 - (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
 - (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

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

- b. Notifying all affected service providers and subcontractors of the Company of transition activities;
- c. Performing the transition service plan activities;
- d. Answering questions regarding the products and services on an as-needed basis; and
- e. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

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

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

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

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

The 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 acts of anyone other than the Company or their affiliates; inadequate surfacing; or vandalism.

It is the intent of any insurance provided by the Company to indemnify for product liability claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by Company or Company's subcontractors. This clarifies and supersedes any other section of the contract concerning indemnification that could be interpreted otherwise.

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

16.1. General Requirements.

- (a) The Company shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this Section and such insurance has been approved by the County. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.
- (b) All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the County with proof of insurance coverage by certificates of insurance accompanying this Agreement and shall name the County as an additional named insured under the commercial general liability.
- (c) The County shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

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

- (a) Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- (b) Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.
- (c) Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

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

It is understood that Playground Equipment will be in the care, custody, and control of the County or Participating Public Agency following installation. It is further understood that the Company cannot additionally insure the eventual owners of the equipment for Participating Public Agencies nationwide for any damages that result from lack of maintenance, inadequate supervision, negligence, or intentional acts

by anyone other than the Company or their affiliates; inadequate surfacing, or vandalism. The responsibility for maintenance and supervision belongs to the County or Participating Public Agency and the public user respectively.

17. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Agreement.
18. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Agreement without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by Company shall name the County as a third party beneficiary.
11. **NON-DISCRIMINATION.** The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.
- The Company agrees that it will inform the County of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Company will also inform the County of the final disposition of such cases.
19. **AUDIT.** During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company in connection with this Agreement, to ensure the Company's compliance with all the terms and conditions of this Agreement or the County's payment obligations.
20. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the County in connection with this agreement. County data processed by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this agreement.
21. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County's project manager with respect to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.
22. **DRUG-FREE WORKPLACE.** The County is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:
- 22.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 22.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any

available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

- 22.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 22.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 22.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 22.6. Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

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

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

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

For The Company:	For The County:
Don King	Karen Ruppe
PlayCore Wisconsin, Inc. dba GameTime	Charlotte-Mecklenburg Procurement Services
150 Playcore Drive	600 East 4 th Street
Fort Payne, AL 35967	Charlotte, NC 28202
Phone: 256.997.5255	Phone: 704.336.2992
Fax: 256.997.5455	Fax: 704.632.8254
E-mail: dking@playcore.com	E-mail: kruppe@ci.charlotte.nc.us
With Copy To:	With Copy To:
	Tyrone Wade
	Deputy County Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704.336.4135
	Fax:
	E-mail: TyroneC.Wade@mecklenburgcountync

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

24. **MISCELLANEOUS**

24.1. **ENTIRE AGREEMENT.** This Agreement, (including all Exhibits) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter

herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

- 24.2. **AMENDMENT.** No amendment or change to this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.
- 24.3. **GOVERNING LAW AND JURISDICTION.** North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 24.4. **BINDING NATURE AND ASSIGNMENT.** This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 25.10 constitute an assignment.
- 24.5. **FORCE MAJEURE.** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- (a) if such failure or delay:
 - i. could not have been prevented by reasonable precaution;
 - ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
 - (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Service Provider shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Service Provider continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
 - (c) Upon the occurrence of a Force Majeure Event, the Service Provider shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Service Provider from performing its obligations for more than five (5) days, the County shall have the right to terminate this Agreement by written notice to the Service Provider.

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

An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force

Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

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

- 24.6. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 24.7. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 24.8. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 24.9. **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the County shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 24.10. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with this Agreement.
- 24.11. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 24.12. **TAXES.** The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.

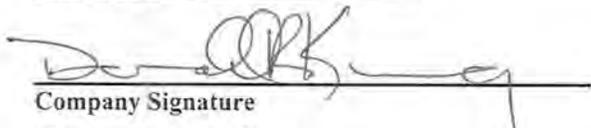
22.13 *WAIVER OF RIGHT TO JURY TRIAL.* The County and Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.

25. **Non-Appropriation of Funds.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

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

PLAYCORE WISCONSIN, INC.
dba GAMETIME:

ATTEST:



Company Signature
Donald R. King
Director of Sales Administration
Title



Mary Cole
Sales Administration Manager
Title

MECKLENBURG COUNTY:

ATTEST:



General Manager/Deputy County Manager



Clerk to the Board of County Commissioners

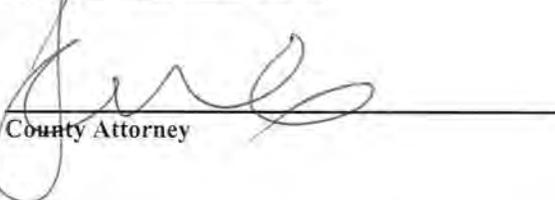


Park and Recreation Director

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

APPROVED AS TO FORM:

Finance Director



County Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:

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

BY: 

DIRECTOR OF FINANCE



Director, Charlotte-Mecklenburg Division of Insurance
Risk Management



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT # 110179.09

NINTH AMENDMENT TO MASTER PURCHASE AGREEMENT

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

STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revised freight rates, and new products.
- D. The County and the Company agreed to amend the contract on February 1, 2013 to incorporate a 2.47 percent (2.47%) price increase and new products offered by the Company.
- E. The County and the Company agreed to amend the contract on May 1, 2013 to incorporate the new Colorado Timing System products offered by the Company.
- F. The County and the Company agreed to amend the contract on March 1, 2014 to incorporate a 3.3 percent (3.3%) price increase, and new products offered by the Company.
- G. The County and the Company agreed to amend the contract on January 1, 2015 to incorporate a 3.4 percent (3.4%) price increase, and new products offered by the Company.
- H. The County and the Company agreed to amend the contract on July 1, 2015 to renew the original Agreement through September 16, 2016.
- I. The County and the Company agreed to amend the contract on January 1, 2016 to incorporate a three percent (3%) price increase, and new products offered by the Company.
- J. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

