

PLAYGROUND EQUIPMENT REMOVAL AND INDEMNIFICATION AGREEMENT

This PLAYGROUND EQUIPMENT REMOVAL AND INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into effective this 3rd day of September, 2024, by and between the city of Burleson (the "City"), a Texas municipal corporation located in the counties of Johnson and Tarrant, and Kids Around The World, Inc. (the "Contractor"), an Illinois not-for-profit corporation. The City and the Contractor are hereafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City owns certain playground equipment located at Bailey Lake, Bartlett Park, Cedar Ridge Park, Centennial Park, Chisenhall Sports Complex, Cindy Park, Clark Park, Claudia's Playground, Elk Ridge Park, Hajek Park, Hebele Park, Hidden Vistas Park, Meadowcrest Park, Mistletoe Hill Park, Oak Valley Park North, Prairie Timber Park, Robert Joseph Park, Wakefield Heights Park, Warren Park, and Willow Creek Park as more particularly described in Exhibit A attached hereto (the "Equipment"), which is scheduled to be removed and replaced; and

WHEREAS, the City has determined that the residual value, if any, of the Equipment is less than the cost to disassemble, remove and dispose of the Equipment; and

WHEREAS, Contractor desires to acquire the Equipment in connection with its charitable program of providing playgrounds in underprivileged locations; and

WHEREAS, Contractor is willing, at its sole cost and expense, to disassemble and remove the Equipment in accordance with the schedule set by the City; and

WHEREAS, the City has determined that the Equipment should be replaced as determined by City personnel and the City's standard policies and procedures in determining the useful life of playground equipment; and

WHEREAS, the City is willing to donate the Equipment to Contractor subject to and in accordance with the terms and conditions of this Agreement; and

WHEREAS, the City has determined that the donation of the Equipment in accordance with the terms and conditions of this Agreement accomplishes a legitimate public purpose in aiding the City in maintaining its parks; and

WHEREAS, the City has determined that this Agreement provides a return benefit to the City for the donation, specifically, that, among other things, the Agreement provides for the disassembly and removal of end-of-life playground equipment at no cost, thereby saving the City money; and

WHEREAS, the City has determined that this Agreement provides the City with sufficient controls to ensure the public purpose underlying the donation is carried out and accomplished; and

NOW, THEREFORE, for and in consideration of the promises and mutual agreements set forth

herein, the Parties agree as follows:

AGREEMENT

1. Donation of Equipment. Subject to strict compliance by Contractor with the terms and conditions of this Agreement, the City hereby donates and conveys title to the Equipment to Contractor. Contractor accepts the Equipment and each part thereof "as-is" without user manuals, warning labels or instructions, and acknowledges and agrees that: (i) the City is neither a manufacturer nor a vendor of the Equipment; (ii) the City has not made and does not hereby make any covenant, representation or warranty, express or implied, with respect to (a) compliance with any and all applicable guidelines, regulations or requirements, including, but not limited to those promulgated or provided by the American Society for Testing and Materials (ASTM) and United States Consumer Product Safety Commission (CPSC), (b) the merchantability, condition, quality, durability, design, operation, fitness for use, or suitability of the Equipment in any respect whatsoever, including any proposed use or application thereof by Contractor or others, or (c) the absence of defects, latent or otherwise, in the design, manufacture or condition of the Equipment. The City makes no representation that the Equipment has any value, use or application, other than potentially as scrap metal. Contractor hereby assumes and accepts all risks incident to its acceptance and use of the Equipment and agrees that the City shall not be liable for any damages or losses, actual, incidental, consequential, exemplary or otherwise, of or to Contractor or other person or entity arising out of or in connection with the use, performance or condition of the Equipment or the operation or maintenance thereof. Contractor affirmatively disclaims reliance on any oral representations concerning the Equipment.

2. Removal of Equipment. City shall disassemble and remove the Equipment from Bailey Lake, Bartlett Park, Cedar Ridge Park, Centennial Park, Chisenhall Sports Complex, Cindy Park, Clark Park, Claudia's Playground, Elk Ridge Park, Hajek Park, Hebele Park, Hidden Vistas Park, Meadowcrest Park, Mistletoe Hill Park, Oak Valley Park North, Prairie Timber Park, Robert Joseph Park, Wakefield Heights Park, Warren Park, and Willow Creek Park in coordination with the City's Director of the Park and Recreation Department, or their designee, within a time period not to exceed thirty (30) days after notice to proceed with the removal. Only the Equipment, as set forth in Exhibit A attached hereto, shall be disassembled and removed. Contractor shall notify the City's Director of the Park and Recreation Department prior to scheduling any disassembly and removal of the Equipment and provide the Director, or their designee, the opportunity to be present to observe said disassembly and removal. Unless otherwise requested by the City, Contractor, at its cost, shall restore any areas disturbed by the disassembly and removal of the Equipment to the condition existing prior to the Equipment removal activities.

