

**AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
KOMPAN, INC.
FOR
LONNIE MILLER REGIONAL PARK PLAYGROUND IMPROVEMENTS**

THIS AGREEMENT is made and entered into this ____ day of _____, 2019 (hereinafter the “Effective Date”), by and between the **CITY OF JACKSONVILLE**, a municipal corporation in Duval County, Florida with principal office at 117 West Duval Street, Jacksonville, Florida 32202 (hereinafter the “CITY”), and **KOMPAN, INC.**, a foreign profit corporation with principal office at 605 W. Howard Lane, Suite 101, Austin, Texas 78753 (hereinafter the “CONTRACTOR”), for playground improvements at Lonnie Miller Regional Park.

WITNESSETH:

WHEREAS, CITY owns certain real property consisting of approximately 126 acres, more or less, located north and east of Moncrief Road West and Soutel Drive with an address of 7689 Price Lane and situated within that certain park owned by Jacksonville and commonly known as Lonnie C. Miller Sr. Regional Park (the “Park”), which portion of the Park is more particularly delineated and described on **Exhibit A**, attached hereto and incorporated herein by this reference (the “Playground”); and

WHEREAS, CITY desires to make improvements to the Playground (the “Project”); and

WHEREAS, City Council, pursuant to an appropriation in Ordinance 2019-216-E, desires to provide funding for the Project in the amount of \$350,000.00 (\$150,000 from entrance fees within the Lonnie Miller Regional Park Capital Improvement Trust Fund, \$99,000 from Countywide Parks & Recreation Projects within Subfund 32E, \$32,066.42 from Council District 10 Loblolly funds, \$746.51 from Council District 10 Park Acquisition/Development and Maintenance Trust- Saratoga, \$2,593.66 from Council District 10 RCR Bond Construction and Park Acquisition/Maintenance- Ft. George, and \$65,595.41 from Council District 10 Better Jacksonville Plan Bonds) for the Project; and

WHEREAS, CITY and CONTRACTOR have negotiated mutually satisfactory terms for the execution of the Project; and

WHEREAS, Ordinance 2019-216-E authorizes this Agreement and it is in the best interests of both parties to make and enter into this Agreement for execution of the Project; now therefore

IN CONSIDERATION of the mutual promises contained herein and for other good and sufficient consideration, the parties agree as follows:

1. **Incorporation of Recitals.** The above-stated recitals are true and correct and, by this reference, are incorporated herein and made a part hereof.

2. **Description of Project.** The construction of the Project at the Playground will be funded with \$350,000 (\$150,000 from entrance fees within the Lonnie Miller Regional Park Capital Improvement Trust Fund, \$99,000 from Countywide Parks & Recreation Projects within Subfund 32E, \$32,066.42 from Council District 10 Loblolly funds, \$746.51 from Council District 10 Park Acquisition/Development and Maintenance Trust- Saratoga, \$2,593.66 from Council District 10 RCR Bond Construction and Park Acquisition/Maintenance- Ft. George, and \$65,593.41 from Council District 10 Better Jacksonville Plan Bonds) as authorized by Ordinance 2019-216-E. The labor, equipment, and services for the Project are more particularly described in the "Scope of Services", attached hereto as **Exhibit B** and incorporated herein by this reference. All construction will be subject to inspection by CITY at all reasonable times, and no construction will be considered complete until accepted as complete in writing by CITY.

3. **Effective Date.** This Agreement shall become effective on the day and year first above written and shall continue in full force and effect as to all its terms, conditions, and provisions until completion of the Project unless terminated earlier as provided in this Agreement.

4. **Maximum Indebtedness.** The maximum indebtedness of CITY for all fees, reimbursable items, and other costs for services and materials provided by CONTRACTOR shall not exceed the sum of THREE HUNDRED AND FIFTY THOUSAND 00/100 DOLLARS (\$350,000) for the term of this Agreement.

