



Asheboro City Schools

Request for Proposals

Purchasing Department

1126 S. Park Street

Asheboro, NC 27203

(336)625-5104

Direct All Inquiries To:

All questions are due by 2:00 PM on

July 27, 2022

147-PlaygroundEquip

Tammy Davidson

Bid Opening Date: 2:00 PM August 3, 2022

tdavidson@asheboro.k12.nc.us

Commodity: Playground Equipment

1.0 Description:

This Invitation for Bid is to obtain per unit pricing which includes playground equipment, shipping and installation. Asheboro City Schools intends to purchase new playground equipment for Charles W. McCrary Elementary School. There is also a line item for removal of old playground equipment and pebbles. Currently there are 3 separate play areas (see attached diagram). All equipment must meet the ASTM and CPSC safety standards. This equipment shall be accessible to the handicapped in accordance to State and Federal laws. A site visit is available by appointment.

1.1 Bid Specifications:

All equipment reflected in the bid must meet the specifications outlined in this section.

- Removal of old playground equipment, pebbles and borders.
- 4' x 12' Borders for mulch containment.
- Imperial Springs structure.
- 2 -Hold n Spin spinner.
- Mount Sinai Physical fitness unit.
- 2 - Sit n Spin.
- 2 – Whizzy Dizzy Spinner.
- 2 - 30' Embankment slide.
- Provide an estimated timeline of project

PRODUCT WARRANTY AND SUPPORT

All submitted bids must include a detail of what warranty and support is covered and for how long.

As part of the warranty bid detail, please respond to the following questions:

- How long is the warranty period and what type (Onsite – please be specific)?
- Who does the trouble-shooting (integrator or manufacturer)? How in depth or how many hours do ACS staff need to invest (if ACS staff are responsible for the diagnosis) before replacement is authorized (describe the process used when the equipment is not functioning as expected)?
- How long will it take before a support person is onsite (if Onsite Warranty is offered)?
- Assuming the piece of equipment is determined to be faulty and under warranty, who takes the equipment down for the return? Who pays for packaging and shipping? How much are the anticipated shipping costs in total for one return and service (one-way, round trip)?
- Once the warranty period expires, can an extended warranty be purchased

1.2 Evaluation of Criteria:

Responses will be evaluated on the following 100 point scale in relation to all qualified responses.

Proposal Total Cost	30 points
Quality of Materials & Aesthetics	25 points
Ability to meet requirements	20 points
Warranty	15 points

References & Successful Similar Projects 10 points

Total Points Available: 100 points

To be eligible for consideration, a Responder must meet the intent of all mandatory requirements.

2.0 Information for Responders

2.1 Purpose

All proposals and responses received shall be treated as offers to contract. In an effort to expedite the procurement process, Appendix A contains the Requestor's Contractual Terms and Conditions.

2.2 Communications

All communications between Responder and Requestor shall be through the Requestor's RFP contact (as listed on the cover of this RFP) and no other Requestor's employees or consultants. No negotiations, decisions, or actions shall be executed by any Responder as a result of any oral discussions with any Requestor's employees or consultants. General, non-technical questions will be accepted until the RFP submission deadline.

2.3 Scope of Response

Responder should include all hardware and software necessary to meet the requirements. ALL PRODUCTS AND SERVICES OFFERED MUST BE LATEST DESIGN AND TECHNOLOGY AND MOST CURRENT SERVICE LINES. All items offered must be new. Used and/or refurbished items are not acceptable for new purchases.

2.4 Required Content and Format of Response

Elaborate proposals in the form of brochures or other presentation materials beyond that necessary to present a complete, concise and effective proposal are not desired. The response shall have the following sections:

Letter of Transmittal

The response must be accompanied by a Letter of Transmittal and shall include the following information:

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax number, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax number, and e-mail address of the person authorized to negotiate the contract on behalf of the organization
- d. Identify the names, titles, telephone and fax number, and e-mail address of the person to be contacted for clarification; and
- e. Acknowledgement of receipt of any and all amendments to this RFP.

f. Hand-signed in ink by either:

- a. A current corporate officer, partnership member, or other individuals specifically authorized to submit a response as reflected in the appropriate records on file with the North Carolina Secretary of State; or
- b. An individual authorized to legally bind the Respondent as reflected by a corporate resolution, certificate or affidavit; or
- c. An individual with other documents indicating authority which are acceptable to the Requestor.