4/25/16 SBS

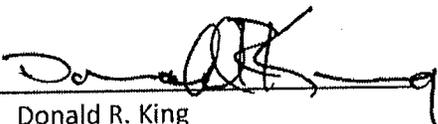
NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

AGREEMENT

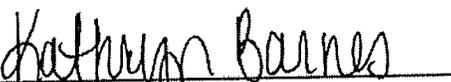
1. Defined terms used in this Eighth Amendment shall have the same meaning as are assigned to such terms in the Agreement.
2. Pursuant to Section 3 of the Agreement, the County wishes to exercise its option to renew the original Agreement for an additional one-year term to expire on September 16, 2017, unless earlier terminated in accordance with the terms of this Agreement.
3. Except to the extent specifically provided in the amendment contained herein, this Eighth Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
4. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

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

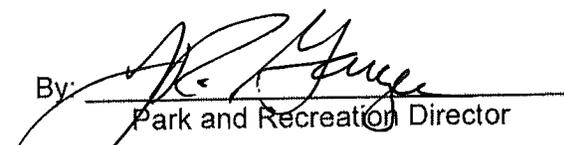
GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

By: 
Donald R. King
Title: Director of Sales Administration

Attested:

By: 
Kathryn Barnes
Title: Sales & Marketing Assistant

MECKLENBURG COUNTY:

By: 
Park and Recreation Director
Attested:

By: _____
County/General Manager

By: _____
Clerk to the Board

Approved As To Form:

By: _____
County Attorney

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

By: _____
Finance Director

Approved As To Insurance Requirements:

By: _____
Risk Management



Mecklenburg County

Signature Page

Contract Number: 110179

Amendment Number: 09

Contractor Name: GAMETIME DIVISION OF PLAYCORE - WISCONSIN, IN

MECKLENBURG COUNTY:

ATTEST:

Leslie Johnson
Assistant County Manager

No Pre-Audit Required.

APPROVED AS TO FORM:

Wanda Reeves
Finance Director

Tyrone Wade
County Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:



MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Master Intergovernmental Cooperative Purchasing Agreement (“Agreement”) is made between certain government agencies that execute a Lead Public Agency Certificate (collectively, “Lead Public Agencies”) to be appended and made a part hereof and other government agencies (“Participating Public Agencies”) that agree to the terms and conditions hereof through the U.S. Communities registration process and made a part hereof.

RECITALS

WHEREAS, after a competitive solicitation and selection process by Lead Public Agencies, in compliance with their own policies, procedures, rules and regulations, a number of suppliers (each, a “Contract Supplier”) have entered into Master Agreements with Lead Public Agencies to provide a variety of goods, products and services based on national and international volumes (herein “Products and Services”);

WHEREAS, Master Agreements are made available by Lead Public Agencies through U.S. Communities and provide that Participating Public Agencies may purchase Products and Services on the same terms, conditions and pricing as the Lead Public Agency, subject to any applicable local purchasing ordinances and the laws of the State of purchase;

WHEREAS, the parties desire to comply with the requirements and formalities of the Intergovernmental Cooperation Act as may be applicable to the laws of the State of purchase;

WHEREAS, the parties hereto desire to conserve resources and reduce procurement cost;

WHEREAS, the parties hereto desire to improve the efficiency, effectiveness and economy of the procurement of necessary Products and Services;

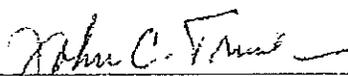
NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties agree as follows:

1. That each party will facilitate the cooperative procurement of Products and Services.
2. That the procurement of Products and Services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules and regulations that govern each party’s procurement practices.
3. That the cooperative use of solicitations obtained by a party to this Agreement shall be in accordance with the terms and conditions of the solicitation, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
4. That the Lead Public Agencies will make available, upon reasonable request and subject to convenience, information which may assist in improving the effectiveness, efficiency and economy of Participating Public Agencies’ procurement of Products and Services
5. That the Participating Public Agency will make timely payments to the Contract Supplier for Products and Services received in accordance with the terms and conditions of the procurement. Payment, inspections and acceptance of Products and Services ordered by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency. Disputes between the Participating Public Agency and Contract Supplier are to be resolved in accord with the law and venue rules of the State of purchase.
6. The Participating Public Agency shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
7. The Participating Public Agency shall be responsible for the ordering of Products and Services under this Agreement. A Lead Public Agency shall not be liable in any fashion for any violation by a Participating Public Agency, and the Participating Public Agency shall hold the Lead Public Agency harmless from any liability that may arise from action or inaction of the Participating Public Agency.
8. The exercise of any rights or remedies by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency.
9. This Agreement shall remain in effect until termination by a party giving thirty (30) days prior written notice to U.S. Communities at 2999 Oak Road, Suite 710, Walnut Creek, CA 94597.
10. This Agreement shall become effective after execution of the Lead Public Agency Certificate or Participating Public Agency registration, as applicable.

LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of the City of Charlotte (Mecklenburg County) (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Vendors and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature

JOHN C. TRUNK

PROCUREMENT SERVICES DIRECTOR

Name and Title of Signer

10-23-03

Date