Recreation Consultants of Texas
CUSTOM COMMERCIAL PLAYGROUNDS
11660 Plano Road
Dallas, TX 75243
(214) 503-7320
(214) 341-1221 fax

PROPOSAL

Date	Estimate #
5/26/2008	RCT3081

Name / Address
City of San Antonio 500 Houston Street San Antonio, TX

P.O. No.	Terms	Rep	FOB	Project	Ship Via
	Net 15 Ship Date	TE	San Antonio	5 Park Project	Truckload

Qty	Item #	Description	Unit Price	Unit Wt.	Total ...	Total
		*** US COMMUNITIES PURCHASE. PURCHASE ORDER WILL BE MADE OUT DIRECTLY TO LANDSCAPE STRUCTURES, INC., 601 7TH ST S, DELANO, MN 55328-0198. PLAY EQUIPMENT WILL BE INVOICED WHEN SHIPPED. DISCOUNT BASED ON PURCHASING ALL FIVE PARKS ON A SINGLE PURCHASE ORDER. PLEASE CALL FOR REVISED PRICING IF PURCHASING PARKS SEPARATELY.*** *** IMPORTANT FREIGHT NOTE: FREIGHT RATES ARE CHANGING RAPIDLY DUE TO INSTABILITY IN THE OIL INDUSTRY. QUOTED FREIGHT RATES ARE VALID FOR 30 DAYS. PLEASE CONFIRM FREIGHT RATES IF ORDERING MORE THAN 30 DAYS AFTER THE DATE OF THIS PROPOSAL. FREIGHT RATE IS BASED UPON SHIPPING TWO PARKS TOGETHER OR EACH PARK WITH ANOTHER LOAD COMING TO THE SAME GENERAL AREA.*** *** COLLINS GARDEN PARK ***				
1	PlayBooster	Custom Designed Modular Play Structure # 23049-1-3, ages 5-12, surface mount	30,767.00	3551	3551	30,767.00
2	Independents	Saddle Spinner # 152179A, surface mount	730.00	36	72	1,460.00
1	Independents	Single Post Swing w/2 Belt & 2 Full Bucket Seats, direct bury	1,975.00	386	386	1,975.00
2	Independents	6' TenderTuff Coated Bench w/Back # 141683B, surface mount	365.00	119	238	730.00
		Equipment Subtotal				34,932.00

	Subtotal
1.5% FINANCE CHARGE PER MONTH IF PAYMENT RECEIVED AFTER DUE DATE.	**Sales Tax (0.0%)**
SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER & ACCEPTANCE OF ALL NOTES, TERMS, FINANCE CHARGES, AND CONDITIONS.	**Total**

Signature _____

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	Net 15 Ship Date	TE	San Antonio	5 Park Project	Truckload

Qty	Item #	Description	Unit Price	Unit Wt.	Total ...	Total
	Discount	US Communities Discount	-2,794.56			-2,794.56
	Freight	Freight	1,750.56			1,750.56
		Subtotal - Freight				1,750.56
		*** TOTAL - COLLINS GARDEN PARK w/US COMMUNITIES DISCOUNT & FREIGHT: $33,888.00 ***				
		*** PERSHING PARK ***				
1	PlayBooster	Custom Designed Modular Play Structure # 23050-1-1, ages 5-12, surface mount	35,145.00	4318	4318	35,145.00
2	Independents	Saddle Spinner # 152179A, surface mount	730.00	36	72	1,460.00
1	Independents	Single Post Swing w/2 Belt & 2 Full Bucket Seats, direct bury	1,975.00	386	386	1,975.00
2	Independents	92" TenderTuff Bench w/Back # 141683F, surface mount	385.00	136	272	770.00
		Subtotal - Equipment				39,350.00
	Discount	US Communities Discount	-3,148.00			-3,148.00
	Freight	Freight	1,750.00			1,750.00
		Subtotal - Freight				1,750.00
		*** TOTAL - PERSHING PARK w/US COMMUNITIES DISCOUNT & FREIGHT: $37,952.00 ***				
		*** SKYLINE PARK ***				
1	PlayBooster	Custom Designed Modular Play Structure # 23052-1-1, ages 5-12, surface mount	35,236.00	4107	4107	35,236.00
1	Independents	Single Post Swing w/2 Belt & 2 Full Bucket Seats, direct bury	1,975.00	386	386	1,975.00
1	Independents	92" TenderTuff Bench w/Back # 141683F, surface mount	385.00	136	136	385.00

	Subtotal
1.5% FINANCE CHARGE PER MONTH IF PAYMENT RECEIVED AFTER DUE DATE.	**Sales Tax (0.0%)**
SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER & ACCEPTANCE OF ALL NOTES, TERMS, FINANCE CHARGES, AND CONDITIONS.	**Total**

Signature _____

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	Net 15 Ship Date	TE	San Antonio	5 Park Project	Truckload

