

**STATE OF NORTH CAROLINA**  
**COUNTY OF TRANSYLVANIA**

**PLAYGROUND EQUIPMENT PURCHASE  
AND INSTALLATION CONTRACT**

**THIS AGREEMENT**, made this 19<sup>th</sup> day of May, 2025, by and between the **TRANSYLVANIA COUNTY BOARD OF EDUCATION**, a body politic and corporate of the State of North Carolina, and the public school unit responsible for the Transylvania County Schools, having its principal offices located at 225 Rosenwald Lane, Brevard, NC 28712 (the “Board” or “Owner”), and **BLUERIDGE PLAYGROUNDS**, a company formed under the laws of the State of North Carolina, having a principal mailing address of 542 Hendersonville Rd. Asheville, NC 28803 ("Contractor"), for procurement, transportation, and installation of playground equipment for SOW #51425, pour in place safety surfacing in the use zones, and the excavation of the playground area for the Brevard Elementary School Playground Project (collectively, the “Project”).

**WITNESSETH:**

That the Owner and the Contractor, for the consideration herein named, agree as follows:

**1. Scope of Work:** The Contractor shall furnish all material, equipment, labor, services and supervision necessary to complete the Project as specified in the Contractor’s SOW #51425 and any documents referenced herein, which are incorporated herein and attached hereto as Exhibit A. This includes the excavation of the playground area to create a flush with grade site, the disposal of spoils, supplying and installing the playground equipment as designed, and supplying and installing pour in place safety surfacing in the use zones. If there are any contradictions between this Agreement and anything contained in any exhibit, this Agreement shall control.

**2. Beginning Work and Substantial Completion:** The Contractor will begin work no later than **June 9, 2025**, which shall constitute the date of the Notice to Proceed (“work” for purposes of this paragraph shall include ordering of materials and other preparation to perform) and shall complete the Project in accordance with the Specifications no later than **August 25, 2025, seventy-seven (77) calendar days** from the date of the Notice to Proceed. If the Owner fails to have the site prepared prior to the Notice to Proceed date, the Owner shall pay for equipment and freight within ten (10) working days as well as any additional customer fees generated by the offloading of equipment without the site prepared or if the equipment cannot be safely stored at the site. The Owner shall make an inspection to determine whether the Project is complete. When the Owner determines that the Project is complete in accordance with the Specifications and all applicable codes and regulations, the Contractor shall prepare a Certificate of Completion that shall establish the date of completion.

Contractor may be allowed delays beyond the time specified above for the following weather conditions, if applicable: 1) isolated inclement weather, wherein the Project site is determined to be unworkable for days of precipitation and/or temperature and days following for short times between otherwise good weather; and 2) sustained inclement weather, wherein the

Project site is determined to be unworkable for sustained periods of time, such as the winter months, with only an occasional working day within the sustained unworkable conditions.

If the Contractor believes either condition applies, a written request shall be made within seven (7) calendar days following the beginning of the condition to the Board's Superintendent or designee for a site meeting and a joint determination of the site conditions and approval of the delay. The Superintendent or designee will catalog these approved delays and will incorporate them into a Change Order for signature by the Owner and Contractor.

The Owner shall assess liquidated damages against the Contractor in the amount of two hundred fifty dollars (\$250) per day for every day that the Project extends beyond the contract days specified above for completion. Such damages are separate from any actual damages caused by defective work (including architect's and engineer's fees) and shall be the sole remedy for delay.

**4. Default and Termination:** If the Contractor fails to complete the Project within the times specified in Section 2 or fails to diligently perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work or performs the work unsuitably or shall discontinue the prosecution of the work or not carry on the work in an acceptable manner, the Owner may give written notice, sent by certified mail return receipt requested, to the Contractor of such delay, neglect or default, specifying the same, and, if the Contractor, within a period of fifteen (15) calendar days after such notice, shall not proceed in accordance therewith, the Owner shall declare this Agreement in default and shall have full power and authority, without violating the Agreement, to take the prosecution of the work out of the hands of the Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of the Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under the Agreement, including liquidated damages, if any, shall be deducted from any monies due or which may become due to the Contractor. In case the expense so incurred by the Owner, including liquidated damages, if any, shall be less than the sum which would have been payable under the Agreement, if it had been completed by the Contractor, then the Contractor shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Agreement, then the Contractor shall be liable and shall pay to the Owner the amount of said excess.

**5. Payment:** The Owner shall pay to the Contractor, as specified in the Contractor's SOW #51425 attached as part of Exhibit A, the total contract sum, including all municipal, county, and State taxes related to the purchase of the property, of Three Hundred Sixty-One Thousand Three Hundred Dollars and Forty-Eight Cent (\$361,300.48) for completion of Project, unless altered as allowed herein. Payment shall be made based on the following schedule:

- a. At the time this Agreement is signed, the Owner shall pay to the Contractor fifty percent (50%) of the total contract sum.

- b. Upon completion of installation, the Contractor shall present to the Owner, or designee, a pay application for the balance of the contract sum. The Owner shall inspect the work to determine that the pay application accurately reflects the completed work.

**6. Changes in the Work:** During the Project, if the Contractor encounters any additional charges resulting from unanticipated conditions or additional work requested by the Owner which may alter the total contract sum as stated in Section 5, prior to commencing the work, the Contractor must submit a written change order to the Owner or its designee. The written change order must specify the need for the change and the cost of the proposed change. No later than five (5) calendar days after receipt of the written change order, the Owner, or its designee, shall provide to the Contractor a written response either accepting or rejecting the change order. No additional payment shall be made for additional work completed by the Contractor unless the Contractor has submitted a written change order and received the Owner's approval.

