

MEMORANDUM

Agenda Item No. 8(K)(1)

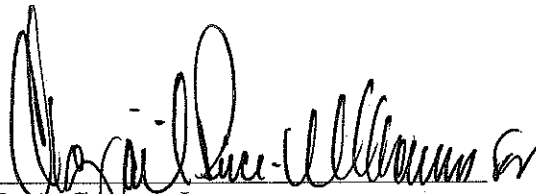
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 2, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing
Memorandum of Understanding
between City of Miami and
Miami-Dade County for the
installation of Youth Athletic
Field at the Liberty Square
Public Housing Development
Resolution No. R-521-13

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: July 2, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Resolution Authorizing Execution of Memorandum of Understanding with City of Miami for Playground and Youth Athletic Field at the Liberty Square Public Housing Development

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the execution of the attached Memorandum of Understanding between Miami-Dade County (County) and the City of Miami (City) for installation of a youth athletic field, irrigation, fencing, bleacher, and shade structure at the Liberty Square public housing development (Liberty Square), a County-owned federally-assisted housing development managed by Public Housing and Community Development Department (Department).

Scope

The County and City and the residents of Liberty Square desire to create a safe play environment for the children in the public housing development. This Memorandum of Understanding specifies the shared cost and responsibility for installation of a playground and youth athletic field located behind the Liberty Square Community Center at 6304 NW 14th Avenue. This item will have a positive health and recreational impact on Commission District 3, represented by Commissioner Audrey M. Edmonson.

Fiscal Impact/Funding Source

The fiscal impact of this proposed item is shared between the County and the City. The County has already funded the acquisition of the playground equipment, which has been installed. The County will enforce the warranty for the playground, ensure proper maintenance of the playground, youth athletic field, irrigation, fencing bleachers and safety surface and shade structure for its lifetime. Funding for the purchase of the playground equipment was from the County's Community Development Block Grant funds of \$23,686.00; funding for the installation of the playground equipment was from the Department's Public Housing Capital Fund in the amount of \$52,900.00. Future maintenance cost shall be from the Department's operating and/or capital subsidy allocated by the United States Department of Housing and Urban Development (Housing and Urban Development).

The City will fund installation of a youth athletic field, irrigation, fencing, bleacher, and shade structure. The City of Miami has identified Account No. 00001.296001.552000 for an amount not to exceed \$75,000.00.

Track Record/Monitor

The City is a local government entity with a reliable track record in current and prior Memoranda of Understanding and other contractual documents between the City and Miami-Dade County. The Department's Executive Director has designated Jeannie Mendoza, the Interim Asset Management Director of PHCD to monitor this Memorandum of Understanding.

Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
Page No. 2


Background

In 2009, the County and City collaborated to develop a playground at the site. This collaboration was approved by both the City Commission, pursuant to City Resolution No. R-09-0422, and the Board, pursuant to Resolution No. 1249-09. However, the plans for the playground were never implemented due to funding issues with the City. More recently, in 2012, the City, County, and residents of Liberty Square submitted a joint application for KaBOOM! Community Partner Project for a playground to be built, but this effort was also unsuccessful.

Both the County Commissioner and City Commissioner have worked with the residents of Liberty Square to collaboratively to bring a benefit to the children of the development by installing a playground and youth athletic field with costs to be shared between the County and the City.

On April 11, 2013, the City Commission adopted Resolution No. 13-0134 approving execution of a Memorandum of Understanding with the County. This proposed item is the County's request for approval to move the project forward.

Attachments



Russell Benford, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 2, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(K)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(K)(1)
7-2-13

RESOLUTION NO. R-521-13

RESOLUTION AUTHORIZING MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MIAMI AND MIAMI-DADE COUNTY FOR THE INSTALLATION OF YOUTH ATHLETIC FIELD AT THE LIBERTY SQUARE PUBLIC HOUSING DEVELOPMENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL CONTRACTS, AGREEMENTS AND AMENDMENTS NECESSARY; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AMENDMENT, EXTENSION, CANCELLATION, AND MODIFICATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, Miami-Dade County and the City of Miami desire to create a safe environment of the children in the Liberty Square public housing development; and

WHEREAS, the City of Miami Commission adopted Resolution Number 13-0134 authorizing the City Manager to execute a Memorandum of Understanding with the County for the purpose of the City to fund in an amount not to exceed \$75,000.00 the construction/installation of a youth athletic field for the Liberty Square Public Housing Development,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The recitals and findings contained in the resolution are adopted and by reference incorporated as fully set forth in this Section.

Section 2. The County Mayor or County Mayor's designee is authorized to execute a Memorandum of Understanding, in substantially the attached form, between the County and the City, for the purpose of the City to fund, in an amount not to exceed \$75,000.00, the construction/installation of a youth athletic field for Liberty Square with funds allocated from the City.

Section 3. The County Mayor or County Mayor's designee is further authorized to execute any other documents, amendment, extension, cancellation, and modifications provisions contained in said Memorandum of Understanding.

