

RESOLUTION NO. R-22-09

A RESOLUTION AUTHORIZING ACCEPTANCE OF A PROPOSAL FROM WATER ODYSSEY, FOR THE REPLACEMENT OF THE GLADSTONE COMMUNITY CENTER'S LEISURE POOL DUMPING BUCKET IN THE TOTAL AMOUNT OF \$32,983.00.

WHEREAS, one proposal was received for a dumping bucket water feature and that proposal of Water Odyssey in the amount of \$32,983.00 has been determined by the Director of Parks, Recreation and Cultural Arts to be a fair proposal.

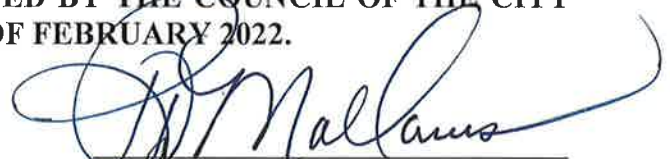
WHEREAS, it is the recommendation of the Department of Parks, Recreation and Cultural Arts to accept the bid from Water Odyssey for the dumping bucket in the total amount of \$32,983.00.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

THAT, the City Manager of the City of Gladstone, Missouri is hereby authorized to accept the proposal of Water Odyssey in the amount of \$32,983.00.

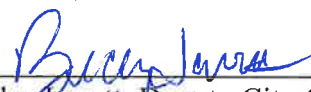
FURTHER, THAT, funds for such purpose are authorized from the 2020 COP Project Fund.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 28th DAY OF FEBRUARY 2022.



Mayor R.D. Mallams

ATTEST:



Becky Jarrett, Deputy City Clerk



Request for Council Action

RES # R-22-09

BILL # City Clerk Only

ORD # City Clerk Only

Date: 2/23/2022

Department: Parks & Recreation

Meeting Date Requested: 2/28/2022

Public Hearing: Yes Date: [Click here to enter a date.](#)

Subject: Community Center Leisure Pool Dumping Bucket Replacement

Background: The community center's leisure pool dumping bucket began having issues and upon investigation, we have found that the bearings and internal parts are corroded and are prone to fail in the near future. It would be more costly to remove and attempt to repair than to replace.

Budget Discussion: Funds are budgeted in the amount of \$32,983.00 from the OTHER Fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$

Public/Board/Staff Input:

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Justin Merkey
Department Director/Administrator

JM
City Attorney


SW
City Manager



Customer Name	Gladstone
Contact Name	Linda Borders Borders
Contact Phone	(816)423-4201
Contact Email	lindab@gladstone.mo.us

Proposal Number	Quote 2100214
Quote Date	Dec 16, 2021
Expiration Date	Mar 26, 2022
Created by	Kelsey Fording
Created by Email	kelsey.fording@fountainpeople.com

PROJECT NAME W09116 Gladstone Community Center

PRODUCTS AND SERVICES				
Model Number	Quantity	Product Name & Image	Product Description	GPM (Each)
W142-B	1	Dumpin' Buccaneer™; Balance Assembly Only 	The Dumpin' Buccaneer™ is a unique themed piece that can look like a pirate brig or a mighty man of war. The "reefed sails" dump as they fill with water. Use with the Ship Prow and Stern and G2 Cannons™ to create a super fun maritime aquatic play environment.	45

Products and Services Total \$30,883.00



FREIGHT AND PACKAGING			
Description	Quantity	Price	Subtotal
Packaging and Crating	1	\$600.00	\$600.00
✓ Freight	1	\$1,500.00	\$1,500.00

Freight and Packaging Total \$2,100.00

GRAND TOTAL THIS PROPOSAL WITH OPTIONS SELECTED \$32,983.00

By Signing this agreement I agree to The Fountain People/Water Odyssey's general terms and conditions of sale.

AGREED TO AND ACCEPTED:

Scott Wingerson

03 / 07 / 2022



Proposal Pricing: The above proposal is valid for 30 days from the date first set forth above. **PRICES ARE YOUR COSTS unless specifically noted otherwise in the quote.** After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel, or other cost increases. When applicable, Fountain People reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to: fuel, steel, resin, foam and paint. Due to the duration of time between proposals, contracts, and final installation, Fountain People reserves the right to implement this surcharge, when applicable at its sole discretion. **Installation, unloading and storage are not included unless specifically noted in Proposal. See other exclusions section below.**

Taxes: Sales and/or use taxes are not included in your proposal. Sales and/or use taxes will be added at time of order unless acceptable tax-exempt documentation is provided.

Purchase: By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by Fountain People (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase Water Odyssey or Fountain People brand equipment ("Equipment") and the services to be provided by the Company, as detailed in the Proposal sections of this agreement, above, or in the relevant purchase order accepted by the Company, for use by Purchaser or for installation by Company or Purchaser on behalf of a third-party who will be the ultimate owner of the Equipment (the ultimate owner of the Equipment, whether Purchaser or a third-party, being the "Owner").

Short Ship and Damage Claims: Purchaser has 3 business days from receipt of the Equipment to file a short ship or damage report in writing to its Company sales representative. Company will not honor claims made after this time. Obvious damage should be noted at time of unloading on the trucking companies' paperwork before accepting receipt of Equipment. Failure to note shipping damage may result in shipping damages not being covered.