Qty	Item #	Description	Unit Price	Unit Wt.	Total ...	Total
		Subtotal - Equipment				37,596.00
	Discount	US Communities Discount	-3,007.68			-3,007.68
	Freight	Freight	1,750.68			1,750.68
		Subtotal - Freight				1,750.68
		*** TOTAL - SKYLINE PARK w/US COMMUNITIES DISCOUNT & FREIGHT: $36,339.00 ***				
		*** OLYMPIA PARK ***				
1	PlayBooster	Custom Designed Modular Play Structure # 22641-1-3, ages 5-12, surface mount	37,003.00	4428	4428	37,003.00
1	Independents	Stand-UP Spinner # 155077A, direct bury	1,035.00	60	60	1,035.00
1	Independents	Single Post Swing w/2 Belt & 2 Full Bucket Seats, direct bury	1,975.00	386	386	1,975.00
2	Independents	6' TenderTuff Coated Bench w/Back # 141683B, surface mount	365.00	119	238	730.00
		Subtotal - Equipment				40,743.00
	Discount	US Communities Discount	-3,259.44			-3,259.44
	Freight	Freight	1,750.44			1,750.44
		Subtotal - Freight				1,750.44
		*** TOTAL - OLYMPIA PARK w/US COMMUNITIES DISCOUNT & FREIGHT: $39,234.00 ***				
		*** WINDSOR PARK ***				
1	PlayBooster	Custom Designed Modular Play Structure # 22870-1-3, ages 5-12, surface mount	42,816.00	4676	4676	42,816.00
2	Independents	Saddle Spinner # 152179A, surface mount	730.00	72	144	1,460.00
1	Independents	Single Post Swing w/2 Belt & 2 Full Bucket Seats, direct bury	1,975.00	386	386	1,975.00

	Subtotal
1.5% FINANCE CHARGE PER MONTH IF PAYMENT RECEIVED AFTER DUE DATE.	**Sales Tax (0.0%)**
SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER & ACCEPTANCE OF ALL NOTES, TERMS, FINANCE CHARGES, AND CONDITIONS.	**Total**

Signature _____

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Qty	Item #	Description	Unit Price	Unit Wt.	Total ...	Total
2	Independents	92" TenderTuff Bench w/Back # 141683F, surface mount	385.00	136	272	770.00
		Subtotal - Equipment				47,021.00
	Discount	US Communities Discount	-3,761.68			-3,761.68
	Freight	Freight	1,750.68			1,750.68
		Subtotal - Freight				1,750.68
		*** TOTAL - WINDSOR PARK w/US COMMUNITIES DISCOUNT & FREIGHT: $45,010.00 ***				
		FOR YOUR INFORMATION: Recreation Consultants of Texas, LLC is certified by NCTRCA as a WBE with certificate # WFWB37539N0509.				
		INSTALLATION NOTE: THE ABOVE PRICES DO NOT INCLUDE INSTALLATION unless otherwise noted. If an installation quote is not attached, please request one from Custom Swings of Texas (CST) at 214-341-4040 if necessary. CST is a Certified Installer for Landscape Structures, Inc. CST WILL INVOICE SEPARATELY FOR THESE SERVICES!				

Subtotal	$192,423.00
Sales Tax (0.0%)	$0.00
Total	$192,423.00

1.5% FINANCE CHARGE PER MONTH IF PAYMENT RECEIVED AFTER DUE DATE.

SIGNATURE BELOW ACCEPTING THIS PROPOSAL WILL CONSTITUTE A PURCHASE ORDER & ACCEPTANCE OF ALL NOTES, TERMS, FINANCE CHARGES, AND CONDITIONS.

Signature _____

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT NO. 040377

MASTER PURCHASE AGREEMENT

This Master Purchase Agreement (the "Agreement") is entered into as of this 17th day of September 2003 (the "Effective Date"), by and between Landscape Structures, Inc. (the "Supplier"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

Statement of Background and Intent

A. The County issued a "Request for Proposals for Park and Playground Equipment, Surfacing, Site Furnishings and Related Commodities and Services" Number 269-2003-077, dated April 21, 2003 requesting proposals from qualified firms to provide the County and other Participating Public Agencies with Playground Equipment and Related Commodities and Services, hereafter referred to as ("Equipment"). This Request for Proposals, together with all Exhibits, Appendices and Addenda, is referred to herein as the "RFP".

B. In response to the RFP, the Supplier submitted to the County a proposal dated August 12, 2003. This proposal, together with all attachments and any separately sealed confidential trade secrets, is referred to herein as the "Proposal."

C. The County and the Supplier have negotiated and now desire to enter into an Agreement for the Supplier to provide Playground Equipment to the County in accordance with the terms and conditions set forth herein.

D. Charlotte-Mecklenburg (herein "Lead Public Agency"), in cooperation with the U.S. Communities Purchasing & Finance Agency (herein "U.S. Communities"), and on behalf of other public agencies that elect to access the Master Agreement (herein "Participating Public Agencies"), competitively solicited and awarded the Master Agreement to Supplier. Lead Public Agency has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Master Agreement to Participating Public Agencies. Supplier shall sign and return to U.S. Communities the Administration Agreement attached hereto and incorporated herein as Exhibit E.