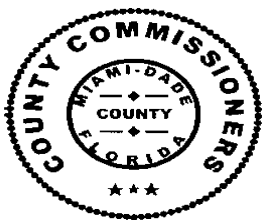
The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	aye
	Lynda Bell, Vice Chair	aye
Bruno A. Barreiro	absent	Esteban L. Bovo, Jr. absent
Jose "Pepe" Diaz	aye	Audrey M. Edmonson aye
Sally A. Heyman	aye	Barbara J. Jordan aye
Jean Monestime	aye	Dennis C. Moss aye
Sen. Javier D. Souto	aye	Xavier L. Suarez aye
Juan C. Zapata	aye	

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of July, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in blue ink, appearing to read "TAS", is written over a horizontal line.

Terrence A. Smith

**MEMORANDUM OF UNDERSTANDING
BETWEEN
MIAMI-DADE COUNTY AND THE
CITY OF MIAMI**

This Memorandum of Understanding (“MOU”) is made and entered into this _____ day of _____, 2013 by and between the Miami-Dade County, a political subdivision of the State of Florida (“County”), and the City of Miami, a body politic (“City”).

RECITALS

WHEREAS, the County owns and operates a public housing development commonly known as the Liberty Square Public Housing Development (hereinafter “Liberty Square”); and

WHEREAS, the County has delegated the administration of its public housing program to its housing department, Miami-Dade Public Housing and Community Development Department; and

WHEREAS, Liberty Square presently lacks a playground and sports field area for the children who reside with their families in the public housing development and surrounding community; and

WHEREAS, the City, the County and the residents desire to create a safe environment for the children of Liberty Square; and

WHEREAS, the City desires to fund the installation of a playground area for the children of Liberty Square; and

WHEREAS, the Miami-Dade County Board of County Commissioners pursuant to Resolution No. R- ___-12 has authorized the County Mayor or the County Mayor’s designee to execute this MOU with the City; and

WHEREAS, the Miami City Commission pursuant to Resolution No. 13-0134 has authorized the City Manager or the City Manager’s designee to execute this MOU with the County; and

NOW THEREFORE, in consideration of the premises and mutual covenants and promises contained herein, the County and the City agree as follows:

**ARTICLE I
PURPOSE**

The purpose of this MOU is to ensure for the funding and installation of a playground for the children of Liberty Square. The parties recognize that a playground that is installed within the boundaries of the public housing development will provide a safe haven for the children who reside within the development. The use of the word "playground" for this MOU refers to the designated area located at Liberty Square where stationary and manipulative play equipment will be located to facilitate a child's physical, emotional, social, and intellectual development.

**ARTICLE II
TERM OF THE MOU**

- 2.1 The term of this MOU shall commence on the last date of execution by the parties and continue until _____20__ unless terminated by either party pursuant to Article VII below.
- 2.2 The parties agree that time is of the essence in the performance of each and every obligation under this MOU.

**ARTICLE III
RESPONSIBILITIES OF THE PARTIES**

- 3.1 City's Responsibilities. The City hereby agrees as follows:
- (a) To fund and install a youth athletic field, with proper irrigation, fencing, bleacher, and shade structure to be located within Liberty Square, as illustrated in Exhibit A. Subject to available funds, the maximum amount payable for services rendered under this MOU shall not exceed Seventy-Five Thousand Dollars 00/100 (\$75,000.00).
- 3.2 County's Responsibilities. The County hereby agrees as follows:
- (a) To fund the acquisition of the playground equipment.
 - (b) To ensure that a warranty for the playground is issued in the name of Miami-Dade County in substantially the form attached hereto as Exhibit B.
 - (c) Design an age-appropriate playground. The County will further ensure that the design and equipment complies with the standards established by the American Society for Testing and Materials (ASTM), which sets industry standards for playground equipment, and the standard for Public Use Playground Equipment. The design shall also comply with the safety standards established by the National Program for Playground Safety.

- (d) Provide proper fall surfacing under and in the playground area. The City shall consider the standards for fall surfacing recommended by the National Program for Playground Safety, including ensuring that twelve (12) inches of loose-fill surfacing is used to provide an extra measure of safety. "Loose-fill" choices may include sand, pea gravel, wood products (chips, mulch), and rubber products (i.e., shredded tires), or pour-in-place safety surface. The age of the children, as defined in this paragraph, who will use the playground shall be considered prior to the selection of the appropriate loose-fill.
- (e) Ensure that the playground is not installed over cisterns, or near poisonous plants such as nightshade.
- (f) To ensure that the playground and the public housing development are secured by fencing.
- (g) To properly maintain the playground, youth athletic field, irrigation, fencing, bleachers, safety surface, and shade structure for its lifetime, including the equipment and the surfacing as well as the vendor's maintenance recommendations as more fully described in Exhibit C. The maintenance of the playground does not include any areas that require maintenance by a third party, including but not limited to any vendor who is leasing space in the community center adjacent to the newly installed playground. The County shall ensure that nuts and bolts are tightened and all other safety measures are taken into account. The County shall ensure that trash is picked up in the playground and shall maintain the loose-fill surface material at a proper depth to absorb any falls. Animals should be kept out of the area. Should the County fail to maintain the playground equipment and surfacing in accordance with this provision, the County shall, at its own expense, restore the playground equipment and/or surfacing to its original condition.