Section 1 – Technical Response

Provide the narrative of the proposed solution. Clearly state understanding of the business problem presented by this RFP and the response to mandatory and desired technical specifications in the exact order in which the performance criteria is presented in the RFP. The Responder should offer a complete listing of all Manufacturer Maintenance Plans available, by product category, to include but not necessarily be limited to: drop shipped advanced replacements of parts, software patches and revisions issued to resolve known defects or vulnerabilities, access to online and live body technical assistance, advanced replacement of parts which requires installation/software configuration support to facilitate replacement. The Responder may offer different discounts for manufacturer maintenance plans by product categories offered.

Section 2 – Proposal Cost

- A. Provide, in table format, a list of materials and services, quantity, list price, discounts, one-time costs or hourly rate, annual recurring costs, final cost. All response costs must be itemized.
- B. Provide a copy of the current warranty for each type of equipment and or service proposed.
- C. Provide an hourly rate schedule for any consultative, installation, configuration, or support services.

D. Section 3 –Background and Financials

- A. Provide a detailed description of Responder's firm, including all of the following:
 - a. Full name, Federal Tax Identification number, address, and telephone number of the organization.
 - b. Date established, state of incorporation (if applicable), and ownership.
 - c. Background of the organization.
 - d. Number of full-time employees as of January 1st for the last three years, or for the duration the firm has been in business, whichever is less.
- B. Provide evidence of financial stability, excluding tax returns and compiled statements. The Responder should provide a Comprehensive Report from Dun and Bradstreet, stating the financial condition and credit rating of the company. If unable to provide a Dun and Bradstreet report, the following may be substituted:
 - a. For a publicly traded company, Financial Statements for the past three (3) fiscal years must be submitted, including at a minimum, income statements, balance sheets, and statements of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If three (3)

years of statements are not available, Responder must explain the reasons why they are not available.

- b. For a privately held company, when certified audited financial statements are not prepared, a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition must be submitted. Alternatively, Responders may submit opinions of Certified Public Accountants, together with opinions of counsel for the past three (3) fiscal years.

Section 4 – References

This section shall include information on the Responder's organization, experience, and skills regarding the Responder's track record, reputation, and past performance that indicates the capabilities for the successful completion of this work. Responder must provide three (3) references of similar projects that are similar in scope indicating the Responder's capabilities to do this work with project descriptions, cost and other pertinent information, including contact information telephone numbers and email addresses. The Responder should provide links to the work described in the references.

Section 5 – Miscellaneous Documents

A. Conflict of Interest Statement

A Letter of Authorization from the manufacturer, on letterhead and signed by appropriate representative of the manufacturer, certifying the Respondent is an authorized manufacturer's representative and that an agreement exists between the Responder and manufacturer to supply the products specified in the response. This letter must reference this specific RFP by title.

B. Conflict of Interest Statement

a. Provide a statement verifying that no assistance in preparing the response was received from any current or former employee of the Requestor whose duties relate(d) to this RFP, unless such assistance was provided by the employee in his or her official capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP; and

b. State if any employee of the Responder is related by blood or marriage to a Requestor employee or resides with a Requestor employee. If there are such relationships, list the names and relationships, positions and responsibilities of said parties. C. Errata and Exceptions

Any errata or exceptions must be stated, with references to the corresponding terms or provisions of the RFP.

2.5 Alternative Responses

Responders are welcome to submit Alternative Responses that may provide a substantially different solution to the stated business need or offer alternative options. Alternative Responses must accompany an original response and be clearly marked as "Alternative Response".

2.6 Changes, Addenda, Withdrawals

Responders shall submit all changes or addenda to submitted proposals in writing, signed in original ink by an official representative of the Responder, with clear cross-referencing of relevant section(s), in a sealed

envelope prior to the RFP deadline. Responders may withdraw their response by providing written notice to the RFP response address.

2.7 Delivery Instructions

Three (3) copies in hard copy format, as well as an electronic version, in PDF format, on a CD or USB Flash memory labeled with the Responder's name, RFP title and description, and RFP date, shall be submitted before the posted deadline.

Sealed responses shall be delivered to the address as specified in the cover letter of this RFP before the posted deadline. Late submissions will not be accepted or opened and will be destroyed.