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

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

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

AGREEMENT

1. **INCORPORATION OF EXHIBITS.**
The parties acknowledge and agree that the following Exhibits are hereby incorporated into and made a part of this Agreement by reference:

Exhibit A:	Contract Pricing and Discounts
Exhibit B:	Pricing Incentives
Exhibit C:	Supplier's Proposal
Exhibit D:	Product Warranties
Exhibit E:	U.S. Communities Administrative Agreement
Exhibit F:	RFP #2003-057
Exhibit G:	State-by-State Shipping Calculator
Exhibit H	Installation Fees
Exhibit I:	Certified Installers List

Any conflict between language in an Exhibit to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

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

2.1. "AFFILIATES" shall mean all departments or units of the County, Charlotte-Mecklenburg Schools and all other public agencies.

2.2. "AGREEMENT" shall mean this Agreement including all Attachments and Exhibits, Mecklenburg County's RFP No. 269-2003-077, all subsequent Addenda issued in connection with the RFP, the Supplier's proposal dated August 12, 2003 in response to the RFP as referenced and incorporated herein as though fully set forth.

2.3. "DELIVERABLES" shall mean all designs, plans, drawings, equipment and all other work product which the Supplier is required to complete and deliver to the County in connection with this Agreement.

2.4. "EFFECTIVE DATE" refers to the date this Agreement is fully executed by all parties to the Agreement.

2.5. "PARK & RECREATION" refers to the Mecklenburg County Park and Recreation Department.

2.6. PRODUCTS: The term "Products" shall mean the park and playground equipment, surfacing materials, site furnishings and related items and services to be provided by the Supplier as identified and described in this Agreement, including Exhibits.

2.7. PROJECT: The term "Project" refers to individual County and participating public agencies requirements for Park and Playground Equipment.

2.8. "PARTICIPATING PUBLIC AGENCY" shall mean any all government agencies, except Federal, that have the authority to purchase from another public agency's competitively solicited contract including Counties, Cities, Towns, Villages, Special Districts, Public Schools, Community Colleges, Universities, State Agencies and Non profit agencies providing services on behalf of government agencies.

2.9. SERVICES: The term "Services" shall include all services that the Supplier provides or is required to provide under this Agreement.

2.10. SPECIFICATIONS AND REQUIREMENTS. The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Products and Services that are set forth or referenced in this Agreement, including the Exhibits.

3. TERM.

The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment signed by both parties.

4. DESCRIPTION OF GOODS AND SERVICES.

The Supplier shall provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Commodities and Services per bid specifications and in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in this Agreement.

5. CONTRACT PRICING.

5.1 The County agrees to pay the Supplier for materials, supplies, equipment, apparatus and services delivered in accordance with the terms and conditions of this Agreement based on a fixed percentage discount from the current manufacturer's price index as identified and incorporated into this Agreement as Exhibit A.

5.2 The Supplier agrees the fixed percentage discount will remain firm for entire contract term.

5.3 The Supplier shall advise the Charlotte-Mecklenburg Procurement Services Department in writing of any proposed price increases no later than January 1st of each year. The County agrees to accept proposed price increases on Skatewave™ products no later than March 31, 2004 for the initial term only. The Supplier must provide documented evidence of material and labor price increases that directly impact current equipment prices. No adjustments shall be made to compensate a Supplier for inefficiency in operation, quantity of product ordered, or for additional profit.

5.4 Mecklenburg County reserves the right to review the revised pricing structure and amend this Agreement if such is in the best interest of the County or cancel this Agreement with a thirty (30) day written notice should changes in price be unacceptable.

5.5 The Supplier shall be responsible for furnishing and delivering approved price lists and most current catalogs to the County and other participating public entities.

5.6 The Supplier agrees that if a public agency is otherwise eligible for lower pricing through a federal, state, regional or local contract, the Supplier will match the pricing.

6. SHIPPING AND HANDLING.

All orders shall be shipped F.O.B. Destination and the Supplier shall be responsible for any damage or loss in transit. The County and Participating Public Agencies shall have the following shipping options:

6.1 Calculate freight based on the state-by-state shipping calculator provided in Exhibit G. Shipping charges are listed in weight and distance categories to assist in determining actual shipping fees.

6.2 Allow the Supplier to ship on a Freight Prepaid and Added basis with the carrier's actual charges added to the invoice for the goods, supported by copies of the applicable freight bills; or

6.3 Designate carrier and shipping arrangements at the discretion of the Participating Public Agency. This option will release the Supplier from any liability for damages or loss in transit. The Participating Public Agency will submit payment for shipping charges and all damage or loss claims directly to the carrier.

7. INSTALLATION, MAINTENANCE AND SAFETY INSPECTIONS.

All equipment shall be installed according to the standards established by the terms, specifications, drawings, and construction notes for each project and meet manufacturer's specifications and industry standards. The County and Participating Public Agencies shall be responsible for contracting installation services on a project-by-project basis as needed:

a. With the Supplier based on installation charges included as Exhibit H; or
b. With local certified installer from Supplier's approved list included as Exhibit; or
c. The County and Participating Public Agencies reserve the right to self perform installation of any or all equipment.

