

CONTRACT FOR THE PURCHASE OF EQUIPMENT

This Contract for the Purchase of Equipment ("Contract"), made this 19th day of September, 2018 (the "Effective Date"), by and between the Wheaton Park District, an Illinois park district (the "Park District"), with its principal place of business at 102 E. Wesley St, Wheaton, IL 60187, Illinois and All Access Equipment LLC, a Massachusetts limited liability company (the "Contractor"), with its principal place of business at 891 Woburn Street, Wilmington, MA, 01887, collectively referred to as the "Parties" or individually as "Party."

WITNESSETH

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

1. Services

The Contractor shall provide and install the following equipment:

Articulated Boom Lift (the "Equipment"),

as indicated in the plans and specifications in the Contract Documents as defined in Paragraph 2 of this Contract.

2. Contract Documents

The Contract Documents consist of this Contract between the Park District and the Contractor and the Invitation to Bid, Instructions to Bidders, General and Special Conditions, and Specifications dated August 14, 2018 (the "Bid Documents"), attached to and incorporated as part of this Contract by reference, the Contractor's Proposal, dated August 23, 2018, attached to and incorporated as part of this Contract as **Exhibit A**, the Contractor Compliance and Certification and References, attached to and incorporated as part of this Contract as **Exhibit B**, and any addenda issued prior to the execution of this Contract and any modifications issued after the execution of this Contract. Modifications to this Contract may only be made in writing and endorsed by the Parties. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein.

3. Contract Sum and Payment

The Park District shall pay the Contractor One Hundred Forty-seven Thousand Seven Hundred and 00/100 Dollars (\$147,700.00), for the proper performance of the Contract (the "Contract Sum"). The Contract Sum is the total of the Base Bid (\$132,150.00) plus the Alternate Bid 2 Lithium Ion Battery Pack (\$15,550.00). Payment of the Contract Sum shall be made in full after receipt of the Equipment, in accordance with the Local Government Prompt Payment Act (50

ILCS 505/1 *et seq.*), and only upon inspection and acceptance of the Equipment by the Park District.

Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment.

4. Completion Date.

Time is of the essence of this Contract. Contractor shall achieve Final Completion on or before December 30, 2018. Final Completion means the date the Park District has received, inspected and accepted the Equipment from the Contractor and the Park District has approved final payment to the Contractor.

5. Liquidated Damages for Failure to Meet Completion Date. Should the Contractor fail to achieve Final Completion on or before the Final Completion date, the Contractor shall be liable and shall pay to the Park District the sum of \$100.00 per calendar day, not as a penalty but as liquidated damages, for each day of overrun from the Final Completion date. The liquidated damages for failure to deliver the Equipment on time are approximate, due to the impracticality of calculating and proving actual delay costs. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Park District during extended and delayed performance by the Contractor. The liquidated damage amount specified will accrue and be assessed until Final Completion. The Park District will deduct these liquidated damages from any monies due or to become due to the Contractor from the Park District.

6. Delivery

Contractor will arrange for delivery of the Equipment through a carrier chosen by Contractor, the costs of which shall be F.O.B. Wheaton, Illinois.

7. Title and Risk of Loss

Contractor shall not grant rights in or to, or otherwise encumber the Equipment or any parts of the Equipment, to, in or by any third parties at any time, that would impair or delay the full exercise by Park District of any of its rights or remedies under the Contract. Clean and unencumbered title to the Equipment shall be transferred to the Park District upon acceptance of the Equipment by the Park District. Title to, and the risk of loss, injury or destruction from any casualty to the Equipment, regardless of cause, will be the responsibility of the Contractor until the Equipment has been received, inspected and accepted by the Park District.

8. Acceptance and Rejection

The Park District will have the right to inspect the Equipment upon receipt and to reject the nonconforming or damaged Equipment within ten (10) business days after delivery. The Park

District will give notice to Contractor of any rejection of the Equipment or claim for damages on account of condition, quality or grade of the Equipment.