5. **CONTRACTOR Compliance.** CONTRACTOR shall comply with all applicable bond covenants/restrictions, and federal, state, and local laws, rules, regulations, and ordinances.

6. **Payment on Draw or Reimbursement Basis.** CITY's contribution for the Project pursuant to this Agreement shall be on a "draw for work done" basis or on a "cost for reimbursement" basis. Payments will be made within thirty (30) days of CONTRACTOR's submittal to CITY of documentation, including bills, invoices, and other documents satisfactory to CITY's General Accounting Division, to justify withdrawal or reimbursement payment to CONTRACTOR. A further condition precedent for payment by CITY shall be a visual inspection by a CITY representative to confirm that the Project is being constructed as described in **Exhibit B** and as represented by CONTRACTOR.

7. **CITY Representative.** CITY's Department of Parks, Recreation and Community Services (the "Department") shall be responsible for overseeing, administering, and implementing this Agreement. The Department's contact person for the Project shall be Keith Meyerl, Chief of Recreation and Community Programming (Office: 904.255.7936; Fax: 904.255.7940; Email: kmeyerl@coj.net).

8. **Accounting/Report.** CONTRACTOR shall provide the Department with a full accounting/report in a form approved by the Department and shall include, but not be limited to, copies of all invoices and checks. Such accounting/report shall be submitted within thirty (30) days after the day and year first above written and shall continue at thirty (30) day intervals until completion of the Project. CONTRACTOR consents to such audits of its financial affairs surrounding construction of the improvements as the CITY Council Auditor's Office may require.

9. **Return of Unspent CITY Funds.** In the event that any unspent funds from CITY's contribution are in the possession of CONTRACTOR and are unencumbered for the Project upon completion of the Project, such unspent funds shall be immediately returned to CITY. Any funds that are unspent and which are still being held by CITY upon the completion of the Project shall lapse and return to proper accounts.

10. **Indemnification.** See Exhibit C

11. **Insurance.** See Exhibit D

12. **CONTRACTOR Responsibilities.** CONTRACTOR shall be solely responsible for all maintenance and repairs to the Project at no additional cost to CITY, including but not limited to maintaining and keeping the Project in good repair, and shall provide all required maintenance and repair of whatsoever kind or nature.

13. **Non-Waiver.** Failure by either party to insist upon strict performance of any of the provisions hereof, either party's failure or delay in exercising any rights or remedies provided herein, CITY's payment for the Project or any part or combination thereof, or any purported oral modification or rescission of this Agreement by an employee or agent of either party shall not release either party from its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance hereof or of either party's rights or remedies under this Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

14. **Right of Entry.** CITY has the right to enter into and upon the Premises at reasonable times for the purposes of viewing the same and of verifying compliance by CONTRACTOR with its obligations under this Agreement.

15. **CONTRACTOR Default.** If CONTRACTOR shall neglect or fail to perform or observe any requirement or violate any provision of this Agreement and such default shall continue for a period of three (3) days after written notice thereof is given by CITY to CONTRACTOR, then CITY may immediately or at any time thereafter, and without further notice or demand, terminate this Agreement without prejudice to any remedy which might otherwise be used by CITY to recover for any breach of CONTRACTOR's covenants herein contained. Should this Agreement be terminated as a result of CONTRACTOR's breach of this Agreement, then and in such event CONTRACTOR must refund and return all funds provided by CITY which were not spent on the Project. Such refund and return shall be made within

fifteen (15) days after notice and request for refund by CITY.

16. **Delays.** Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall in such event be extended for a period equal to any time lost due to such prevention or delay.

17. **Non-Discrimination.** In conformity with the requirements of Section 126.404, *Ordinance Code*, CONTRACTOR represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. CONTRACTOR agrees that on written request it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; provided however, that CONTRACTOR shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. CONTRACTOR agrees that if any of the work to be provided pursuant to this Agreement is to be performed by a subcontractor, the provisions of this Article 17 shall be incorporated into and become a part of the subcontract.

