CONTRACT FOR SALE OF GOODS

This Contract for the Sale of Goods ("Contract"), made this 20th day of April 2023, (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 East Wesley Street, Wheaton, Illinois, 60187; and NuToys Leisure Products, an Illinois corporation (the "Vendor"), with its principal place of business at Box 7075, Westchester, Illinois, 60154 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:

Hoffman Park Playground Equipment ("Goods"), as indicated in the Plans and Specifications in the Bid Documents dated January 30, 2023, attached to and incorporated as part of this Contract by reference.

2. Contract Documents

The Contract Documents consist of this Contract between the Park District and the Vendor and the Legal Notice, Instructions to Bidders, Bid Proposal Form, Bid Specifications and Drawings, General Requirements, the Vendor's Proposal, dated February 16, 2023 attached to and incorporated as part of this Contract as **Exhibit A**, the Vendor Compliance and Certification, attached to and incorporated in this Contract as **Exhibit B**, and any addenda issued prior to the execution of this Contract (collectively the "Bid Documents") 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. Vendors shall not require any additional or alternative contract terms or conditions; any such additional or alternative terms or conditions are rejected and do not form a part of the Contract unless expressly acknowledged and accepted by the Park District.

3. Contract Sum and Payment

The Park District shall pay the Vendor: Seventy-Five Thousand, Six Hundred and Seventy-Five Dollars ($75,675.00), subject to additions and deductions as provided in the Contract Documents for the proper performance of the Contract (the "Contract Sum"). Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*).

4. Term

This Contract shall begin upon the Effective Date and terminate upon completion of any and all applicable warranty periods, unless terminated earlier as provided herein.

5. Delivery

Vendor shall deliver the Goods on or before September 22, 2023. Vendor will arrange for delivery of Goods through a carrier chosen by Vendor, the costs of which shall be F.O.B. Park District's facility at 1000 Manchester Rd., Wheaton, Illinois, 60187.

6. Title and Risk of Loss

Title to, and the risk of loss, injury or destruction from any casualty to the Goods, regardless of cause, will be the responsibility of the Vendor until the Goods have been received, inspected and accepted by the Park District.

The risk of loss from any casualty to the Goods, regardless of cause, will be the responsibility of the Vendor until the Goods have been received and accepted by the Park District.

7. Acceptance and Rejection

The Park District will have the right to inspect the Goods 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.

8. Performance of the Contract

Vendor agrees to perform all work and services in a good and workmanlike manner. Vendor shall not interfere in any way with and shall cooperate fully with other vendors and contractors procured by the Park District for this project.

Vendor, on receipt of this Contract executed by the Park District, 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.

9. Termination

The Park District may terminate this Contract as follows:

a. 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 9 shall be by a notice of termination delivered to the Vendor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination the Vendor 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 Vendor shall recover payment for approved work executed on the terminated portion of the work before the effective date. Vendor shall not be entitled to damages or lost profits resulting from termination for convenience under this Paragraph.

b. If Vendor fails to provide the Goods 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 Vendor, the Park District may immediately terminate this Contract and enter into an agreement with another Vendor or Vendors to provide the Goods. In such event, Park District shall not be liable to Vendor for all or any portion of the Contract Sum. Vendor 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 Goods and services from the substitute Vendor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees.

c. If Vendor is adjudged as bankrupt, or if Vendor makes a general assignment for the benefit of Vendor's creditors, or if a receiver is appointed on account of Vendor's insolvency, or if any provision of the bankruptcy law is invoked by or against Vendor, 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 Vendor and/or (ii) finish or cause to be finished the Vendor's services required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Vendor 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 Vendor's default (collectively "Park District Expenses and

Damages"), such excess shall be paid to Vendor. If the Park District Expenses and Damages shall exceed such unpaid balance, Vendor 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.

10. 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 in accordance with Paragraph 9.b of this 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.

11. Ownership and Use of Documents

All title, ownership and copyright privileges to all drawings, plans, specifications and other documents and instruments of service prepared or provided by Vendor in connection with the Goods, in whatever format (collectively, "Project Documents") are and shall at all times be vested in the Park District. Vendor agrees, when requested by the Park District, to execute immediately any documents which evidence and acknowledge the Park District's ownership of all Project Documents. All Project Documents prepared or furnished by Vendor shall be solely the property of the Park District the time of their preparation or upon the suspension or termination the Vendor. Reproducible copies of Project Documents shall, to the extent not previously delivered, be delivered promptly to the Park District upon demand and thereafter may be used by the Park District in whole or in part or in modified form for such purposes as the Park District may deem advisable, without further employment of or payment of additional compensation to Vendor or anyone retained by Vendor. Notwithstanding the foregoing, Vendor retains the right to use standard design elements and details which are neither unique to the Park District nor related to the business of the Park District.