ARTICLE IV PROJECT MANAGEMENT AND NOTICE

- 4.1 The Project Manager for the County is Jeannie Mendoza, Interim Director, Asset Management Division, Miami-Dade Public Housing and Community Development, 701 N.W. 1st Court, 16th Floor, Miami, Florida 33136, telephone number (786) 469-4142. The Project Manager for the City is Ralph Gonzalez, Operations Coordinator, City of Miami Parks and Recreation Department, 1950 N.W. 12th Ave, Miami, Florida 33136, telephone number (305) 960-3003. The parties shall direct all matters arising in connection with the performance of this MOU, other than notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this MOU.

- 4.2 All notices, demands, or other communications to Miami-Dade County under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

Miami-Dade County
111 N.W. 1st Street
Miami, Florida 33128
Attn: County Mayor

Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Attn: Terrence A. Smith
Assistant County Attorney

All notices, demands, or other communications to the City under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

City of Miami
3500 Pan American Drive
Miami, Florida 33133-5504
Attn.: City Manager

City Attorney
444 SW 2nd Avenue
9th Floor
Miami, FL 33130

The County and the City shall also provide a copy of all notices to the Project Managers. All notices required by this MOU shall be considered delivered upon receipt. Should any party change its address, written notice of such new address shall promptly be sent to the other parties.

ARTICLE V INDEMNIFICATION

- 5.1 The County assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the County and the officers, employees, servants, and agents thereof. The County warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the County officers, employees, servants and agents while acting within the scope of their employment with the County.
- 5.2 The City assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the City and the officers, employees, servants, and agents thereof. The City warrants and represents that it

is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the City's officers, employees, servants and agents while acting within the scope of their employment with the City.

- 5.3 The County and the City further agree that nothing contained herein shall be construed to interpret as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the United States or its agents and agencies to be sued; (3) the consent of the State of Florida or its agents and agencies to be sued; or (4) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE VI INSURANCE

- 6.1 The parties hereto acknowledge that the County and the City are self-insured governmental entities subject to the limitations of Section 768.28, Florida Statutes. The County and the City shall maintain a fiscally sound and prudent risk management program with regard to their obligations under this MOU in accordance with the provisions of Section 768.28, Florida Statutes. The County and the City shall collect and keep on file documentation of insurance of any and all contractors contracted to provide the services or product used in conjunction with this MOU in any way. The County and the City shall further require all contractors to include the County and the City as named insured and shall provide the County and the City with a copy of the insurance policy purchased by any contractor prior to commencement of the Services.

ARTICLE VII TERMINATION/REMEDIES

- 7.1 If any party fails to fulfill its obligations under this MOU in a timely and proper manner, the other parties shall have the right to terminate their participation under this MOU by giving written notice of any deficiency. The party in default shall then have thirty (30) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this MOU shall terminate at the expiration of the thirty (30) day time period.
- 7.2 Any party may terminate this MOU at any time for convenience upon ninety (90) calendar days prior written notice to the other party. Any such termination shall be effected by delivery to the other of a Notice of Termination specifying the extent to which performance of work under the MOU is terminated, and the date upon which such termination becomes effective.
- 7.3 In the event a dispute arises which the Project Managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation.

The mediator or mediators shall be impartial, shall be selected by parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

- 7.4 This MOU has no third-party beneficiaries (intended or incidental), who may enforce obligations of any party should the MOU be terminated.

ARTICLE VIII RECORDS RETENTION/OWNERSHIP

The County and the City shall maintain records and each party shall have inspection and audit rights as follows:

- 8.1. Maintenance of Records: All parties shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this MOU including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration or termination date of this MOU.
- 8.2. Examination of Records: All parties or their designated agents shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this MOU. Such examination may be only within five years from the expiration or termination of this MOU and upon reasonable notice, time and place.
- 8.3. Extended Availability of Records for Legal Disputes: In the event that any party should become involved in a legal dispute with a third party arising from performance under this MOU, the other parties shall extend the period of maintenance for all records relating to this MOU until the final disposition of the legal dispute, and all such records shall be made readily available.

ARTICLE IX STANDARDS OF COMPLIANCE

- 9.1 The County and City, their employees, subcontractors, partners or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this MOU to which their activities are subject.
- 9.2 The County and the City shall allow public access to all project documents and materials it maintains in accordance with the provisions of Chapter 119, Florida Statutes. Should the County and/or the City assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be both upon the County and the City.

- 9.3 All parties assure that no person shall be excluded on the grounds of race, color, creed, religion, national origin, ancestry, disability, age, sex, pregnancy, marital status, familial status, sexual orientation, veteran status, or source of income from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this MOU. All parties shall take all measures necessary to effectuate these assurances.

**ARTICLE X
RELATIONSHIP BETWEEN THE PARTIES**

- 10.1 The County and the City are independent contractors. No party is an employee or agent of any other party. Nothing in this MOU shall be interpreted to establish any relationship other than that of independent contractors, between the County and the City, or between their respective employees, agents, subcontractors, partners, or assigns, during or after the performance of this MOU.