18. **Independent Contractor.** In the performance of this Agreement, CONTRACTOR shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of CITY. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized in the full performance of this Agreement.

19. **Notices.** All notices as required under this Agreement shall be by certified mail return receipt requested:

As to CITY:

Keith Meyerl
Chief, Recreation and Community Programming
214 N. Hogan Street, Suite 400
Jacksonville, Florida 32202

As to CONTRACTOR:

Kompan, Inc.
605 W. Howard Lane, Suite 101
Austin, Texas 78753

20. **Termination for Convenience.** CITY shall have the absolute right to terminate this Agreement without cause upon giving three (3) days' advance written notice to CONTRACTOR. In the event that this Agreement is terminated for convenience, CONTRACTOR shall return to CITY all unspent funds provided under this Agreement and received by CONTRACTOR.

21. **Actions of Mayor and Corporation Secretary.** The Mayor and Corporation

Secretary shall have the authority to terminate this Agreement under any circumstances in which CITY has a legal right to terminate this Agreement in accordance with the provisions hereof.

22. **Construction of Agreement Terms.** The parties agree that they have had meaningful discussion and/or negotiations of the provisions, terms, and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party which physically prepared this Agreement.

23. **Severability.** If any section, paragraph, sentence, or other part of this Agreement is declared to be unenforceable or unlawful by a court of competent jurisdiction, then in such event such section, paragraph, sentence, or other part shall be severed from this Agreement and shall not affect other terms and conditions herein.

24. **Section/Paragraph Headings.** All section/paragraph headings herein are provided for convenience only and shall not be used in the interpretation or construction of the Agreement.

25. **Exhibits.** All exhibits which are attached hereto and which are specifically and expressly referenced in the text of this Agreement are incorporated into this Agreement as if fully set forth herein.

26. **Governing Law/Severability/Venue.** This Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired. Venue for litigation of this Agreement shall be in courts of competent jurisdiction in Jacksonville, Duval County, Florida.

27. **Survival of Provisions.** The provisions of Sections 8, 10, 12, and 13 shall survive the termination of this Agreement, whether this Agreement terminates naturally by the passage of time or is earlier terminated as provided herein.

28. **Prompt Payment.**

28.01 Generally. When CONTRACTOR receives payment from CITY for labor, services, or materials furnished by contractors or subcontractors and suppliers hired by CONTRACTOR, CONTRACTOR shall remit payment due, less proper retainage, to those contractors, subcontractors, and suppliers within fifteen (15) calendar days after CONTRACTOR's receipt of payment from CITY. Nothing herein shall prohibit CONTRACTOR from disputing pursuant to the terms hereof all or any portion of a payment alleged to be due to its contractors, subcontractors, and suppliers. In the event of such dispute, CONTRACTOR may dispute the disputed portion of any such payment only after CONTRACTOR has provided notice to CITY and to the contractor, subcontractor, or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY

and said contractor, subcontractor, or supplier within ten (10) calendar days after CONTRACTOR's receipt of payment from CITY. CONTRACTOR shall pay all undisputed amounts due within the time limits imposed by this Section 28.01.

28.02. *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, CONTRACTOR shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined therein, their pro rata share of their earned portion of the progress payments made by CITY under this Agreement within seven (7) business days after CONTRACTOR's receipt of payment from CITY, less proper retainage. The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to CONTRACTOR, CONTRACTOR shall provide to CITY with its requisition for payment, documentation that sufficiently demonstrates that CONTRACTOR has made proper payments to its certified JSEB's or MBE's from all prior payments CONTRACTOR has received from CITY. CONTRACTOR shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to CONTRACTOR. If CONTRACTOR withholds payment to its certified JSEB's or MBE's, which payment has been made by CITY to CONTRACTOR, CONTRACTOR shall return said payment to CITY. CONTRACTOR shall provide notice to CITY and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY and said JSEB's or MBE's within five (5) calendar days after CONTRACTOR's receipt of payment from CITY. CONTRACTOR shall pay all undisputed amounts due within the time limits imposed in this section. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by CITY.