12. No Infringement

Vendor warrants that the Goods and any parts thereof do not infringe on any copyrights, patent rights, trade secrets or other rights of any third party. Vendor agrees to indemnify, defend and hold the Park District harmless from and against any loss, cost, damage, liability, or expense (including attorney's fees and other reasonable litigation expenses) suffered or incurred by the Park District in connection with any such infringement claim by any third party, provided, however, that the Park District permits Vendor all available information, assistance and authority to enable Vendor

to do so. Vendor further warrants that if the Park District is enjoined from using the Goods due to an actual or claimed infringement of any patent right or copyright or other property right or for any other reason then, at Vendor's option, Vendor shall promptly either: (i) procure for the Park District, at Vendor's expense, the right to continue using the Goods; or (ii) replace or modify the Goods, at Vendor's expense, so that the Goods become non-infringing.

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

14. Vendor's Representations

The Vendor hereby specifically acknowledges and declares, and the execution of this Contract by the Vendor is a representation of the Vendor that the Contract Documents are full and complete, are sufficient to have enabled the Vendor to determine the cost of the Goods and that the Contract Documents are sufficient to enable it to supply and deliver the Goods outlined therein, in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Vendor's obligation to supply the Goods for an amount not in excess of the Contract Sum on or before the delivery date established in the Contract.

The Vendor shall carefully study and compare the Contract Documents with each other and with information furnished by Park District and shall at once report to the Park District errors, inconsistencies or omissions discovered. The Vendor 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 Vendor in advance. If the Vendor performs any manufacturing activity involving an error, inconsistency or omission in the Contract Documents that Vendor recognized or reasonably should have recognized and of which Vendor failed to notify the Park District, the Vendor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

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.

15. Warranties

The Vendor warrants to the Park District that materials and equipment furnished under the Contract will be of the best quality and new, that the Goods will be free from defects and deficiencies, and that the Goods will conform to the requirements of the Contract Documents. Goods not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Vendor's warranty excludes remedy for damage or defect caused by Park District's abuse, modifications not executed by the Vendor, improper or insufficient maintenance or improper operation by Park District.

Liability or refusal of the subcontractor or vendor responsible for the defective materials, equipment or goods to correct the same shall not excuse the Vendor from performing under the

warranty. If required by the Park District, the Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by the Vendor. All warranties shall be addressed to the Park District and delivered to the Park District upon delivery of the Goods. Vendor must provide the Park District with two (2) copies of any manufacturer's warranty or guarantee information. Where required, the Vendor will assign all manufacturers' warranties to the Park District. In addition to the specific manufacturer warranties, Vendor shall warrant the Goods for at least twelve (12) month period, commencing on the acceptance of the Goods by the Park District, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. Vendor shall repair and replace, as determined by the Park District, any defects or deficiencies at no charge to the Park District during any warranty period.

Vendor shall correct any portion of the Goods that are defective, and replace defective or nonconforming materials, even though such deficiency, defect or nonconformity may be discovered more than one year after delivery and acceptance of the Goods by the Park District, if the correction is of a latent defect and arises from poor workmanship or improper materials or is required to be made to workmanship or materials covered by Vendor or subcontractors contrary to the Park District's request or to requirements specifically expressed in the Contract Documents and was therefore not visible for inspection by the Park District at the time the Goods were delivered. Final acceptance shall occur only after the Goods have 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 Goods.

16. Insurance

A. **Commercial General and Umbrella Liability Insurance**. Vendor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 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 04 13, or a substitute form providing equivalent coverage. Park District, its elected and appointed officials, employees, agents and volunteers shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing 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 Park District. The insurance company's liability shall not be reduced by the existence of such other insurance.

B. **Business Auto and Umbrella Liability Insurance**. Vendor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than $2,000,000 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**. Vendor shall maintain workers compensation as required by statute 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 Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Vendor waives all rights against Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Vendor's work. Contractor shall provide a waiver of subrogation on its workers compensation policy in favor of Owner and shall waive any limitation of its or its subcontractors' liability notwithstanding the limitation set forth in *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991).