Neither inspection nor acceptance by the Park District shall act as Park District's acceptance of any defects or deficiencies in the Equipment or the failure of the Equipment to conform to the requirements of the Contract Documents and shall not act as a waiver of any rights Park District has with respect to such defects, deficiencies or failure, including rights under any warranty.

9. Performance of the Contract

Contractor agrees to perform all work and services in a good and workmanlike manner. All Equipment supplied by Contractor shall be new materials of the like and kind specified. Defective Equipment, including those damaged during testing will not be accepted, and must be replaced or repaired in a manner satisfactory to the Park District.

Contractor, upon the Effective Date, shall immediately place orders for materials and otherwise commence performance of this Contract, unless otherwise directed by the Park District. No claim for extras shall be allowed unless such claim is first submitted in writing to the Park District and approved in writing by an authorized agent of the Park District.

10. Waiver of Liens. Contractor for itself and for all its sub-suppliers and subcontractors, agrees that no mechanic's lien or other claim shall be filed or maintained by Contractor or by any sub-supplier, subcontractor, laborer or any other person, whatsoever, against the Park District's funds for or on account of the Equipment furnished under this Contract. Prior to the payment of the Contract Sum, Contractor shall provide: a) for any payment other than final payment for the Equipment, a partial waiver of lien from Contractor and each sub-supplier and subcontractor reflecting any partial payouts, and for final payment, a final waiver of lien from Contractor and each sub-supplier and sub-contractor for the full amount of each subcontract providing services under this Contract, showing all materials and labor have been paid in full; and b) sworn affidavit, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 *et seq.*), showing in detail the sources of all labor and materials used in performance of this Contract, including the names and addresses of sub-suppliers and subcontractors and showing amounts paid for each.

Final payment shall not become due until the Contractor has met Final Completion, including but not limited to delivery of all manufacturer's and supplier's warranties, and has delivered to the Park District a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Park District to indemnify the Park District against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Park District all money that the Park District may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

11. Termination

The Park District may terminate this Contract as follows:

- a. Prior to the delivery of the Equipment, the Park District may, at any time, terminate the Contract in whole or in part for the convenience of the Park District and without cause. Termination by the Park District under this Paragraph 11 shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date of said termination. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Contract; (4) terminate all subcontracts and orders to the extent they relate to the work and services terminated; (5) proceed to complete the performance of work and services not terminated; and (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated work and services. In the event of termination for convenience by the Park District, the Contractor shall recover payment for the reasonable, out-of-pocket expenses incurred by Contractor for approved work properly performed by Contractor before the effective date of termination. Contractor shall not be entitled to damages resulting from termination for convenience under this Paragraph.
- b. If Contractor fails to provide the Equipment and services as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Contract and does not remedy such failure, breach or default within three (3) business days after demand from the Park District to take corrective action, or in the event of repeated or multiple failures or defaults by Contractor, the Park District may terminate this Contract and enter into an agreement with another contractor or contractors to provide the Equipment. In such event, Park District shall not be liable to Contractor for all or any portion of the Contract Sum. Contractor shall be liable to the Park District and shall pay the Park District promptly upon demand the increased cost to the Park District of obtaining the Equipment from the substitute contractor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees.
- c. If Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a receiver is appointed on account of Contractor's insolvency, or if any provision of the bankruptcy law is invoked by or against Contractor, then notwithstanding any other rights or remedies granted the Park District,

the Park District may, without prejudice to any other right or remedy, (i) immediately terminate the retention of Contractor and/or (ii) finish or cause to be finished the Contractor's services required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the work and/or services are completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the work and/or services, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default (collectively "Park District Expenses and Damages"), such excess shall be paid to Contractor. If the Park District Expenses and Damages exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

12. Correction of Deficiencies

If the Contractor defaults or neglects to provide the Equipment in accordance with the Contract Documents and fails, within a three (3) business day period after receipt of written notice from the Park District, to commence to cure said default, the Park District may, without prejudice to other remedies, correct said deficiencies. In such case, the Park District shall deduct from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto. If the amount deducted by the Park District exceed the payments then or thereafter due the Contractor, the Contractor shall pay the difference to the Park District.