**ARTICLE XI
GENERAL PROVISIONS**

- 11.1 Notwithstanding any provisions of this MOU to the contrary, the parties shall not be held liable for any failure or delay in the performance of this MOU that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, acts of God, or for any other cause of same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this MOU shall otherwise remain in effect.
- 11.2 In the event any provisions of this MOU shall conflict, or appear to conflict, the MOU, including all exhibits, attachments and all other documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this MOU by the parties, their successors and assigns shall not be deemed a waiver of any rights or remedies, nor shall it relieve the other parties from performing any subsequent obligations strictly in accordance with the term of this MOU. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this MOU specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 11.4 Should any term or provision of this MOU be held, to any extent invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent

jurisdiction, such invalidity shall not affect any other term or provision of this MOU, to the extent that the MOU shall remain operable, enforceable and in full force and effect to the extent permitted by law.

- 11.5 This MOU may be amended only with the written approval of the parties hereto.
- 11.6 This MOU states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this MOU. The parties recognize that any representations, statements or negotiations made by the staff of either party does not suffice to legally bind either party in a contractual relationship unless they have been reduced to writing and signed by their authorized representative(s). This MOU shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this MOU on the date first written above.

ATTEST:
Harvey Ruvlin, Clerk

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

Deputy Clerk

By: _____
Russell Benford
Deputy Mayor

Approved for legal form and
sufficiency:

By: _____
Terrence A. Smith
Assistant County Attorney

CITY OF MIAMI, a municipal
corporation of the State of Florida

ATTEST:
Todd B. Hannon,
City Clerk

City Clerk

By: _____
Johnny Martinez.
City Manager

Approved for legal form and
sufficiency:

Approved as to Insurance Requirements:

By: _____
Julie O. Bru, City Attorney

Calvin Ellis, Director
City Risk Management

EXHIBIT "A"
ATHLETIC FIELD DESIGN

EXHIBIT "B"
PLAYGROUND EQUIPMENT WARRANTY

EXHIBIT "C"
Vendor Recommended Maintenance Schedule



Universal Terms & Conditions

Applicability

These terms and conditions of sale are the only terms which govern the sale of the goods by Superior International Industries, Inc. (d/b/a Superior Recreational Products or GroundsForPlay, "SII"). The accompanying quotation, confirmation of sale or invoice issued by SII and these terms and conditions comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These terms and conditions prevail over any of a customer's general terms and conditions of purchase regardless whether or when a customer has submitted its purchase order or such terms. Fulfillment of a customer's order does not constitute acceptance of any of a customer's terms and conditions and does not serve to modify or amend these terms and conditions.

Freight and Handling

All product is shipped EXW Shipping Point (Carrollton, GA; Mansfield, TX; or McAlester, OK). Title and risk of loss to all goods sold by SII transfer at the manufacturing plant. Freight weights shown are approximate and may vary. Freight and handling charges are additional and are not included in the selling price of the equipment. Transit time is dependent upon your location.

Damage/Loss Claims

The responsibility for damage in transit is the carriers' whether it is visible damage or concealed damage. Shipments must be inspected immediately and visible damage must be indicated on the delivery copy of the freight bill. The customer is responsible for recovery of loss. Loss or damage claims must be filed within 15 days of receipt of shipment.

Storage Fees

Storage fees of \$250.00 per week may begin to accrue on any order that is not accepted on or after the estimated ship date provided by SII. To prevent these fees, make all possible attempts to arrange a later ship date prior to the production of your order.

Material Storage

It is the sole responsibility of the customer to provide for protection of the material after arrival at destination.

Installation and Assembly

Installation charges are additional and are not included in the selling price of the equipment. Detailed setup and assembly instructions are included in each shipment along with the hardware. Some fitting and cutting of parts may be required because of field conditions and will not be reason for rejection or back charges. Touch-up and finish painting and staining shall be the responsibility of the installer.

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SII assumes no responsibility for the condition of the factory-applied finishes damaged or altered by installation or storage procedures. No corrections or alterations are to be made to our products without permission. Back charges must be pre-approved before any product corrections are performed.

Installation of equipment can be provided by SII qualified installation technicians. The time necessary for installation will depend on the equipment you purchased.

Custom Designs: We welcome the opportunity to develop specific products and specifications to meet your custom design requirements. Do not hesitate to call. Occasionally, new designs require extensive investigation and will require a pre-paid design and engineering fee. However, upon receipt and shipment of the order, the fee will be offset in the prices of the approved new product.

Quotations

All quotations are firm for 30 days, after which, SII reserves the right to adjust pricing and freight and handling costs to reflect market fluctuations.

Catalog Prices

Prices do not include delivery and installation charges and are subject to change without notice.

Payment Terms

Customers shall pay all invoiced amounts due to SII within the number of days stated in the applicable invoice. SII may charge interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

Taxes

All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by a customer. A customer shall be responsible for all such charges, costs and taxes, which will be added to the invoice, except when SII determines that an appropriate tax exempt certificate has been provided with the order.

Cancellations and Returns

Any cancellation or return must have proper authorization in advance. All cancellations are subject to a 15% handling charge and all returns are subject to a 25% restocking charge plus freight and handling. Custom products and Pre-cut Metal Roofs are non-returnable.