The Supplier agrees to work closely with certified local installers to ensure products are properly installed.

8. INVOICES.

Each invoice sent by the Supplier shall detail all Services and Deliverables performed and delivered which are necessary to entitle the Supplier to the requested payment under the terms of this Agreement. The Supplier shall mail all invoices to:

Angela Horton
Park and Recreation
5841 Brookshire Blvd.
Charlotte, NC 28216
Phone: 704.336.8466

The County will pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt. Proposals may include an incentive discount for early payment. Invoices must include state and local sales tax. In no event shall the County be liable for any late fees or charges. The County and the Supplier will jointly agree on the format of a detailed report.

9. WARRANTY AND PRODUCT COMPLIANCE.

9.1 All equipment provided to the County must be new, unused and meet all CPSC, ADA and ASTM Standards and other laws and requirements regarding playground equipment in the state of North Carolina or in accordance with the laws and applicable purchasing policies of the State and locality where the Participating Agency exists.

9.2 Supplier warrants that if any components of the products fail due to defects in workmanship or materials, within one year from date of delivery, Supplier will repair or replace, free of charge, all parts found defective. In addition, limited warranties apply from date of delivery for products and components per product warranty statement included as Exhibit D.

10. GENERAL WARRANTIES.

Supplier represents and warrants that:

10.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;

10.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

10.3 The execution, delivery, and performance of this Agreement have been duly authorized by Supplier;

10.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;

10.5 In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

10.6 The Supplier shall not violate any agreement with any third party by entering into or performing this Agreement.

11. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

Supplier represents, warrants and covenants that:

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

11.2 All work performed by the Supplier and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

11.3 Neither the Services, nor any Deliverables provided by the Supplier under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

11.4 The Supplier has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Agreement by virtue of interruptions in the computer systems used by the Supplier.

12. TERMINATION.

12.1 Termination Without Cause.
The County may terminate this Agreement at any time without cause by giving thirty (30) days prior written notice to the Supplier.

12.2 Termination for Default by Either Party.
By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

b. The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due,

files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

12.3 Additional Grounds for Default Termination by the County.
By giving written notice to the Supplier, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

a. The Supplier makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Supplier's proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

b. The Supplier takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

12.4 No Suspension.
In the event that the County disputes in good faith an allegation of default by the Supplier, notwithstanding anything to the contrary in this Agreement, the Supplier agrees that it will not terminate this Agreement or suspend or limit the Services unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

12.5 Cancellation of Orders and Subcontracts.
In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Supplier shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Supplier shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

12.6 Authority to Terminate.
The Director of Mecklenburg County Park and Recreation Department is authorized to terminate this Agreement on behalf of the County.

12.7 No Effect on Taxes, Fees, Charges, or Reports.
Any termination of this Agreement shall not relieve the Supplier of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Supplier of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Supplier from any claim for damages previously accrued or then accruing against the Supplier.

12.8 Other Remedies.
Upon termination of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedies.

13. AUDIT.

The Supplier shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Supplier in connection with this Agreement, to ensure the Supplier's compliance with all the terms and conditions of this Agreement or the County's payment obligations.

14. SUPPLIER WILL NOT SELL OR DISCLOSE DATA.

The Supplier will treat as Confidential Information all data provided by the County in connection with this Agreement. County data processed by the Supplier shall remain the exclusive property of the County. The Supplier will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this Agreement.

15. COMPLIANCE WITH LAWS AND CODES.

The Supplier shall ensure that the Services are in compliance with all local, state and federal laws and regulations. In performing the Services, the Supplier shall comply with all local, state and federal laws and regulations.

16. WORK ON COUNTY'S PREMISES.

The Supplier will ensure that its employees and agents shall, whenever on the County's premises, shall obey all instructions and directions issued by the County with respect to work on the County's premises. The Supplier agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.

The Supplier shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Supplier or employees, subcontractors or agents of the Supplier. Such repairs shall be made immediately, but in no event later than thirty (30) days after the occurrence.

If Supplier fails to make timely repairs, the County may make any necessary repairs. All costs incurred by the County for such repairs, as determined by the County, shall be reimbursed by the Supplier by cash payment upon demand or County may deduct such cost from any amounts due to the Supplier from the County.

17. RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other. The Supplier shall be fully and solely responsible for its own acts and omissions and those of its employees, officers, agents and subcontractors. All personnel supplied by Supplier subcontractors shall be considered employees or agents of Supplier. The Supplier shall be responsible for the payment of all salaries, withholding taxes, worker's compensation, disability benefits and other compensation and related taxes for such persons.

18. INDEMNIFICATION.

The Supplier shall indemnify, defend and hold harmless the County and the County's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) that arise directly or indirectly from:

18.1 any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Supplier in connection with this Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");

18.2 any act(s) of negligence or willful misconduct by the Supplier or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal;

18.3 any acts or omissions of the Supplier with respect to the Services or any of the products or services provided by the Supplier under this Agreement (or any allegations of any of the foregoing);

18.4 any claims by any persons or entities supplying labor or material to the Supplier in connection with the performance of the Supplier's obligations under this Agreement.