28.03. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between CITY and any contractor, subcontractor, supplier, JSEB, MBE, or any third party, or create any CITY liability for CONTRACTOR's failure to make timely payments hereunder. However, CONTRACTOR's failure to comply with the Prompt Payment requirements shall constitute a material breach of CONTRACTOR's contractual obligations to CITY. As a result of said breach, CITY, without waiving any other available remedy it may have against CONTRACTOR, may issue joint checks and charge CONTRACTOR a 0.2% daily late payment interest charge or the charges specified in Chapter 126, *Ordinance Code*, for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

29. **Entire Agreement.** This Agreement represents the entire agreement by and between the parties concerning the receipt and expenditures of the funds specified herein. No agreement, statement, representation, course of action, course of statement, representation, or course of conduct by either of the parties hereto or by their authorized representatives shall be

binding if it is not in writing and contained in this Agreement. This Agreement may be amended by written instrument signed by the parties or their lawfully authorized representatives.

IN WITNESS WHEREOF, the parties, by and through their lawfully authorized representatives have executed this Agreement on the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

WITNESS:

KOMPAN, INC.

By: _____
Signature

By: _____
Signature

Type/Print Name

Type/Print Name

Title

In compliance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement and that provision has been made for the payment of the monies provided therein to be paid.

Director of Finance
City Contract # _____

Form Approved:

Office of General Counsel

EXHIBIT C INDEMNIFICATION

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

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

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

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

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

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

EXHIBIT D INSURANCE REQUIREMENTS

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

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

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

Commercial General Liability	\$2,000,000 \$2,000,000 \$1,000,000 \$1,000,000 \$ 50,000 \$ 5,000	General Aggregate Products & Comp. Ops. Agg. Personal/ Advertising Injury Each Occurrence Fire Damage Medical Expenses
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability (Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)	\$1,000,000	Combined Single Limit
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Liquor or Host Liquor Liability	\$1,000,000 Each Occurrence
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(Liquor or Host Liquor Liability to the extent liquor is being sold, served or consumed.)

Professional Liability \$1,000,000 per Claim and Aggregate
(Including Medical Malpractice when applicable)

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Builders Risk/Installation Floater 100% Completed Value of the Project

Such insurance shall be on a form acceptable to the CITY's Office of Insurance and Risk Management. The Builder's Risk/Installation Floater policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: CONTRACTOR, the CITY, and respective members, officials, employees and agents, the ENGINEER, and the PROGRAM MANAGEMENT FIRM(S) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$1,000,000 per Loss
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$1,000,000 per Loss
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this contract that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this contract.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- C. CONTRACTOR's Insurance Primary. The insurance provided by the CONTRACTOR shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured CONTRACTOR. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- E. CONTRACTOR's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the CONTRACTOR or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- F. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by CONTRACTOR shall relieve CONTRACTOR of CONTRACTOR's full responsibility to provide insurance as required under this Contract.
- G. Certificates of Insurance. CONTRACTOR shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The CONTRACTOR shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the CONTRACTOR shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

- J. Survival. Anything to the contrary notwithstanding, the liabilities of the CONTRACTOR under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, CONTRACTOR shall present this Contract and Exhibit C & D to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and(2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of CONTRACTOR.

Bonds and Other Performance Security. Design-Builder shall not perform or commence any construction services for a Project until the following performance bond and labor and material payment bond or other performance security have been delivered to Owner: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to Owner, on forms furnished by Owner, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Project performed under this Agreement, each in an amount not less than the GMP as defined in Article 6 and inclusive of Design- Builder's fees. No qualification or modifications to the Bond forms are permitted.