Standard Exclusions: This quotation explicitly excludes any and all items not expressly specified or identified above in writing. No other product, parts, equipment, labor or service is included, regardless of any Contract Document, Contract Section, Plans, Specifications, Drawings or Addendum.

Bonding Guidelines: If Purchaser will use or provide the Equipment and Services for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner: *"The manufacturer's warranty for the Water Odyssey brand Equipment is a separate document between Fountain People and the ultimate owner of the Water Odyssey Equipment brand Equipment, which will be provided to the ultimate owner at the time of completion of the delivery and other services specifically contracted above to be provided by the Fountain people. Due to surety requirements, any performance and/or payment bond will cover only the first year of the Fountain People warranty."*

Insurance Requirements: Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.

Payment: Terms of payment will be determined at time of order based on credit and payment history. Deposits may be required. Proposals over \$100,000 will require a deposit – amount to be determined at time of order. All payments must be made to Fountain People, PO Box 807 San Marcos, TX 78666. If the Purchaser or Owner fails or delays in making any required payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws including, but not limited to, filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.

Lien Releases: Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.



4600 Highway 123
San Marcos TX, 78666
(512) 392-1155
info@fountainpeople.com

Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings, and Surveying: Site plan approval, permits, permit fees, plans, engineering drawings, health department approvals, and surveying are specifically excluded from this agreement and the Services unless specified in the quote section above. The Company does not in any way warrant or represent that a permit or government approval for construction or occupancy will be obtained. Sealed engineered drawings or 3rd party engineering review that are required but not included in above quote will result in an additional cost to Purchaser.

Manufacturing & Delivery Times: Manufacturing lead-time from Company's receipt of the "approved order" is approximately 6 to 8 weeks for standard Equipment, and 8 to 16 weeks for custom Equipment. Delivery is approximately 1 week thereafter. All shipping is FOB our Texas facility. Transfer of ownership of Equipment occurs once the Equipment leaves our facility. Fountain People does not guarantee specific delivery days unless that option is specified and paid for in the quote. In the event a shipment is late due to no fault of Fountain People, Fountain People is not liable for the extra shipping charges paid and does not pay re-mobilizations or other delay charges or liquidated damages.

Returned Product, Deposits, and/or Cancelled Order: Within the first 30 days after shipment from our facility, all returned product(s) and cancelled orders are subject to a 25% restocking fee. Custom products cannot be returned. No returns are available following this 30 day period. All deposits are non-refundable. All expenses incurred are the responsibility of the Purchaser, up to notice of cancellation.

Force Majeure: A party shall be excused from performance (or such performance shall be suspended) for any period and to the extent that it is prevented from completing the Work, in whole or in part, as a direct result of any delay or suspension of work caused by a Force Majeure Event. For purposes of this Subcontract, "**Force Majeure Event**" means a cause or event that is not reasonably foreseeable or otherwise caused by or under control of the party claiming the Force Majeure Event, including acts of God, fires, floods, explosions, wars, hurricane, sabotage, terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes (other than those of Subcontractor or its sub-subcontractors that prevent Subcontractor from performing the Work), pandemics, epidemics, and other like events that are beyond the reasonable anticipation and control of the party affected by the Force Majeure Event despite the party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of the acts, events or occurrences, and which events or its effects are not attributable to a party's failure to perform its obligations under this Subcontract, but only to the extent that any of these cause are valid excuses under the Prime Contract. A party effected by a Force Majeure Event shall commence performance completing the Work immediately following such suspension due to a Force Majeure Event.

Indemnification: To the fullest extent permitted by law, Purchaser shall indemnify, defend, and hold harmless the Company and its consultants, agents, and employees or any of them from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees related to the installation of the Equipment or performance of the services, provided that such claim, damage, loss, or expense is attributable to bodily injury to, sickness, disease, or death of a person, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 15.

THE COMPANY SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, LIQUIDATED, EXEMPLARY, OR PUNITIVE DAMAGES, OR ANY LOSS OF REVENUE, PROFIT, USE OR GOODWILL, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, ARISING OUT OF A BREACH OF THIS WARRANTY OR IN CONNECTION WITH THE SALE, DELIVERY, INSTALLATION, MAINTENANCE, USE, OPERATION OR REPAIR OF ANY PRODUCT OR SERVICE. IN NO EVENT WILL THE COMPANY BE LIABLE FOR ANY AMOUNT GREATER THAN THE PURCHASE PRICE FOR ANY PRODUCT OR SERVICE PROVIDED BY THE COMPANY. THE FOREGOING LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR THE COMPANY'S PRODUCTS AND SERVICES, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING OR PERFORMANCE OR TRADE USAGE. PURCHASER, BY ACCEPTANCE AND USE OF THIS LIMITED WARRANTY, WAIVES ANY RIGHTS IT WOULD OTHERWISE HAVE TO CLAIM OR ASSERT THAT THIS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.

Signature Certificate

Reference number: UUAX6-RMFCD-BDNFC-QWREM

Signer

Timestamp

Signature

Linda Borders Borders

Email: lindab@gladstone.mo.us

Sent:

24 Feb 2022 03:02:42 UTC

Viewed:

24 Feb 2022 03:03:54 UTC

Signed:

07 Mar 2022 20:16:17 UTC

Scott Wingerson

IP address: 98.100.109.189

Location: Kansas City, United States

Document completed by all parties on:

07 Mar 2022 20:16:17 UTC

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