Specifications

Complete specifications are available on most products. Modifications to meet bid specifications are available. Consult your factory representative for complete details. Due to continuous product improvement we reserve the right to change specifications without notice; however, we will not substitute products without notice.

The Americans with Disabilities Act 1990

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Most SII products may be modified to be handicap accessible and when specified to be handicap accessible will conform to applicable ADA Standards.

GSA Contract

Most SII products are available for Federal Accounts.

Minimum Orders

Orders less than \$100.00 will be subject to a \$10.00 surcharge.

Force Majeure

SII shall not be liable or responsible for any failure or delay when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of SII including, without limitation, acts of God, natural disasters, labor disputes, delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, or power outage.

Limited Prorated Manufacturer's Warranty

EXCEPT FOR THE LIMITED MANUFACTURER'S WARRANTY SET FORTH BELOW, SII MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NEITHER CUSTOMER NOR ANY OF ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS NOR ANY OTHER PERSON OR ENTITY IS AUTHORIZED TO CREATE FOR SII (AND IS EXPRESSLY PROHIBITED HEREBY FROM CREATING OR OFFERING) ANY OTHER WARRANTY, GUARANTEE, REPRESENTATION OR OBLIGATION OR LIABILITY OF ANY KIND TO ANY PERSON OR ENTITY RELATING TO THE PRODUCTS SOLD BY SII.

PRODUCTS MANUFACTURED BY A THIRD PARTY MAY CONSTITUTE, CONTAIN, BE CONTAINED IN, INCORPORATED INTO, ATTACHED TO OR PACKAGED TOGETHER WITH, THE GOODS SOLD BY SII. SUCH THIRD PARTY PRODUCTS ARE NOT COVERED BY THE LIMITED MANUFACTURER'S WARRANTY BELOW. FOR THE AVOIDANCE OF DOUBT, SII MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY SUCH THIRD PARTY PRODUCT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

SII warrants its products to be free from defects in materials and workmanship under normal use and service from date of invoice for the periods specified below on an annual prorated basis as follows (unless otherwise specified below): SII will repair or replace, at its discretion, defective product with the repair or replacement cost proportionately allocated between SII and the customer based on the number of years lapsed in the limited warranty period. For example, a product with a limited 10 year warranty which fails in the 5th year of ownership will be repaired or replaced with a 50% credit applied towards a customer's repair or replacement cost, and a product with a limited 10 year warranty which fails in the 10th year of ownership will be repaired or replaced with a 10% credit applied towards a customer's repair or replacement cost. Freight and handling costs shall be paid by the customer. Labor costs of replacement shall be paid by the customer. Warranty claims must be reported within the applicable warranty period and be accompanied by a sales

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order or invoice number. THE FOREGOING REMEDIES SHALL BE A CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SII'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.

- Lifetime limited warranty on all galvanized steel posts, fiberglass reinforced polymer (FRP) posts, stainless steel hardware, and aluminum fittings and post caps. For the purpose of this warranty, lifetime encompasses no specific term of years but rather that SII warrants to its original customer for as long as the original customer owns the product and uses the product for its intended purpose that the product will be free from defects in materials and workmanship under normal use and service. There is no proration on the lifetime limited warranty.
- 50 year limited warranty on posts made from recycled plastic materials.
- 30 year limited warranty on fiberglass shingles per the manufacturer's specifications.
- 20 year limited warranty on structural steel frames supporting HPDE shade fabric against failure due to rust-through corrosion under normal environmental conditions. Structures are warranted for winds up to 150mph only if shade canopies have been removed as per requirement set forth above in the shade fabric warranty. Removal and reinstallation must be performed by a qualified person or authorized dealer following the instructions provided by SII. This steel warranty shall be void if damage to the steel frame is caused by the installer, or from physical damage, damage by salt spray, or sprinkler systems, contact with chemicals, chlorine, pollution, misuse, vandalism, or any act of God.
- 15 year limited warranty on rotationally molded plastic components when included as part of a complete playground purchase.
- 15 year limited warranty on high density polyethylene (HDPE) plastic sheet, punched steel decks, Trex decking, and pipes, rungs, loops and rails.
- 15 year limited warranty on anchoring products (GroundPlug) to maintain structural integrity.
- 10 year limited warranty on HDPE shade fabric. SII shade fabrics carry a ten-year limited manufacturer's warranty against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold or discoloration. Should the fabric need to be replaced under the warranty, SII will manufacture and ship a new fabric at no charge for the first six years, thereafter pro-rated at 18% per annum over the last four years. The colors Red and Yellow are warranted against significant fading for only two years. If the corners of the fabric are equipped with both holes in the fabric corner PLUS reinforcing straps, BOTH the strap and fabric hole must be placed over each corner hook or the fabric warranty is void. Fabric curtains, valences or flat vertical panels are not covered under the warranty. Fabric is not warranted where it is installed on a structure that is not engineered and built by SII or its agents. This warranty shall be void if damage to or failure to the shade structure is caused by contact with chemicals, chlorine, bleaching agents, hydrocarbons or hydrocarbon containing solvents, misuse, vandalism or any act of God, including but not limited to wind in excess of the wind limitations set forth below. All HDPE shade fabric tops are warranted for sustained winds up to 76mph (hurricane force 1) and for gusts of up to 3 seconds duration up to 90mph. Removal of the shade fabric is required if damaging winds or other extreme conditions are called for. Damage due to snow and/or ice accumulation is not covered by this warranty. The structures have been designed to eliminate any friction between the rafters and the fabric. The warranty will, therefore, be voided if any modification (temporary or permanent) is made to the rafter, cross pieces or ridge beams. SII reserves the right, in cases where certain fabric colors have been discontinued, to offer the customer a choice of available colors to replace the warranted fabric of the discontinued color. The company does not warranty that any particular color will be available for any period of time and reserves the right to discontinue any color for any reason it may determine, without recourse by the owner of the discontinued fabric color.