To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:

- a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

<u>CONTRACT AMOUNT</u>	<u>RATING</u>	<u>RATING</u>
\$ 500,000 TO \$1,000,000	A-	CLASS IV
\$1,000,000 TO \$2,500,000	A-	CLASS V
\$2,500,000 TO \$5,000,000	A-	CLASS VI
\$5,000,000 TO \$10,000,000	A-	CLASS VII
\$10,000,000 TO \$25,000,000	A-	CLASS VIII
\$25,000,000 TO \$50,000,000	A-	CLASS IX
\$50,000,000 TO \$75,000,000	A-	CLASS X

- b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
- 1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Financial Services to conduct business in this state.
 - 2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

**Lonnie C. Miller Sr.
Regional Park**

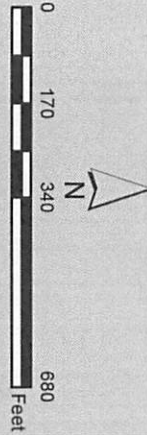


EXHIBIT A

Moncrief Road

Soutel Drive

**Legends
Center**

Playground Location

Ribault River



SALES PROPOSAL



KOMPAN, INC. * 605 W Howard Lane Ste 101, Austin, TX 78753 * Tel 1-888-579-8223 * Fax 1-888-579-8224 * www.kompan.com



Date 03/19/19
Expiration Date
Proposal No. SP60479
Project Lonnie C. Miller: 2-5 and 5-12
Ship to State/Zip FL 32209
Customer Service Representative EliLan
Sales Representative Stacy Moseley
Payment Terms NET 30

Site Location: 510038
 Lonnie C. Miller: 2-5 and 5-12
 Jill Enz
 7689 Price Lane
 Jacksonville, 32209
 United States

Invoice-to: 510038
 City of Jacksonville
 214 N Hogan St
 Suite 312
 Jacksonville, FL 32202
 United States
 Jill Enz

Ship-to:
 Lonnie C. Miller:2-5 and 5-12
 7689 Price Lane
 Jacksonville, FL 32209
 United States
 Jill Enz

Qty.	Item No.	Description	Unit Price	Retail Price	Disc. %	Net Price
U.S. Communities Contract #2017001135						
		Equipment 2-5				
1	ELE400158-3517F	JUNIOR SPICA, IG	1,380.00	1,380.00	12.00	1,214.40
1	MSC-CUSTOM	MSC-CUSTOM Story Maker Castle, IG Variant 690761	60,770.00	60,770.00	12.00	53,477.60
1	M17501-12P	WATER LILIES SPRINGER, IG	1,140.00	1,140.00	12.00	1,003.20
1	M18601-12P	Garden Seesaw, IG	5,320.00	5,320.00	12.00	4,681.60
1	PCM200304-0936	TWO TOWER W/ BRIDGE & ADA PHY Lime Green, IG	28,450.00	28,450.00	12.00	25,036.00
1	KSW924-CUSTOM	KSW924 CUSTOM VARIANT 20047129 2 Bay: 2 Belts, 2 Infant, 6'3", IG Galvanized Header and Legs	4,290.00	4,290.00	12.00	3,775.20
1	PCM111704-0902	Equipment 5-12 .MEGA DECK WITH JACOB'S LADDER Plastic Slide, Yellow/Blue, Steel Posts IG	25,620.00	25,620.00	12.00	22,545.60
Continued on page 2.....						111,733.60