D. **General Insurance Provisions**.

1. **Evidence of Insurance**. Prior to commencing any services, Vendor shall furnish 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 Park District shall be by certified mail, return receipt requested. Failure of Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Vendor's obligation to maintain such insurance. Park District shall have the right, but not the obligation, of prohibiting Vendor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Park District. Failure to maintain required insurance may result in termination of this Contract at Park District's option. With respect to insurance maintained after final payment in compliance with requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Park District whenever requested. Vendor shall provide certified copies of all insurance policies required above within 10 days of 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. **Cross-Liability Coverage**. If Vendor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. **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, the Vendor may be asked to eliminate such deductibles or self-insured retentions as respects the Park Districts, its officers, officials, employees, volunteers and agents or required to procure a bonds guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

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

17. Indemnification

To the fullest extent permitted by law, the Vendor shall indemnify 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 the performance of the Vendor's 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 therefrom and (ii) arises out of in whole or in part any act or omission, by the Vendor, any subcontractor, and 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. Vendor shall similarly protect, indemnify and hold and save harmless the Park District's 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 breach of any of their obligations under, or default of, any provision of the Contract. Vendor's obligations under this paragraph shall survive the completion, termination or expiration of this Contract.

18. Extension of Time

Extension of time provided for the supply and delivery of the Goods shall be the Vendor's sole remedy for delay unless the same shall have been caused by acts constituting intentional interference by Park District with Vendor's obligations hereunder and where to the extent that such acts of the Park District continue after Vendor'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 or re-execution of any defective Goods, shall

not under any circumstances be construed as intentional interference with Vendor's obligations under this Contract.

19. Independent Contractor

Vendor acknowledges that it is an independent contractor; it alone retains control of the manner of conducting its activities in furtherance of this Contract. Vendor, 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.

20. 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.

21. 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.

22. 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.

23. Time; Liquidated Damages

Time is of the essence for all matters concerning this Contract. It is hereby understood and mutually agreed by and between the Vendor and the Park District that the delivery date is the latest date to supply the product, material or equipment as specified in the Contract Documents. The Vendor agrees that time is of the essence of this Contract. If the Vendor shall neglect, fail, or refuse to deliver the specified product, material or equipment within the time specified in the Contract or any proper extension thereof granted by the Park District, the Vendor shall be liable and shall pay to the Park District the sum of $100.00 per calendar day, not as a penalty but as a liquidated damages, for each day after the completion/delivery date or such extended time as may have been allowed that the material has not been delivered. The liquidated damages for failure to complete the Contract 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 Vendor for the Work. The liquidated damage amount specified will accrue and will not be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Park District will deduct these liquidated damages from any monies due or to become due to the Vendor from the Park District. If the Vendor shall neglect, fail, or refuse to deliver the specified product, material or equipment within the time specified in the Contract or any proper extension thereof granted by the Park District, it in no way relieves the Vendor of his responsibility to complete the Work at no additional cost to the Park District. Any extension of the completion/delivery date must be agreed upon in writing by the Park District and Vendor. The Vendor shall not be responsible for failure to meet the delivery date when the Park District determines that the Vendor is without fault and the Vendor's reasons for the time extension are acceptable to the Park District.

24. 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.

25. Governing Law; Venue; Attorney's Fees

This Contract and the other Contract Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Notwithstanding any other provision of this Contract to the contrary, if the Park District is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Contract or to seek a declaration of rights under this Contract, it shall be entitled to its reasonable attorney's fees and expenses and costs incurred (including but not limited to expert fees, transcription fees, deposition costs, copying and other costs) pertaining thereto including those fees and costs related to any appeal. In the event of litigation under or regarding this Contract, the only proper venue shall be the Circuit Court of the Eighteen Judicial Circuit, DuPage County, Illinois, and the parties hereby consent to the jurisdiction ov, and exclusive venue in, said court.

26. 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 other 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.

27. Amendment

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

28. 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.

29. 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.

30. 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 East Wesley Street
Wheaton, Illinois 60187
Attn: Executive Director

FOR THE VENDOR:

NuToys Leisure Products
Box 7075
Westchester, Illinois 60154
Attn: Kevin Driscoll

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

WHEATON PARK DISTRICT

By: 5-8-23

Executive Director

Attest:

NUTOYS LEISURE PRODUCTS

By:

Attest:

828445