Appendix A: Contractual Terms and Conditions

1. **BEST VALUE.** Any contract resulting from this Request for Proposals shall be awarded to the Responder that submits the best overall proposal as determined by the Requestor in accordance with N.C.G.S. 143-129.8. The Requestor may negotiate with any Responder(s) in order to obtain a final contract that best meets the needs of the Requestor.
2. **VOLUNTARY.** All submissions by Responder are voluntary and become the property of the Requestor who is under no obligation to return or pay for the creation, development, or delivery of any of the material submitted by the Responder as a result of this RFP.
3. **RIGHTS RESERVED.** The Requester reserves the right to waive any formality; amend the solicitation; cancel or terminate this RFP; to reject any or all of the proposals submitted, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; noncompliance with the requirements or intent of this solicitation; waive any undesirable, inconsequential, or inconsistent provisions of this document which would not have significant impact on any proposal; if the response to this solicitation demonstrates a lack of competition, negotiate directly with one or more Responders; not award, or if awarded, terminate any contract if the Requestor determines adequate funds are not available; or any other determination that rejection would be in the best interest of the Requestor.
4. **NON-EXCLUSIVE CONTRACT.** This contract is non-exclusive and shall not in any way preclude the Requestor from entering into any similar contracts and/or arrangements with other Responders or from acquiring similar equal or like goods and/or service from other entities or sources.
5. **ASSIGNMENT.** The Responder shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous written consent of the Requestor. The Requestor reserves the right to declare the Responder in default and terminate the contract for cause. Responder shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Responder shall affirm that the assignee is fully capable of performing all obligations of Responder under this Contract. An assignment may be made, if at all, in writing by the Responder and Assignee setting forth the foregoing obligation of Responder and Assignee.
6. **INSURANCE COVERAGE.** Providing and maintaining adequate insurance coverage described herein is a material obligation of the Responder and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Responder shall at all times comply with the terms of such insurance policies, and all

requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Responder shall not be interpreted as limiting the Responder's liability and obligations under the Contract. The Responder(s) shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Comprehensive General Liability, Comprehensive Automobile Liability, and Workers Compensation in the following amounts and types:

- a. Comprehensive General Liability – Responder(s) to supply the Requestor with original certificates of General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- b. Comprehensive Automobile Liability – Responder(s) to supply the Requestor original certificates of insurance, to include liability coverage, covering all owned, hired and no owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- c. Workers' Compensation/Employers Liability Insurance - The Responder(s) shall furnish the Requestor with original certificates showing that all its employees who are engaged in any work under this Contract are protected under Worker's Compensation insurance policies with a limit no less than the minimum required by North Carolina state statutes. If any work is sublet, the Responder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract.

7. GENERAL INDEMNITY. The Responder shall hold and save the Requestor, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Responder shall be conditioned upon the following:

- a. The Requestor shall give Responder written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b. The Responder shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Requestor shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

8. INVOICE. Orders shall be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be submitted by the Responder upon presentation of properly executed invoice after goods have been received, inspected and accepted. Invoices shall be paid within 60 days or receipt of properly executed invoice, or receipt of goods, whichever is later.

PAYMENTS SHALL BE PAID TO RESPONDER(S) AT ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED.

9. FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT. Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and may not be disclosed except in very limited circumstances. The contractor shall ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The contractor is responsible for the actions of its employee and must take all precautions

necessary to ensure that no violations occur. Finally, access to personally identifiable student education information shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.

10. DEBARMENT. If any of the services rendered under this contract are to be paid with federal funds, the contractor hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
11. WARRANTIES: Responder shall assign all applicable third-party warranties for Deliverables to the Requestor.
12. PERSONNEL: Responder shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Requestor's Contract Administrator. Any desired substitution shall be noticed to the Requestor's Contract Administrator accompanied by the names and references of Responder's recommended substitute personnel. The Requestor will approve or disapprove the requested substitution in a timely manner. The Requestor may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Requestor may request acceptable substitute personnel or terminate the contract services provided by such personnel.
13. SUBCONTRACTING: The Responder may subcontract the performance of required services with other Responders or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Responder shall provide the Requestor with complete copies of any agreements made by and between Responder and all subcontractors. The selected Responder remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Responder. Any contracts made by the Responder with a subcontractor shall include an affirmative statement that the Requestor is an intended third-party beneficiary of the contract; that the subcontractor has no agreement with the Requestor; and that the Requestor shall be indemnified by the Responder for any claim presented by the subcontractor. Notwithstanding any other term herein, Responder shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
14. RESPONDER'S REPRESENTATION: Responder warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Responder agrees that it will not enter any agreement with a third party that might abridge any rights of the Requestor under this Contract. Responder will serve as the prime Responder under this Contract. Should the Requestor approve any subcontractor(s), the Responder shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Responders or subcontractors of Responder may appear for purposes of convenience in Contract documents; and shall not limit Responder's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Responder. Responder will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
15. REGISTERED SEX OFFENDERS: Responder acknowledges that Requestor's "Registered Sex Offenders" policy prohibits anyone registered or required to register as a sex offender from being present on any Requestor property for any reason, whether before, during or after school hours, or on or off of Requestor's property. Responder expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from Requestor's property by Requestor and/or law enforcement officials and may also be subject to criminal prosecution. If Responder, any of Responder's employees, or any of Responder's subcontractors or employees of subcontractors will have any direct interaction with students, then Responder or the subcontractor must (i)