If an Infringement Claim occurs, the Supplier shall either: (i) procure for the County the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the Services or any component thereof shall not be adversely affected by such replacement or modification.

19. SUBCONTRACTING.

Should the Supplier choose to subcontract, the Supplier shall be the prime contractor and shall remain fully responsible for performance of all obligations, which it is required to perform under this Agreement. Any subcontract entered into by Supplier shall name the County as a third party beneficiary.

20. INSURANCE.

20.1 Types of Insurance

The Supplier shall obtain and maintain during the life of the Agreement, with an insurance Supplier rated not less than A by A.M. Best, authorized to do business in the State of North Carolina the following insurance:

Automobile Liability.
Successful Supplier shall be required to provide proof of bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than $1,000,000 bodily injury each person, each accident and $1,000,000 property damage, or $1,000,000 combined single limit each occurrence/aggregate.

Commercial General Liability.
Successful Supplier shall be required to provide proof of bodily injury and property damage liability as shall protect the contractor and any sub-contractor performing work under this contract from claims of bodily injury or property damage which arise from operation of services described in this RFP whether such operations are performed by contractor, any sub-contractor or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than $1,000,000 bodily injury each occurrence/aggregate and $1,000,000 property damage each occurrence/aggregate or $1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability assumed under the indemnity provision in Section 28 of this contract.

The County shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this contract.

Worker's Compensation and Employers Liability.
Meeting the statutory requirements of the State of North Carolina and Employers Liability - $100,000 per accident limit, $500,000 disease per policy limit, $100,000 disease each employee limit, providing coverage for employers and owners.

The Supplier shall not commence any work in connection with this Agreement until it has obtained all of the foregoing types of insurance and the County has approved proof of such insurance. The Supplier shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

20.2 Other Insurance Requirements.
The County shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Supplier and/or subcontractor providing such insurance.

The County shall be named as an additional insured for operations or services rendered under the general liability coverage. The Supplier's insurance shall be primary of any self-funding and/or insurance otherwise carried by the County for all loss or damages arising from the Supplier operations under this agreement.

Certificates of such insurance will be furnished to the County and shall contain the provision that the County be given thirty (30) days written notice of any intent to amend or terminate by either the insured or the insuring Supplier.

Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished.

If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Agreement, provided that types and amounts of insurance to be maintained by each subcontractor shall be adjusted to an amount reasonably necessary to cover the risks associated with such subcontractor's role in the project. The parties stipulate that the Supplier will maintain each type of insurance set forth above at a coverage level equal to at least half of the amount set forth above for such type of insurance. However, nothing contained herein shall relieve the Supplier from meeting all insurance requirements or otherwise being responsible for the subcontractor.

21. NOTICES.

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For The Supplier:	**For The County:**
Jane Jenewein, Strategic Alliance Manager	Karen P. Ruppe
Landscape Structures, Inc.	Charlotte-Mecklenburg Procurement Services
601 7th Street South	600 E. Fourth St.
Delano, MN 55328	Charlotte, NC 28216
Phone: 763-972-5458	Phone: 704-336-2992
Fax: 763-972-5291	Fax: 704-336-2258
E-mail: jane_jenewein@4funisi.com	E-mail: kruppe@ci.charlotte.nc.us
With Copy To:	**With Copy To:**
Jean Hayes, Contract Administrator	Sandra Bisanar

Landscape Structures, Inc.	Deputy County Attorney
601 7th Street South	600 East Fourth Streeet
Delano, MN 55328	Charlotte, NC 28202
Phone: 763-972-5458	Phone: 704.336.2609
Fax: 763-972-5291	Fax: 704.336.5887
E-mail: jean_hayes@4funisi.com	E-mail: bisanst@co.mecklenburg.nc.us

Notice shall be effective upon the date of receipt by the intended recipient, provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

22. NON-DISCRIMINATION.

22.1 The Supplier agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.

22.2 The Supplier agrees that it will inform the County of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Supplier will also inform the County of the final disposition of such cases.

23. DRUG-FREE WORKPLACE.

The County is a drug-free workplace employer. The Mecklenburg County Board of Commissioners has also adopted a policy requiring Companies to provide a drug-free workplace in the performance of any County contract. The Supplier hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:

23.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

23.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Supplier's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

23.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined above, and (ii) notify the Supplier of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;

23.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;

23.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and

23.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the above provisions.

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

24. MISCELLANEOUS.

24.1 Entire Agreement.
This Agreement and the Contract Documents, including all Exhibits, and Attachments, all of which are hereby incorporated herein by reference, constitute the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

24.2 Amendment.
No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

24.3 Governing Law and Jurisdiction.
The parties acknowledge that this Agreement is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Agreement, and that North Carolina law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles).

The parties further agree that any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

24.4 Binding Nature and Assignment.
This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

24.5 County Not Liable for Delays.
It is agreed that the County shall not be liable to the Supplier, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the County or any other party hereunder.