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- 10 year limited warranty on powder coat finish on shelter products under normal environmental conditions. This limited warranty is for factory applied finish only. This warranty does not cover cosmetic issues such as fading, discoloration, or weathering. Damage occurring from shipping, erection, vandalism, accidents, or field modification will require field touch-up immediately and periodically thereafter which is not covered in this limited warranty. The owner must report any defects in the powder coat at the time the installation is completed. The 10 year limited warranty excludes structures erected at sites where salt air, corrosive atmosphere or sprinkler systems come in contact with the shelter. This finish warranty shall be void if damage to the powder coat is caused by contact with chemicals, chlorine, thinners, degreasers, hydrocarbon containing solvents, pollution, misuse, vandalism or any act of God, including but not limited to, ice, snow or wind in excess of the applicable building code parameters. Not covered by this limited warranty are acute angles, welds, and endplates that are prone to minor defects on occasions and will require touch-up by the owner.
- 10 year limited warranty on Sunset and Horizon umbrella models against rust.
- 10 year limited warranty on extruded plastic components.
- 10 year limited warranty on 100% expanded PTFE fiber (thread) used in shade products. This warrants that the sewing thread will be free from defects in material and workmanship and will not be damaged by exposure to sunlight, weather and water.
- 10 year limited warranty on shelter products to maintain structural integrity.
- Painted or unpainted R-Panel, Max- Rib, and standing seam metal roof panels under normal environmental conditions will meet the following standards:
 - For a period of 25 years from the date of shipment (20 years for Brite Red), the coating system will not crack, check, peel (lose adhesion), chalk or change color (fade).
 - For a period of 30 years from the date of shipment, painted or unpainted metal roof panels, if erected within the United States, will not rupture, fail structurally, or perforate due to exposure to normal environmental conditions.
- 8 year limited warranty on artificial turf materials against defects, including ultraviolet degradation and excessive fading.
- 5 year limited warranty on Thermo-Plastic, PVC coated site amenities to be free of corrosion on seats and tops that results in bare metal exposure, excluding any corrosion that may be the result of vandalism or intentional stripping of any of the coating. SII does not warrant fading or surface contamination, due to the extreme variations of exposure and definitions of fading.
- 5 year limited warranty on structural supports for tables and benches to be free of rust outs that would compromise structural integrity. Surface rust or cosmetic paint deterioration is excluded.
- 5 year limited warranty on park grilles against rust out or breakage, excluding any damage that may be the result of vandalism or intentional destruction.
- 5 year limited warranty on Skyspan tensile membrane umbrella canopies and underlying frames.
- 5 year limited warranty on net climbers.
- 5 year limited warranty on poured in place surfacing provided that the sub-surfacing and surfacing is installed by SII. Warranty includes unreasonable rubber deterioration and surface brittleness resulting in cracking. Warranty does not cover damage during the curing process, shrinking, slight color variations including ambering, color fading, damage due to stains, burns, cuts, gouges, and indentations caused by unusual use, problems caused by moisture, alkali, hydrostatic pressure, cracking, shifting or lifting of the substrate over which the surfacing product has been

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installed. Warranty excludes transfer stations, swings and slide exits. A urethane top coat must be applied every 24 months with supporting documentation to validate warranty.

- 5 year limited warranty on cedar shingles.
- 5 year limited warranty on Lexan/ polycarbonate panels.
- 3 year limited warranty on Kids Center playgrounds.
- 1 year limited warranty on steel, recycled plastic and wood site furnishings. Wood products are subject to weathering, cracking, checking, splintering and insects.
- 1 year limited warranty on all Child Works components:
- 1 year limited warranty on rotationally molded plastic components.
- 1 year limited warranty on all kayaks.
- 1 year limited warranty on all moving parts and windows.
- 1 year limited warranty on waterslides.
- 1 year limited warranty on labor for the removal, installation and/or freight for warranty claims on HDPE shade products; following that, labor for the removal, installation and/or freight will be at the customers' expense and the warranty will only be applicable to the repair or replacement of the defective materials.
- 1 year limited warranty on nature products and materials against manufacturing defects only. Nature materials and products are subject to weathering, cracking, checking, splintering and insects.
- 1 year limited warranty on installation of artificial turf materials if installed by SII. Installation includes seams, tape and edging.
- 1 year limited warranty on portable umbrella models.
- 1 year warranty on all other parts manufactured by SII not mentioned in this warranty statement.