**7. Construction Meetings:** The Contractor shall meet with the Superintendent or designee as such construction meetings as required by the Owner.

**8. Correction of Work:**

- a. Before Completion. The Board's Superintendent or designee shall, from time to time, inspect the status of the Project. The Contractor shall promptly correct work not conforming to the design, and rejected by the Superintendent or designee and the Owner may withhold payment until said work is corrected and accepted.
- b. After Completion. If, within one (1) year after the date of completion, any of the work is found to be nonconforming to the design, the Contractor shall promptly correct the nonconforming work after receipt of written notice from the Owner to do so.

**10. Construction Site:** The Contractor shall be responsible for the construction site(s) during the performance of the work and shall be responsible for any and all damages to persons and property during the performance of the work and shall further provide all necessary safety measures and shall fully comply with all federal, state and local laws, building codes, rules and regulations to prevent accidents or injury to persons or property on or about the location of the work, it being expressly understood by the Contractor that school will not be in session during the performance of portions of the work but that pupils, teachers, other employees and the public still may be on, about and near the construction site. The Contractor agrees to indemnify and hold harmless the Owner for any and all losses, including all applicable costs, expenses, other claims, including attorneys' fees, which the Owner might incur due to any act or omission by Contractor, its employees or agents and subcontractors that occur in conjunction with this Agreement. Orange temporary construction fencing will be put up until the work is completed.

**11. Warranty:** The Contractor hereby warrants and guarantees to the Owner that materials and equipment furnished under the Agreement will be of good quality and new, unless

otherwise allowed, and the work will be free from defects and will conform to the Owner's Specifications and shall present to Owner a one (1) year warranty and shall provide to the Owner any pass-through manufacturers' warranties or other warranties required by the Specifications.

**12. Insurance:** As a condition precedent to this Agreement, the Contractor shall provide proof of insurance for the required policies and coverages: 1) Workers' Compensation (statutory coverage limits); 2) Commercial General Liability ("CGL") (One Million Dollar per occurrence, Two Million Dollar aggregate (\$1million/\$2million)); and 3) Comprehensive Automotive Liability (One Million Dollars (\$1 million)). The Owner shall be listed as an additional insured on the Contractor's CGL policy. The Contractor will submit to the Owner copies of Certificates of Insurance on the latest approved North Carolina Department of Insurance Acond Form 25 by an insurer authorized to do business in North Carolina by the North Carolina Department of Insurance and rated A- (minus) or better by A.M. Best Company. The certificates shall certify that the insurance policies carried by Contractor were in force before the Project commenced and certifying that these policies will not be canceled during the Contract other than by an endorsement added to the policies and certificates reading substantially as follows: "The policies herein referred to are not cancelable or subject to reduction of coverage by the Insurer unless the Owner has received thirty (30) days written notice via registered or certified letter." Certificates of Insurance containing disclaimers holding the insurer harmless for failure to notify the Owner of Contractor policy cancellations will not be acceptable and should be modified to delete such disclaimers from the Insurance Certificate forms.

**13. Jessica Lunsford Act:** Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. In the event that any of the work is to be performed after August 25, 2025, the Contractor agrees to conduct a check of all employees working at the Project site on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry. As a term of this Agreement, said checks must be performed by the Contractor and reported to the Transylvania County Schools' Superintendent.

**14. Relationship:** The Contractor shall be considered an independent contractor and not an employee of the Owner.

**15. Situs:** The place of this Agreement, its situs, forum, shall be Transylvania County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.

**16. Governing Law:** This Agreement shall be governed by the laws of the State of North Carolina.

**17. Mutually Agreed Agreement:** All the Parties to this Agreement have had the opportunity to be fully and completely represented by counsel of their own choosing in the making of this Agreement. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Agreement.

**18. Entire Agreement:** The Parties hereby affirm that the only consideration for executing this Agreement are the terms and conditions herein and no other promises or agreements of any kind have been made by any person or entity to cause the Parties to execute this Agreement. Further, the Parties agree that if any provisions herein are declared invalid by a court of competent jurisdiction, such invalidation shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

**19. Authority:** The Parties hereby represent and warrant that they have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement.

**20. Foreign Investment and E-Verify:** The Contractor shall comply with the requirements of G.S. Chapter 64, Article 2 (the "E-Verify Requirements"). The Contractor agrees that it is in compliance and will comply with North Carolina laws pertaining to international trade, G.S. Ch. 147, art. 6E and 6G (respectively, the Iran Divestment Act and Divestment from Companies Boycotting Israel). In the event that the Contractor utilizes a subcontractor to perform the Work of this Contract, the Contractor shall require any such subcontractor to comply with the E-Verify Requirements and the foreign investment laws.

**21. Dispute Resolution:** Prior to litigation concerning a dispute in which the amount in controversy is at least fifteen thousand dollars (\$15,000.00), parties to the dispute must do the following:

- a. Submit the dispute for review by the Superintendent or designee; and
- b. Participate in mediation if the matter cannot be resolved by the parties. The cost of the dispute resolution process will be divided between the parties to the dispute.

**22. Assignment:** This Agreement shall not be assigned without the prior, written consent of the Owner which shall not be unreasonably withheld.

**IN WITNESS WHEREOF,** the Contractor and the Owner have executed this Agreement the day and year first above written.

**CONTRACTOR: BARRS RECREATION, LLC**

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Signature

Print: \_\_\_\_\_

TITLE: \_\_\_\_\_

\_\_\_\_\_  
Date

**TRANSYLVANIA COUNTY BOARD OF EDUCATION**

\_\_\_\_\_

Signature

\_\_\_\_\_

Date