24.6 Force Majeure.
Neither party shall not be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if all of the following conditions are satisfied:

(a) If such failure or delay:

i. could not have been prevented by reasonable precaution;

ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

(b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Supplier shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Supplier continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

(c) Upon the occurrence of a Force Majeure Event, the Supplier shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Supplier from performing its obligations for more than five (5) days, the County shall have the right to terminate this Agreement by written notice to Supplier.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Supplier from the performance of its obligations under this Agreement. The parties also expressly acknowledge that Year 2000-related interruptions in operations or in the supply of products or services necessary to fulfill the obligations of this Agreement are not excused under this provision.

24.7 Severability.
The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

24.8 Approvals.
All approvals or consents required under this Agreement must be in writing.

24.9 Waiver.
No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

24.10 Interests of the Parties.
The Supplier covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

24.11 No Bribery.
The Supplier certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with this Agreement.

24.12 Change in Control.
In the event of a change in "Control" of the Supplier (as defined below), the County shall have the option of terminating this Agreement for default by written notice to the Supplier.

The Supplier shall notify the County within ten (10) days after it becomes aware that a change in Control will occur. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either:

the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in Supplier; or

the power to direct or cause the direction of the management and policies of Supplier whether through the ownership of voting securities, by contract or otherwise.

24.13 Familiarity and Compliance with Laws and Ordinances.
The Supplier agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. Supplier further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

24.14 Taxes.
The Supplier shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.

24.15 Harassment.
The Supplier agrees to make itself aware of and comply with the County's Harassment Policy. The County will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.

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

24.17 Waiver of Right to Jury Trial.
The County and Supplier waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.

24.18 Non-Exclusivity.
This Agreement is non-exclusive and shall not in any way preclude the County from entering into similar agreements and/or arrangements with other suppliers or from acquiring similar, equal or like goods and/or services from other sources.

The County makes no representation that it or any governmental entity will purchase any minimum quantities or dollar amounts.

24.19 Reports.
The Supplier must maintain and submit a monthly statistical report and an annual tabulated report electronically to the Charlotte-Mecklenburg Procurement Services. This report shall be designed in such a manner that clearly identifies all items purchased by the County under this contract.

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

ATTESTED:
BY: Jean Hayes
TITLE: Contract Specialist

(CORPORATE SEAL)

LANDSCAPE STRUCTURES, INC.
BY: Diane M. Petersen
TITLE: Strategic Alliance Manager

ATTESTED:
BY: James Pope
County Clerk

(COUNTY SEAL)

COUNTY OF MECKLENBURG:
BY: [signature] 10/15/03
Park and Recreation Director

BY:
County Manager

Approved As To Form:
BY:
County Attorney

Approved As To Insurance Requirements:
BY: Linda Liles
Risk Management

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

BY:
Finance Director, County of Mecklenburg North Carolina

CHARLOTTE.

PLAYGROUND EQUIPMENT CONTRACTS
Solicitation Summary

Background

In the Spring of 2003, U.S. Communities Government Purchasing Alliance selected Charlotte-Mecklenburg Procurement Services as a Lead Public Agency to solicit proposals from qualified companies to enter into a Master Agreement to provide a complete line of Park and Playground Equipment, Surfacing Materials, Site Furnishings and related services including, but not limited to, installation, layout, design and inspections.

U.S. Communities is a non-profit public benefit corporation established by government to provide a national purchasing forum for public agencies nationwide. U.S. Communities is jointly sponsored by the National Institute of Governmental Purchasing (NIGP), the National Association of Counties (NACo), the National League of Cities (NLC), the Association of School Business Officials International (ASBO), and the United States Conference of Mayors (USCM). U.S. Communities has a multi-state Advisory Board consisting of representatives from public agencies and associations including John Trunk, Charlotte-Mecklenburg Procurement Services Director.

By providing a comprehensive and competitively solicited Master Agreement through a single bid process, government agencies, school districts, and institutions of higher education or authorities in all fifty (50) states can utilize the subsequent contract without the need for further solicitation.

Combining the volumes of government agencies nationwide achieves cost effective pricing and reduces the administrative and overhead costs of suppliers and government agencies alike. All suppliers awarded contracts must sign a commitment that the U.S. Communities pricing is the lowest available to local agencies nationwide and a further commitment that, if an agency is eligible for lower pricing through a state, regional or local contract, the supplier will match the pricing under U.S. Communities.

All contracts let through U.S. Communities are convenience contracts and do not preempt public agencies from using other contract vehicles or competitive processes as required by individual state law.

Solicitation Process

A Request for Proposals (RFP) was issued in accordance with NC State Statutes (G.S. 143-129) on 4/21/03.