This warranty will be void if the associated invoice is not paid for in full.

Any failure will not be cause for extending the duration of this warranty.

This warranty does not cover damage caused by vandalism, misuse or abuse, altered or modified parts, or cosmetic damage such as scratches, dents, fading, discoloration, rust or weathering and normal wear and tear.

This warranty is valid only if the product is installed in conformity with instructions provided by SII using the approved parts.

This warranty does not cover natural disasters, such as earthquakes, shifts of terrain or tornados. If a shade structure is installed in an area exposed to hurricanes, removal of the shade fabric is required when a hurricane warning is issued.

SII is in no way responsible for damages caused by others, including: installer, fire, acts of God (lightning, storms, hail, etc.), corrosion, salt spray, pollution, of infestation by rodents or other vermin.

SII shall not be responsible for insurance standards or code compliance changes that may be required in the future.

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No signs, objects, ornaments, fans, lights, fixtures or decorations may be hung from the top part of shade or umbrella structures, unless specifically designed and engineered by the manufacturer. These items may interfere with the fabric causing the warranty to be voided.

SII shall not be responsible delays due to missing, stolen, or non-conforming parts. Any rework of non-conforming parts must be authorized by SII prior to the time that the rework is done.

Some fitting and field cutting of parts may be required, and will not be subject to back charges or cause for rejection.

In the unlikely event of failure, SII reserves the right to alter the design, color, or contributing factors to rectify the condition and help prevent any future reoccurrence(s).

LIMITATION OF LIABILITY

IN NO EVENT SHALL SII BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS; WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SII'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SALE OF PRODUCT HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SII FOR THE PRODUCTS SOLD HEREUNDER.

INDEMNIFICATION

Customer shall indemnify, hold harmless, and defend SII and its affiliates against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, fees and the costs of enforcing this right to indemnification and the cost of pursuing any insurance providers, incurred SII or any of its affiliates, arising out of or resulting from of any third party claim alleging any bodily injury, death of any person or damage to real or tangible personal property caused by (i) the negligent acts or omissions of customer or its agents, employees or subcontractors, or (ii) any failure by customer or its agents, employees or subcontractors to assemble, install, maintain and/or use any product in accordance with the manufacturer's setup and assembly instructions, product manuals or other specifications.

WARNING

ALL PLAYGROUND PARTS AND EQUIPMENT SOLD BY SII ARE FOR USE ONLY BY CHILDREN, AND NOT BY ADULTS. ALL PARTS WITH PART NUMBERS ENDING IN "R" ARE FOR BACKYARD, RESIDENTIAL USE ONLY BY CHILDREN BETWEEN THE AGES OF 18 MONTHS TO 10 YEARS, AND UNDER 105 POUNDS OF WEIGHT. ALL PARTS WITH PART NUMBERS NOT ENDING IN "R" ARE FOR USE BY CHILDREN ONLY BETWEEN THE AGES OF 2 YEARS TO 12 YEARS, AND UNDER 125 POUNDS OF WEIGHT.

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INSTALLATION INTRODUCTION

MAINTENANCE

Surfacing should be checked regularly to ensure surfacing has not displaced significantly, particularly in areas of the playground most subject to displacement (heavy traffic areas). Displaced loose-fill surfacing should be raked back into proper place so that a constant depth is maintained throughout the playground area.

Key points to look for during regular checks of surfacing:

- Areas under swings and at slide exits. Activity in these areas tend to displace surfacing quickly. Rake loose-fill surfacing back in place.
- Pooling water on mulch surfacing. Wet mulch compacts faster than dry, fluffy mulch. If puddles are noticed regularly, consider addressing drainage issues.
- Frozen surfacing. Most loose-fill surfacing that freezes solid no longer functions as protective surfacing. Even if the first few inches are loose, the base layer may be frozen and the impact attenuation of the surfacing may be significantly reduced.

Playland does not manufacture loose-fill surfacing materials and is only providing the above information as an added measure of safety. Please contact the manufacturer of the surfacing for recommended maintenance and inspection requirements. The checklist on the following pages is intended to address general maintenance concerns. It does not provide a complete safety evaluation of the playground equipment such as risk of falls from equipment or moving impact incidents. Also, please be aware that playgrounds that are designed, installed and maintained in accordance with safety guidelines and standards can still present hazards to children in the absence of adequate supervision.



INSTALLATION INTRODUCTION**MAINTENANCE**

An inspection and maintenance program is a requirement of playground ownership. Whether you have multiple large facilities with numerous equipment or one piece of equipment or fall somewhere in between, it is your responsibility as a playground owner/operator to inspect and maintain your equipment. Because the safety of playground equipment and its suitability for use depend on good inspection and maintenance, a comprehensive maintenance program for each playground must be developed and strictly followed. All playground areas and equipment to be inspected frequently for potential hazards, paying special attention to moving parts and other components which can be expected to wear. Inspections should be carried out in a systematic manner by trained personnel familiar with the playground area, such as maintenance workers, playground supervisors, etc. Inspections alone do not constitute a comprehensive maintenance program. Any damaged or worn parts, or any other hazards identified during inspection must be repaired or replaced before allowing children to use the playground equipment.