The rights and remedies of Park District stated in this Contract shall be in addition to and not in limitation of, any other rights of the Park District granted in the Contract Documents or at law or in equity.

13. Tax Exemption

The Park District is exempt for the Illinois Retailer's Occupational Tax, the Illinois Use Tax and the Federal Excise Tax as an exempt entity under the Internal Revenue Code. The Park District's tax exemption identification number is E9997-3936-07.

14. Contractor's Representations

The Contractor hereby specifically acknowledges and declares, and the execution of this Contract by the Contractor is a representation of the Contractor that the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Equipment and that the Contract Documents are sufficient to enable it to supply and deliver the Equipment outlined therein, in accordance with applicable laws and regulations, and

otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor's obligation to supply the Equipment for an amount not in excess of the Contract Sum.

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Park District and shall immediately notify the Park District errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Park District for damage resulting from errors, inconsistencies or omissions in the Contract Documents that could not have been discovered by a reasonably prudent and experienced Contractor in advance. If the Contractor performs any activity involving an error, inconsistency or omission in the Contract Documents that Contractor recognized or reasonably should have recognized and of which Contractor failed to notify the Park District, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction of the same.

Contractor further represents that it has full right, title and authority to transfer the Equipment to the Park District and that such transfer, upon delivery to the Park District, shall not be subject to the right or interest of any third party whatsoever.

15. Warranties

The Contractor warrants to the Park District that the Equipment furnished under the Contract will be of the best quality and new, that the Equipment will be free from defects and deficiencies, and that the Equipment will conform to the requirements of the Contract Documents. Equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Any such defects must be corrected, either through repair or replacement, at Contractor's expense.

Contractor guarantees the standard manufacturer's Equipment warranty and shall provide the Park District with two (2) copies of any such warranty. Liability or refusal of a subcontractor responsible for the defective Equipment to correct the same shall not excuse the Contractor from performing under the warranty. If required by the Park District, the Contractor shall furnish satisfactory evidence as to the kind and quality of the Equipment.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be, countersigned by the Contractor and delivered to the Park District upon delivery of the Equipment. Any warranties issued in Contractor's name shall be assigned to the Park District.

Warranty shall become effective upon the Park District's final acceptance of the Equipment and shall run for a twelve month period, or longer, as provided by the manufacturer or as required by law. Final acceptance shall occur only after the Equipment has been delivered, inspected and accepted by the Park District. No warranty herein shall be deemed waived upon Park District's inspection and acceptance of delivery of the Equipment.

16. Insurance

A. Commercial General and Umbrella Liability Insurance. Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 4 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Park District, its agents, officers, commissioners, employees and volunteers, shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Business Auto and Umbrella Liability Insurance. Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance. Contractor shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 or a substitute endorsement acceptable to District under the Commercial General and Umbrella Liability Insurance required in this Contract, Contractor waives all rights against the Park District and its officers, officials, employees, volunteers and

agents for recovery of damages arising out of or incident to Contractor's performance of its services pursuant to this Contract.

E. General Insurance Provisions

1. Evidence of Insurance. Prior to beginning any work, Contractor shall furnish the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as waiver of Contractor's obligation to maintain such insurance.

The Park District shall have the right, but not the obligation, of prohibiting Contractor from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Park District.

Failure to maintain the required insurance may result in termination of this Contract at the Park District's option. Contractor shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

2. Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.

3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, Contractor may be asked to eliminate such deductibles or self-insured retentions as respects to the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

4. Subcontractors. Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Park District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

17. Indemnification and Hold Harmless.

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from Contractor's performance of its obligations pursuant to this Contract, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify, defend and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of this Contract.