on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on Requestor property.

16. TRAVEL EXPENSES: If expressly authorized in the contract Responder may be reimbursed for travel expenses arising under the performance of this Contract at the rates set forth in GS §138-6; as amended from time to time. Responder agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Responder incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the Requestor within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the Requestor. The Requestor will reimburse travel allowances only for days on which the Responder is required to be in North Carolina performing services under this Contract.
17. GOVERNMENTAL RESTRICTIONS: In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Responder shall provide written notification of the necessary alteration(s) to the Requestor Contract Administrator. The Requestor reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The Requestor may advise Responder of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the Requestor. In such event, Responder shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the Requestor, the Requestor may terminate this Contract and compensate Responder for sums due under the Contract.
18. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: Responder warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Requestor for the purpose of obtaining any contract or award issued by the Requestor. Responder further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the Requestor, except as shall have been expressly communicated to the Requestor's Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Responder and their authorized signatory further warrant that no officer or employee of the Requestor has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the Requestor of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Responder(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.
19. AVAILABILITY OF FUNDS: Any and all payments to Responder are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Requestor for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Requestor's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years, subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds from which payment can be made for the purposes set forth in the Contract. If funds to effect payment are not available, the Requestor will provide written notification to Responder. If the Contract is terminated under this paragraph, Responder agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Requestor under this Contract, and relieve the

Requestor of any further obligation thereof. The Requestor shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

20. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Requestor. The Requestor is responsible for all payments under the Contract
21. **ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the Requestor shall have the obligation to notify Responder, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the Requestor shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the Requestor may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Responder fails to promptly cure the defect or replace the Deliverables, the Requestor reserves the right to cancel the Purchase Order, contract with a different Responder, and to invoice the original Responder for any differential in price over the original Contract price. When Deliverables are rejected, the Responder must remove the rejected Deliverables from the premises of the Requestor within seven (7) calendar days of notification, unless otherwise agreed by the Requestor. Rejected items may be regarded as abandoned if not removed by Responder as provided herein.
22. **EQUAL EMPLOYMENT OPPORTUNITY:** Responder shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
23. **INSPECTION AT RESPONDER'S SITE:** The Requestor reserves the right to inspect, during Responder's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Responder prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
24. **ADVERTISING / PRESS RELEASE:** The Responder absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the Requestor.
25. **CONFIDENTIALITY:** All responses to this RFP become a matter of public record at the time of award. In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the competitive bidding process, the Requestor may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Responder may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Responder warrants that it has formed a good faith opinion that, having received such necessary or proper review by counsel and other knowledgeable advisors, the portions marked confidential meet the requirements

of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The Requestor may serve as custodian of Responder's confidential information and not as an arbiter of claims against Responder's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the Requestor to disclose information marked confidential, the Responder agrees that it will intervene in the action through its counsel and participate in defending the Requestor, including any public official(s) or public employee(s). The Responder agrees that it shall hold the Requestor and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the Requestor in the action. The Requestor agrees to promptly notify the Responder in writing of any action seeking to compel the disclosure of Responder's confidential information. The Requestor shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Requestor shall have no liability to Responder with respect to the disclosure of Responder's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law. If an entire response is marked confidential or trade secret, it will be disqualified from consideration.