Implementing an inspection and maintenance program is of the utmost importance and requires the full cooperation from the owner down to the playground supervisors. The importance of this program should be understood and supported by all members of administration, maintenance and the inspection staff as well as the playground supervisors. All information pertaining to the equipment should be kept on file (e.g., manufacturer of equipment, sales representative information, sales brochures, date of purchase, sales paperwork, shipping paperwork, drawings, bill of materials/packing list, installation instructions, date of installation, installer information, warranty information, etc. A record of any accident or injury reported to have occurred on the playground equipment should also be retained.).

The frequency of inspection and maintenance will be determined by several factors, such as the amount of use the equipment receives, the age of the children playing on the equipment, the age of the equipment and the area in which the equipment is installed. However, the more the equipment is inspected, the better the chances of finding and correcting any potential problems. A recorded inspection schedule should be adhered to and a copy signed and kept on file. New sites and equipment should be added to the inspection schedule. Training must be an ongoing commitment. The inspection report will serve as a report card against your audit and action plan. The audit will continue to play a major role in the inspection and maintenance program by measuring progress using statistics, actions taken and actions recommended.

We recommend that you enlist the services of a Certified Playground Safety Inspector to assist you with auditing your equipment and developing an inspection and maintenance plan to suit your individual needs. He or she will also be able to assist in the development of short term plans as well as long term plans in response to equipment that is broken, damaged, missing, vandalized, worn, etc.

The checklist on the following pages is intended to address general maintenance concerns. It does not provide a complete safety evaluation of the playground equipment such as risk of falls from equipment or moving impact incidents. Also, please be aware that playgrounds that are designed, installed and maintained in accordance with safety guidelines and standards can still present hazards to children in the absence of adequate supervision. If the checklist on the following pages meets your needs, please make several copies before marking on the pages. This checklist is yours to modify as you determine best for your equipment.



INSTALLATION INTRODUCTION

MAINTENANCE CHECKLIST

Surfacing

_____ Adequate protective surfacing under and around the equipment

_____ Install/replace/surfacing

_____ Surfacing materials have not deteriorated

_____ Replace surfacing

_____ Other maintenance: _____

_____ Surfacing materials contain no foreign objects or debris

_____ Remove trash and/or debris

_____ Loose-fill surfacing materials are not compacted

_____ Rake and fluff surfacing

_____ Loose fill surfacing materials have not been displaced under heavy use areas, such as under swings or at slide exits

_____ Rake and fluff surfacing

General Hazards

_____ There are no sharp points, corners or edges on the equipment

_____ There are no missing or damaged protective caps or plugs

_____ There are no hazardous protrusions

_____ There are no potential clothing entanglement hazards such as open S-hooks or protruding bolts

_____ There are no crush and shearing points on exposed moving parts

_____ There are no trip hazards such as exposed footings or anchoring devices and rocks, roots or any other obstacles in a use zone

_____ Recover exposed footings or anchoring devices

_____ Remove rocks, roots or other debris

Drainage

_____ The entire play area (inside equipment as well as surrounding area) has satisfactory drainage, especially in heavy use areas such as under swings or at slide exits

_____ Improve drainage

_____ Add drain holes

_____ Other maintenance: _____

Security of Hardware

_____ There are no loose fastening devices or worn connections

_____ Replace fasteners

_____ Other maintenance: _____

_____ Moving parts such as swing hangers, bearings and track rides are not worn

_____ Replace part

_____ Other maintenance: _____

General Upkeep of Playgrounds

_____ There are no user modifications to the equipment, such as strings or ropes tied to the equipment, swings looped over top rails, etc.

_____ Remove string or rope

_____ Correct other modification

_____ The entire playground area (inside equipment as well as surrounding area) is free from debris or litter such as tree branches, soda cans, bottles, animal feces, glass, etc.

_____ Clean playground area and remove debris

_____ There are no missing trash receptacles

_____ Replace trash receptacles

_____ Trans receptacles are not full

_____ Empty trash receptacles

_____ All play structures should have a legible Manufacturer's ID label installed.

_____ Install new label



INSTALLATION INTRODUCTION

MAINTENANCE CHECKLIST

Paint _____
Paint is not peeling, cracking, chipping or chalking
_____ Sand area and repaint with provided touch-up paint

Durability of Equipment _____
There is/are no rust, cracks, splits, splinters or any other
damage to the play equipment.
_____ Repair damage
_____ Order replacement part
_____ Other maintenance: _____

_____ There are no broken or missing components on the
equipment (e.g. handrails, guardrails, barriers, steps, rungs)
_____ Repair damage
_____ Order replacement part
_____ Other maintenance: _____

_____ There are no damaged fences, benches or signs on the
playground
_____ Repair damage
_____ Order replacement part
_____ Other maintenance: _____

_____ All equipment is securely anchored
_____ Anchor equipment

_____ Equipment is sturdy and not easily swayed
_____ Check equipment for signs of tilting and/or sinking by
checking alignment of major support posts, beams,
platforms, etc.

_____ Check windows/domes/bubbles/mirrors for signs of wear,
cracks or discoloration

Signature _____ Date _____

Action Taken _____