18. No Liability

The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Contractor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Contractor's services and obligations under this Contract. The Park District is not liable for acts or omissions of Contractor or any of Contractor's employees, contractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

19. Extension of Time

Extension of time provided for the supply and delivery of the Equipment shall be the Contractor's sole remedy for delay unless the same shall have been caused by acts constituting intentional interference by Park District with Contractor's obligations hereunder and where to the extent that such acts of the Park District continue after Contractor's written notice to the Park District of such interference. The Park District's exercise of any of its rights under the Contract, regardless of the extent or number of changes, or the Park District's exercise of any of its remedies of suspension of any work or services, or requirement of correction of any defective Equipment, shall not under any circumstances be construed as intentional interference with Contractor's obligations under this Contract.

20. Independent Contractor

Contractor acknowledges that it is an independent contractor; it alone retains control of the manner of conducting its activities in furtherance of this Contract. Contractor, as well as any persons or agents it may employ, are not employees of the Park District, and neither this Contract nor the administration thereof shall operate to render or deem either Party hereto the agent or employee of the other.

21. No Third Party Beneficiary

This Contract is entered into solely for the benefit of the contracting parties, and nothing in this Contract is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Contract or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Park District and/or the Contractor, and/or any of their respective officials, officers and/or employees.

22. Assignment

This Contract is non-assignable in whole or part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

23. Waiver

Waiver of any of the terms of this Contract shall not be valid unless in writing and signed by the Parties. The failure of the Park District to enforce the provisions of this Contract or require performance by Contractor of any of the provisions shall not be construed as a waiver of such provisions or affect the right of the Park District to thereafter enforce the provisions of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of contract.

24. Compliance with Laws; Permits.

Contractor shall comply with all federal, state, county and local laws, ordinances, rules and regulations in performing this Contract. All materials, supplies and equipment provided under this Contract must comply with all federal, state, county and local laws, ordinances, rules, regulations and orders that in any manner affect the production, sale, transportation and handling of the product or service contained herein. Contractor shall be responsible for obtaining all permits and license required to perform its obligations under this Contract. Lack of knowledge on the part of the Contractor will in no way be cause for release of this obligation. The Park District reserves the right to terminate any contract and pursue any other legal remedies deemed necessary if it becomes aware of violation of any laws on the part of the Contractor.

25. Governing Law; Venue

This Contract and the other Contract Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Any actions for enforcement of this Contract by any Party hereto shall be brought only in the Circuit Court of DuPage County, Illinois.

26. Entire Agreement; No Amendment

This Contract contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of the other Party that is not contained in this written Contract shall be valid or binding. No amendment or modification shall be made to this Contract unless it is in writing and signed by both Parties.

27. Headings

The headings for each paragraph of this Contract are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Contract nor in any way affect this Contract.

28. Severability

If any provision of this Contract is declared invalid or unenforceable, the remainder of this Contract shall continue in full force and effect, to the extent not affected by the invalid or unenforceable provision.

29. Notice

Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, or by fax or email transmission with the sending Party retaining confirmation of receipt, to the Parties at their respective addresses provided below, or as either Party may otherwise direct in writing to the other Party from time to time:

FOR THE PARK DISTRICT: Wheaton Park District
102 E. Wesley
Wheaton, IL 60187
Attn: Executive Director
Fax: 630-665-5880

FOR THE CONTRACTOR: All Access Equipment LLC
891 Woburn Street
Wilmington, MA 01887
Fax: 978-560-1256

Notices sent by certified mail shall be deemed delivered the second business day following deposit in the mail, notices hand delivered shall be deemed given on the date of delivery, and

notices sent by fax or email transmission shall be deemed given on the date of transmission if between 9:00 AM and 5:00 PM on a business day, or, if later, the next business day.

IN WITNESS WHEREOF the Parties hereto have set their respective hands and seals and year first above written.

ALL ACCESS EQUIPMENT LLC

By: [Signature]

As Its:

Representative

WHEATON PARK DISTRICT

By: [Signature]

As Its:

Executive Director



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