- We advertised the solicitation in the Charlotte Observer (copy enclosed) and posted on the NC Interactive Purchasing System website at: www.ips.state.nc.us.
- A Pre-proposal conference was held to review specifications and allow the suppliers to ask questions pertaining to the bid process or specifications. (Although law does not require a pre-bid/proposal, it is our practice to conduct pre-proposals. We actually scheduled a second pre-proposal meeting to encourage corporate representatives versus local distributors to attend so we could adequately prepare a competitive and comprehensive proposal that would work nationwide.
- We received seven (7) sealed proposals in response to the RFP from the following:
  - Gametime
  - Landscape Structures
  - Little Tikes
  - Playworld
  - Castle Rock

- Kids Play
- Play USA

- Proposals were evaluated over a two-week period and the four (4) top ranked suppliers were interviewed.
- A recommendation was made to the Board of County Commissioners, which was approved at a regularly scheduled Board meeting on September 16, 2003 **(copy of Board approval enclosed).**

Evaluation of Proposals

Using the RFP procurement method allowed us to consider factors other than price and to award contracts to the firms whose proposals were the most advantageous to public agencies. Our recommendation to the Board was based on the following criteria:

- Quality & extensiveness of the product lines offered;
- Company history, annual sales, Dun & Bradstreet;
- Design and installation qualifications;
- Pricing and discount structures;
- Product warranties;
- National distribution network;
- Marketing plans;
- Value added services; and
- Compliance with requirements of the RFP.

The evaluation team consisted of local Park Planers, Procurement staff and Procurement Officials/US Communities Advisory Board members from:

- Wichita Public Schools, KS;
- LA County Schools, CA;
- Detroit Public Schools, MI; and
- Harford County Schools, MA.

It was determined that multiple awards were necessary to ensure that these contracts will allow US Communities to fulfill current and future requirements of the diverse and large number of participating public agencies. The requirements of Public parks and school systems often vary and some agencies choose to standardize their equipment. The evaluation team unanimously agreed that the three (3) best proposals were submitted by:

- **Little Tikes Commercial Play Systems;**
- **Landscape Structures, Inc.; and**
- **GameTime.**

Each supplier has unique product lines and offered slightly different pricing structures as well.

Little Tikes (Play Power Farmington LT, Inc as of September 1, 2004)

- ❖ Little Tikes contract includes variable percentage discounts that are based on dollar volume per product level.
- ❖ Little Tikes also offers rebates based on annual expenditures.
- ❖ Fees for installation services are included or can be contracted separately on a local basis for this particular contract. A list of approved/certified installers is included in the contract.

Landscape Structures, Inc.

- Landscape Structures offered a fixed 6% discount off all published prices with an additional 2 % discount for single orders over $80,000.

- Their contract includes installation fees based on a percentage of the equipment cost with a not to exceed amount per state. The work will be performed by local Landscape Structure certified installers and can be arranged through Landscape Structures or directly with the local installer of the agency's choice.

- Landscape offers a lease purchase program through GE Capital to give agencies a financial option during times of budget constraints.

GameTime

- GameTime offers a variable percentage discount per product category with an additional 10% discount for orders of $75K to $150.
- For orders greater than $150K there is an additional 15% discount.
- Gametime offers turnkey packages that include installation, safety inspections and all other necessary services. The services are based on a percentage of equipment prices and vary per product category and/or state.

Benefits of Master Agreements

- The contracts are with three of the industry leaders in playground equipment manufacturing.
- They each offer a full range of playground equipment and services with:
- Unique and innovative products;
- Age appropriate products;
- Quick ship orders;
- Replacement parts; and
- Design, layout, maintenance and safety inspection services.
- Each company is certified by the International Play Equipment Manufacturers Association (IPEMA) as well as their products, and complies with ASTM and Americans with Disabilities Act (ADA) standards.
- All three contracts include a network of professional field representatives at your service.
- A pricing commitment that the US Communities Agreement is the lowest available pricing to public agencies nationwide and further commit that if a government agency is eligible for lower pricing through a state, regional or local contract, the supplier will match the pricing under US Communities.

Charlotte-Mecklenburg/U.S. Communities
Playground Equipment Contracts
Synopsis

Manufacturer	Verifiable Index	Pricing Structure	Freight Options
Little Tikes	Current Manufacturer's List Price	Percent discount from current list price based on dollar volume per four (4) product levels. Rebates for large orders as follows: $500k to $999,999 = 1% $1,000,000 to $1,499,999 = 2% $1.5M and above = 3%	• Freight prepaid and add (actual charges) • Installation fees are based on percent of total purchase/per state.
Game Time	Current Manufacturer's List Price	• Percent discount from current list price based on Product line (5% to 26%) for Playground Equipment. • Surfacing: (14 to 18% discount) pricing varies per region (10 zones) and material. • Site furnishings: 5% discount Additional Discounts: Orders of $75K to $150K 10% Orders exceeding $150K 15%	• Freight prepaid and added (actual charges) • Apply supplier's rate per charts provided as Exhibit. • Installation fees are based on percent of total purchase/per product category.
Landscape Structures	Current Product Catalogs and Component Price Lists	Fixed 6% discount off all published list prices. Additional discount: Orders exceeding $80K 2%	• Freight prepaid and added (actual charges) • Apply supplier's rate per charts provided as Exhibit. • Installation fees are based on percent of total purchase/per state.