Continued from page 1

Exhibit B

					111,733.60	
1	COR863002-0402	EXPLORER DOME US, BLUE, IG	63,400.00	63,400.00	12.00	55,792.00
1	GXY960012-3717	SUPERNOVA - GREY/LIME GREEN, IG	7,910.00	7,910.00	12.00	6,960.80
1	GXY801521-3717	SPICA 2, IG 009/03	1,870.00	1,870.00	12.00	1,645.60
1	KSW926-CUSTOM	KSW926 CUSTOM VARIANT 20047192 3 Bay: 2 Seats, 2 Infants, 1 Large Shell Lime, IG Galvanized Header and Legs	7,120.00	7,120.00	12.00	6,265.60
1	ELE400024-3717LG	SPINNER BOWL, LIME GREEN, IG	1,190.00	1,190.00	12.00	1,047.20
1	M21101-3417P	AGE APPROPRIATE SIGN 2-5 Years, IG	460.00	460.00	12.00	404.80
1	M21102-3417P	AGE APPROPRIATE SIGN 5-12 Years, IG	460.00	460.00	12.00	404.80
1	FRT-PA	Equipment Freight Middletown PA Installation:	7,200.00	7,200.00		7,200.00
1	CUSTOMINSTALL	Installation of all KOMPAN Equipment	59,349.05	59,349.05	5.00	56,381.60
1	SITWORK	Sitework (Both Areas): Demo and Haul off Existing Equipment Excavate, Remove, & Dispose of up to 9000sf EWF @ up to 12" deep in Use Zones Remove and Dispose of Existing Sidewalk Surfacing (Both Areas):	46,153.85	46,153.85	5.00	43,846.16
1	SITWORK	Installation of up to 2251sqft Sidewalk	25,846.15	25,846.15	5.00	24,553.84
589	TFG-FL-EWF	GreenSoft EWF by Cubic Yard Includes fleathering the EWF near trees	25.98	15,304.94	10.00	13,774.45
12	TFGFF	Filter Fabric up to 12699sf	221.54	2,658.48	10.00	2,392.63
1	FRT-OTHER	Freight for EWF	3,447.00	3,447.00		3,447.00
589	CUSTOMINSTALL	Installation of EWF/FF by cy up to 12" depth in use zones, feathered under trees	13.85	8,157.65	5.00	7,749.77
1	PERMIT	Cost to Use GC License and Permit Runner to Pull Permit.	1,000.00	1,000.00		1,000.00
1	PERMIT	Cost of Permit	400.00	400.00		400.00
1	ENG STAMP DRW 3	Engineer Stamped Drawings	2,000.00	2,000.00		2,000.00

Total **346,999.85**

Comments:

Please allow 9-11 weeks for product delivery upon order placement.

Please read attached General Assumptions and Exclusion document for information on install/sitework.

Exhibit B

Summary:

	Retail Price	Discount	Net Price
Subtotal - KOMPAN Products	209,380.00	25,125.60	184,254.40
Subtotal - Other Products	3,400.00	0.00	3,400.00
Subtotal - Surfacing	17,963.42	1,796.34	16,167.08
Subtotal - Installation & Other Services	139,506.70	6,975.33	132,531.37
Subtotal - Freight	10,647.00	0.00	10,647.00
Subtotal	380,897.12	33,897.27	346,999.85
(Applicable sales tax will be added unless a valid tax exemption certificate is provided. This amount is only an estimate of your tax liability.)			0.00
Estimated Tax Rate			0.00
Total			346,999.85

<p>Your acceptance of this proposal constitutes a valid order request and includes acceptance of terms and conditions contained within the Master Agreement, which is hereby acknowledged. Acceptance of this proposal by KOMPAN is acknowledged by issuance of an order confirmation by an authorized KOMPAN representative. Prices in this quotation are good for 60 days.</p> <p>This proposal may be withdrawn if not accepted by 05/18/19.</p> <p>KOMPAN Products are "Buy American" qualified, and compliant with the Buy American Act of 1933 and the "Buy American" provision of the ARRA of 2009.</p>	<p>KOMPAN Authorized Signature:</p> <p>Accepted By (signature): _____</p> <p>Accepted By (please print): _____</p> <p>Date: _____</p>
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Exhibit B



General Assumptions:

- Pricing is based on all equipment being direct delivery to the project address identified in KOMPANs Sales Proposal (SP).
- Placement of order into fabrication is contingent with deposit being received by KOMPAN as agreed to during the pricing phase.
- If cost proposal is to be considered as Tax-Exempt a current tax exemption form must be provided or on file at KOMPAN main office.
- Customer shall provide a lay down area for deliveries of materials within proximity of final installation site. Site access must be clear and unobstructed with at least ten (10') foot wide access to allow delivery of materials. Any size restrictions contributing to additional handling or downsizing of deliver trucks shall be addressed as a change of conditions and will be invoiced as additional costs to the customer.
- Installation site must be level to no more than one (1") inch in then (10') feet slope or change in elevation over the full length and width of the playground area.
- Price assumes NO overhead obstructions within thirteen feet, six inches (13'-6") or lower and NO underground utilities or obstructions within the playground footprint.
- Soils are to be suitable for the installation of all playground equipment and surfacing and compacted to 95% compaction prior to installation crews arriving on-site.
- All underground utilities, boulders, rock ledge or other obstructions not visible without subsurface investigation shall be considered "unforeseen conditions", all costs shall be invoiced to the customer as a change order to the contract.
- All spoils generated during the excavation of footings shall be disposed of on site at no cost to KOMPAN.
- Customer to provide at no additional costs a 120 V (15 amp) power source and standard hose bib connection for water supply within one hundred (100') feet from work site.
- Customer shall have removed all existing equipment or obstacles from playground area prior to the arrival of the installation crews.
- Time is of the essence in the installation of all materials delivered to project site. KOMPAN shall have delivered all equipment and materials as scheduled to project site. If delays to the installation schedule accrue outside KOMPANs control equipment shall be delivered to project site as scheduled and equipment and materials invoiced at the time of delivery. Unless additional storage arrangements are made in writing between Customer and KOMPAN, additional costs may apply.
- Unloading of equipment and materials shall be performed by the installation crews at the time of installation. If site is not ready for installation by cause outside of KOMPAN, it will be the responsibility of the Customer to off load and store equipment and materials at the project site. KOMPAN shall not be held liable for offloading costs, storage fees or equipment damage.

Exhibit B

- If site requires installation of a drainage system within the proposed playground area, playground equipment footing shall be installed prior to the installation of the drainage system and playground footing locations shall take precedence over drainage system requirements.
- Site layout and dimensions shall be based of KOMPANs 2D drawing or CAD drawings. Customer to provide site "bench mark" to be used for layout and final elevation calculations.
- Unless otherwise noted on KOMPAN's SP, proposal assumes that there are no Prevailing Wages requirement on the project.
- Any additional costs which maybe incurred during installation shall be negotiated between Customer and KOMPAN in writing prior to the start of additional work. If written approval is not received during the time the installation crews are on-site, additional mobilization costs will apply.

Exclusions (Unless Explicitly Stated in KOMPAN Sales Proposal):

- Stamped engineered drawings/calculations or costs to secure permits are not included, if required these costs will be added as a change order payable to Kompan.
- Demolition and off-site disposal of any existing equipment or site amenities.
- Any sitework, including but not limited to grading, excavation outside playground equipment footing and soils compaction and testing.
- Concrete work outside of play equipment footing requirements.
- Relocation of any existing equipment.
- Any required drainage system for playground area.
- Third party testing of materials and playground installation.
- Site landscaping or trimming of vegetation encroaching within the play equipment and safety zones.
- Play area surfacing and base materials if not noted in KOMPAN proposal.
- Installation of Poured in Place surfacing does not include the use of aliphatic binder, solid or custom colors.
- Site security during Poured in Place surfacing cure time and any vandalism which may accrue during surfacing cure time.
- Borders for play area surfacing containment.
- Any required retaining walls for proposed play area.
- Site storage for equipment.
- Site safety fencing beyond standard four (4') foot orange construction fencing.
- Utilities site location services and/or relocation of any underground utilities.
- On site dumpster for disposal of shipping containers and general construction debris.
- If applicable, primary electrical service, such as connection of primary power to KOMPANs ICON server box. Primary power is to be terminated within ICON server box by a licensed electrician.