26. CARE OF INFORMATION: Responder agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the Requestor during performance of any contractual obligation from loss, destruction or erasure. Responder warrants that all its employees and any approved third-party Responders or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Responder will, upon request of the Requestor, verify and produce true copies of any such agreements. Production of such agreements by Responder may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Responder produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The Requestor may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the Requestor for Responder's execution. The Requestor may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security

Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Requestor pursuant to future statutory or regulatory requirements.

27. NONDISCLOSURE: Responder agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the Requestor.

28. DELIVERABLES: Deliverables, as used herein, shall comprise all project materials, including goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the Requestor. Proprietary Responder materials licensed to the Requestor shall be identified to the Requestor by Responder prior to use or provision of services hereunder and shall remain the property of the Responder. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed non exclusively to the Requestor, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

29. LATE DELIVERY, BACK ORDER: Responder shall advise the Requestor's contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place

specified. Together with such notice, Responder shall state the projected delivery time and date. In the event the delay projected by Responder is unsatisfactory, the Requestor shall so advise Responder and may proceed to procure substitute Deliverables or services.

30. PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:

- a. Responder has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the Requestor, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general-purpose consulting and software tools, utilities and routines (collectively, the "Responder Technology"). To the extent that any Responder Technology is contained in any of the Deliverables including any derivative works, the Responder hereby grants the Requestor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Responder Technology in connection with the Deliverables for the Requestor's purposes.
- b. Responder shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the Requestor to Responder. The Requestor hereby grants Responder a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Responder's internal use to non-confidential Deliverables first originated and prepared by the Responder for delivery to the Requestor.
- c. The Responder, at its own expense, shall defend any action brought against the Requestor to the extent that such action is based upon a claim that the services or Deliverables supplied by the Responder, or the operation of such Deliverables pursuant to a current version of Responder supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Responder shall pay those costs and damages finally awarded against the Requestor in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Responder shall be notified within a reasonable time in writing by the Requestor of any such claim; and,
 - ii. That the Responder shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the Requestor shall have the option to participate in such action at its own expense.
- d. Should any services or software supplied by Responder, or the operation thereof become, or in the Responder's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the Requestor shall permit the Responder, at its option and expense, either to procure for the Requestor the right to continue using the goods/hardware or software, or to replace or modify the same to become non infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the Requestor shall be prevented by injunction, the Responder agrees to take back such goods/hardware or software, and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage and make every reasonable effort to assist the Requestor in procuring substitute Deliverables. If, in the sole opinion of the Requestor, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Responder under this Contract impractical, the Requestor shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Responder agrees to take back such Deliverables and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage.

e. Responder will not be required to defend or indemnify the Requestor if any claim by a third party against the Requestor for infringement or misappropriation (i) results from the Requestor's alteration of any Responder-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f. Nothing stated herein, however, shall affect Responder's ownership in or rights to its pre existing intellectual property and proprietary rights.

31. **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C. General Statute 147-64.7, the Requestor, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Responder insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency or political subdivision of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Responder shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency or political subdivision, if in the Agency's or political subdivision's opinion, such requirement is imposed by federal or state law or regulation (e.g. "E-Rate" is five (5) years after the completion of the contract).

32. **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Responder shall be submitted in writing to the Requestor's Contract Administrator for decision.

A claim by the Requestor shall be submitted in writing to the Responder's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

33. **DEFAULT:** In the event any Deliverable furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the Requestor and if the failure is not cured within ten (10) days, or Responder fails to meet the requirements of ACCEPTANCE CRITERIA herein, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" and the obligation to informally resolve disputes as provided in "DISPUTE RESOLUTION" of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The Requestor reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Responder without expense to the Requestor. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

If Responder fails to deliver Deliverables within the time required by this Contract, the Requestor may provide written notice of said failure to Responder, and by such notice require payment of a penalty.

Should the Requestor fail to perform any of its obligations upon which Responder's performance is conditioned, Responder shall not be in default for any delay, cost increase or other consequences due to the Requestor's failure. Responder will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Responder's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Requestor shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

Responder shall provide a plan to cure any default if requested by the Requestor. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Responder may deem necessary or proper to provide.

34. **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Requestor and the Responder, and made as an amendment to this Contract pursuant to Paragraph "CHANGES" herein below.