The Knight Publishing Co., Inc.
Charlotte, NC

North Carolina) ss Affidavit of Publication
Mecklenburg County)

THE CHARLOTTE OBSERVER

CITY OF CHARLOTTE/CMGC
AUBREY BLAZEK
600 E FOURTH ST 8TH FLR
CHARLOTTE NC 28202

REFERENCE: 30035256
4798459 Request: Proposal

Before the undersigned, a Notary Public of said County and State, duly authorized to administer oaths affirmations, etc., personally appeared, being duly sworn or affirmed according to law, doth depose and say that he/she is a representative of the Knight Publishing Company a corporation organized and doing business under the laws of the State of Delaware, and publishing a newspaper known as The Charlotte Observer in the city of Charlotte, County of Mecklenburg and State of North Carolina and that as such he/she is familiar with the books, records, files and business of said Corporation and by reference to the files of said publication the attached advertisement was inserted. The following is correctly copied from the books and files of the aforesaid Corporation and Publication.

PUBLISHED ON: 04/22

AD SPACE: 43 LINE
FILED ON: 04/24/03

NAME: [signature] TITLE: Acct
DATE: 4-24-03

In Testimony Whereof I have hereunto set my hand and affixed my seal, the day and year aforesaid.

Notary: [signature] My Commission Expires: May 27, 2006

My Commission Expires May 27, 2006

Approved as Amended Pg 13
Sept 16, 2003

Mecklenburg County Board of Commissioners
Action Item
September 16, 2003

Subject: **Park and Playground Equipment and Related Commodities**

ACTION: **Approve requirement contracts for the purchase of park and playground equipment, surfacing, site furnishings and related commodities in the combined estimated annual amount of $250,000 for a term of five (5) years to the following manufacturers.**

Little Tikes, Inc.	Farmington, MO
GameTime, Inc.	Fort Payne, AL
Landscape Structure, Inc	Delano, MN
Playworld Systems	Lewisburg, PA

Staff Contact: **Karen Ruppe, Procurement Services**

Presentation: Yes____ No X

BACKGROUND/JUSTIFICATION: Mecklenburg County Park and Recreation currently maintains over 175 public parks ranging from small neighborhood parks to large district parks. It is essential that all playground equipment purchased for these parks be in compliance with all ASTM, ADA and CPSC standards and other applicable laws and requirements of North Carolina. Each playground is custom built to fit the needs of the location with emphasis on (a) encouraging interaction among children with or without disabilities; (b) providing equipment that is safe for all children; (c) allowance for ease of access to the different components and areas of the play equipment; (d) group compatible play types; and (e) designs which separate conflicting play types.

PROCUREMENT BACKGROUND: Charlotte-Mecklenburg Procurement Services issued a Request for Proposals (RFP) to provide Park and Playground Equipment and related commodities to support the County Park and Recreation Department. Charlotte-Mecklenburg Schools has received approval to utilize these contracts and therefore also participated in the procurement process.

U.S. Communities Government Purchasing Alliance selected Charlotte-Mecklenburg Procurement Services as a Lead Public Agency to solicit proposals from qualified companies to enter into a Master Agreement to provide a complete line of Playground Equipment and related commodities and services on a national level. Combining the volumes of government agencies nationwide achieves cost-effective pricing and reduces the administrative and overhead costs of suppliers and government agencies alike. All suppliers awarded contracts must sign a commitment that the U.S. Communities pricing is the lowest available to local agencies nationwide and a further commitment that, if an

agency is eligible for lower pricing through a state, regional or local contract, the supplier will match the pricing under U.S. Communities.

By providing a comprehensive and competitively solicited Master Agreement through a single bid process, government agencies, school districts, and institutions of higher education or authorities in all fifty (50) states can utilize the subsequent contract without the need for further solicitation. The Master Agreement shall be interpreted in accordance with and governed by the laws and the applicable policies of the State and locality where the participating agency exists.

Seven (7) proposals were received in response to the RFP and evaluated by a local and national team consisting of Mecklenburg County Park and Recreation, Procurement Services and CMS staff, procurement officials from LA County, Detroit County Schools, Wichita County Schools and the City of Baltimore.

Price was only one criterion. The other factors included in the evaluation were the quality and extensiveness of product lines offered, warranties, design and installation qualifications, compliance with the technical and business qualifications and the ability of the manufacturer to distribute and market to all fifty (50) states.

Multiple awards are recommended to ensure availability of a full range of products required to fulfill current and future requirements of the diverse public and elementary parks and large number of participating public agencies. To accommodate some standardization requirements of CMS, Playworld Systems is recommended for approval of a Mecklenburg County contract, but did not meet the requirements for a national contract.

POLICY IMPACT: None

FISCAL IMPACT: Appropriations for acquisitions already included in budget.

	Current Fiscal Year Impact	% Funding	Next Fiscal Year Impact	% Funding	New Positions FT PT
Federal					
State					
Other*					
County					
Capital Project					
TOTAL					

MUST BE COMPLETED IF FUNDING IS INVOLVED

ATTACHMENT(S): Description