3. Use of Equipment. Contractor represents, warrants and agrees that it will not install, repurpose or allow any of the Equipment to be reused within the United States of America, its territories, insular areas or protectorates. Contractor represents, warrants and agrees that it will not resell, donate, exchange or otherwise dispose of the Equipment within the United States of America, its territories, insular areas or protectorates, other than through a sale of the Equipment for scrap or disposal at a proper metal recycling facility or disposal site.

4. Insurance. Contractor shall maintain commercial general liability insurance with a limit

of not less than \$1,000,000 each occurrence and a \$2,000,000 aggregate limit. Such policy shall be written on a form or forms acceptable to the City and shall cover liability arising from premises liability, operations, personal injury, and liability assumed under an insured contract. The City shall be included as an additional insured on such policy and Contractor shall provide the City with a certificate indicating same prior to Contractor's disassembly and removal of the Equipment.

5. Indemnification. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO PROTECT, DEFEND (WITH ATTORNEYS REASONABLY ACCEPTABLE TO THE CITY), HOLD HARMLESS, AND INDEMNIFY THE CITY, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AND AGENTS (HEREIN COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION) ARISING IN WHOLE OR IN PART OUT OF: (A) ANY ACTUAL OR ALLEGED BODILY INJURY OR DEATH; (B) INJURY TO, DESTRUCTION OF, OR ENVIRONMENTAL IMPAIRMENT OF TANGIBLE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE LOSS OF USE RESULTING THEREFROM; (C) VIOLATION OF APPLICABLE LAWS, RULES OR REGULATORY REQUIREMENTS; (D) FAILURE BY CONTRACTOR TO PROCURE AND MAINTAIN ALL INSURANCE REQUIRED BY THIS AGREEMENT; OR (E) ANY OTHER DAMAGE OR LOSS ARISING OUT OF OR RESULTING FROM THE EQUIPMENT (INCLUDING, WITHOUT LIMITATION, ITS DISASSEMBLY, AND REMOVAL) OR NEGLIGENT ACT OR OMISSION (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OF CONTRACTOR, OR ANY OFFICER, DIRECTOR, AGENT, EMPLOYEE OR REPRESENTATIVE OF CONTRACTOR, RELATED IN ANY WAY TO THE EQUIPMENT.

THIS INDEMNITY DOES NOT APPLY TO ANY CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, AND EXPENSES THAT MAY OCCUR OR ARISE PRIOR TO THE TIME CONTRACTOR BEGINS DISASSEMBLY AND/OR REMOVAL OF THE EQUIPMENT FROM THE CITY'S PROPERTY. THIS INDEMNITY SHALL SURVIVE THE TERM OF THIS AGREEMENT.

Nothing in this section may be construed as waiving any governmental immunity or damage caps available to the City under state law. This provision is solely for the benefit of the Contractor and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

6. Term. This Agreement shall remain in full force and effect for a term of five (5) years after its effective date.

7. Recitals. The recitals set forth in the foregoing "WHEREAS" clauses are true and correct, constitute representations and warranties of the Parties, constitute legislative findings of the governing bodies of the Parties, form the basis upon which the Parties have entered into this

Agreement, and establish the intent of the Parties in entering into this Agreement. If it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given effect. The Parties have relied on the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.

8. Jurisdiction; Venue. This Agreement is performable in **Johnson** County, Texas and venue of any action arising out of this Agreement shall be exclusively in **Johnson** County, Texas. This Agreement shall be governed and construed in accordance with applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of the state and federal courts in Burleson, **Johnson** County, Texas.

9. Time is of Essence. Time is of the essence in the performance of this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

10. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

11. Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

12. Counterparts Deemed Original; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

13. Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

14. Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions concerning the subject matter hereof.

[Signature Page Follows]

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLESON,
a Texas Municipal Corporation**

By: _____

Name: Tommy Ludwig

Title: City Manager

Date: _____

**KIDS AROUND THE WORLD, INC.,
an Illinois Not-For-Profit Corporation**

By:  _____

Name: Samuel Snyder

Title: Operations Director, U.S.

Date: 9/3/24