35. **TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Contract by written agreement at any time. The Requestor may terminate this Contract, in whole or in part, pursuant to Paragraph "DEFAULT", or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

a. **TERMINATION FOR CAUSE:** In the event any goods, software, or service furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Responder, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" herein. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Responder shall not be relieved of liability to the Requestor for damages sustained by the Requestor arising from Responder's breach of this Contract; and the Requestor may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Responder shall be cause for termination.

b. **TERMINATION FOR CONVENIENCE WITHOUT CAUSE:** The Requestor may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Responder. Responder shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Requestor, the Requestor will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

36. **LIMITATION OF RESPONDER'S LIABILITY:** a. Where Deliverables are under the Requestor's exclusive management and control, the Responder shall not be liable for direct damages caused by the Requestor's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Requestor's intended use of the Deliverables. b. The Responder's liability for damages to the Requestor for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. c. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Responder's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

37. RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. The Responder shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the Requestor, employees of the Requestor, persons designated by the Requestor for training, or person(s) other than agents or employees of the Responder, designated by the Requestor for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Responder's site or at the Requestor's place of business, provided that the injury or damage was caused by the fault or negligence of the Responder.
- b. The Responder agrees to indemnify, defend and hold the Requestor and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Responder, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c. Responder shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Responder, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Responder's goods.

38. CHANGES: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Responder are hereby rejected unless accepted in writing by the Requestor. The Requestor shall not be responsible for Deliverables or services delivered without a purchase order from the Requestor.

39. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Contract.

40. INDEPENDENT CONTRACTORS: Responder and its employees, officers and executives, and subcontractors, if any, shall be independent contractors and not employees or agents of the Requestor. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

41. TRANSPORTATION: Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Requestor. In cases where parties, other than the Responder ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

42. NOTICES: Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

43. TITLES AND HEADINGS: Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

44. AMENDMENT: This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Requestor and Responder.

45. TAXES: The Requestor is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Responder or for any taxes levied on employee wages. Agencies or political subdivisions of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Responder by Agencies or political subdivision, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

46. GOVERNING LAWS, JURISDICTION, AND VENUE:

a. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Randolph County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Responder agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Randolph County shall be the proper venue for all matters.

b. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

47. FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

48. COMPLIANCE WITH LAWS: The Responder shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

49. SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

50. FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the Requestor shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

51. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. THIS CONTRACT, IF FEDERAL FUNDING IS USED, IS A COVERED TRANSACTION FOR PURPOSES OF 2 C.F.R. §200.216. RECIPIENTS AND SUBRECIPIENTS ARE PROHIBITED FROM OBLIGATING OR EXPENDING LOAN OR GRANT FUNDS TO:

a. Procure or obtain.

- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of Critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also §200.471.

52. Federal Funds: The following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as may be applicable):

- a. Equal Employment Opportunity (41 C.F.R. Part 60);
- b. Davis-Bacon Act (40 U.S.C. 3141-3148);
- c. Copeland "Anti-Kickback" Act (40 U.S.C. 3145);
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708);
- e. Clean Air Act (42 U.S.C. 7401-76711q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387);
- f. Debarment and Suspension (Executive Orders 12549 and 12689);
- g. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
- h. Procurement of Recovered Materials (2 C.F.R. § 200.322);
- i. Record Retention Requirements (2 C.F.R. § 200.324); and
- j. Solid Waste and Disposal Act (42 U.S.C. 6002).

Playground #1- 1800 square feet.
Gravel is approx. 2" thick. This is approximately 11 cubic yd. of gravel.

30 Ft.



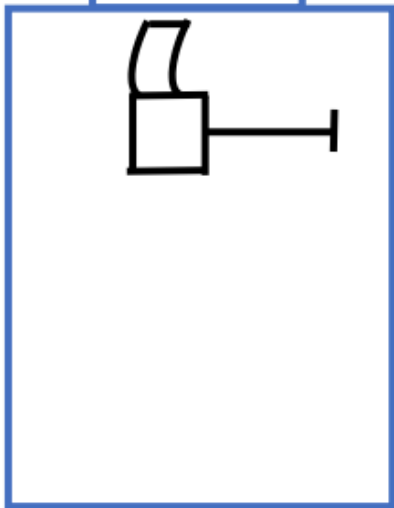
60 Ft.

Playground #2- 2750 square feet.
Gravel is approx. 6" thick. This is approximately 51 cubic yd. of gravel.

30 Ft.



25 Ft.



50 Ft.

40 Ft.

Playground #3- Approx. 6614 square feet. Gravel is approx. 2" thick. This is approximately 41 cubic yd. of gravel.

