

CONTRACT FOR SALE OF GOODS

This Contract for the Sale of Goods ("Contract"), made this 9th day of May, 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 Street, Wheaton, Illinois, and Aqua-Gon, Inc. (the "Vendor"), with its principal place of business at 1728 North Aurora Road, Naperville IL 60563, collectively referred to as the "Parties" or individually as "Party."

WITNESSETH

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

1. Services and Payment

The Vendor shall provide all the following supplies, material and equipment:

Two (2) Raypak Raytherm P3001 #17 Commercial Indoor Pool Heater/ Natural Gas 3,000,000 MBTU ("Goods"), as indicated in the quote dated May 4, 2018, attached to and incorporated as part of this Contract by reference.

2. Contract Sum and Payment

The Park District shall pay the Vendor Thirty-two Thousand Sixty-four Dollars and 00/100 Dollars (\$32,064.00), subject to additions and deductions as provided in the Contract Documents for the proper performance of the Contract (the "Contract Sum"). All invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*).

3. Delivery

Vendor estimates delivery of product approximately four (4) weeks after confirmation of purchase order. Vendor will coordinate shipping through their chosen carrier. Vendor estimated freight in the amount of \$682.00 per heater, totaling \$1,364.00. Any freight above this amount will be invoiced to and paid by the Park District.

4. Acceptance and Rejection

The Park District will have the right to inspect the Goods upon receipt and to reject the nonconforming or damaged Goods within ten (10) business days after delivery. The Park District will give notice to Vendor of any rejection of the Goods or claim for damages on account of condition, quality or grade of the Goods.

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

5. Performance of the Contract

Vendor, on receipt of purchase order and payment for ½ total amount due, 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. All extras shall be subject to the Park District's prior written approval.

6. Correction of Deficiencies

If the Vendor defaults or neglects to provide the Goods in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Park District to commence and continue correction of such default, the Park District may, without prejudice to other remedies the Park District may have, correct such deficiencies. In such case, the Park District shall deduct from payments then or thereafter due the Vendor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto, and may terminate the Contract. If payments then or thereafter due the Vendor are not sufficient to cover such amounts, the Vendor 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 other Contract Documents or at law or in equity.

7. 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 shall provide its tax exemption identification number to Contractor upon Contractor's request.

The Vendor further represents that it has full right, title and authority to transfer the Goods 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.

8. Warranties

Manufacturer's warranty is attached as Exhibit A.

9. 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, defenses and/or privileges of the Park District and/or the Vendor, and/or any of their respective officials, officers and/or employees.

10. Non-Assignment

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

11. No 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 Vendor 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.

12. Time

Time is of the essence for all matters concerning this Contract.

13. Compliance with Laws

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 and sale of the product or service contained herein. Lack of knowledge on the part of the Vendor will in no way be cause for release of this obligation. The Park District reserves the right to reject any bid, cancel any contract and pursue any other legal remedies deemed necessary if it becomes aware of violation of any laws on the part of the Vendor.

44. 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. Venue shall be proper in the Circuit Court of DuPage County.

15. Entire Agreement

This Contract contains the entire agreement between the Parties, and no statement, promise or inducement made by either party to the agency of either party that is not contained in this written Contract shall be valid or binding; and this Contract may not be enlarged, modified or altered except signed by the Parties and endorsed thereon.

16. Amendment

No amendment or modification shall be made to this Contract unless it is in writing and signed by both Parties.

17. 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.

18. 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.

19. Notice

All notices required or permitted to be given under this Contract shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile or e-mail transmission provided such transmission, together with fax machine or e-mail generated confirmation of such transmission, is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

FOR THE PARK DISTRICT:

Wheaton Park District
102 E. Wesley Street
Wheaton, Illinois 60187
Attn: Executive Director

FOR THE VENDOR:

Aqua-Gon, Inc.
1728 North Aurora Road
Naperville, IL 60563
Attn: Matt Benson

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

WHEATON PARK DISTRICT

By:


Michael Benard
Executive Director

Date:

5/17/18

AQUA-GON, INC.

By:



Date:

5/17/18

Its: PRESIDENT