

RESOLUTION NO. R-23-53

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH GAMETIME TURF CARE, INCORPORATED, IN THE TOTAL AMOUNT NOT TO EXCEED \$27,195.00 FOR THE RENOVATION OF THE HAPPY ROCK SOFTBALL INFIELDS.

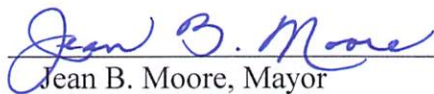
WHEREAS, the City requested proposals for the work, and the proposal of Gametime Turf Care, Incorporated, in the amount of \$27,195.00 has been determined by the Director of Parks, Recreation and Cultural Arts to be the lowest and best proposal.

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 execute a contract with Gametime Turf Care, Incorporated, for a total amount not to exceed \$27,195.00.

FURTHER, funds for such purpose are authorized from the Fiscal Year 2024 lease Capital Improvement Sales Tax Fund.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 28TH DAY OF AUGUST 2023.


Jean B. Moore, Mayor

ATTEST:


Kris Keller, City Clerk



Request for Council Action

RES ☒ # R-23-53

BILL ☐ # City Clerk Only

ORD ☐ # City Clerk Only

Date: 8/22/2023

Department: Parks & Recreation

Meeting Date Requested: 8/28/2023

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

Subject: Happy Rock Softball Infield Renovation

Background: Three of the infields at the Happy Rock Park softball complex are not draining properly and staff is subsequently having to cancel games due to the infields being too wet. This renovation will “pitch” the fields to drain to the outfield and have a field conditioner product applied that will help them dry quicker, so play can resume after rainfall.

Budget Discussion: Funds are budgeted in the amount of \$ 27,195.00 from the CIST Fund.

Public/Board/Staff Input: It is the recommendation of the Department of Parks, Recreation and Cultural Arts to accept the lowest bid provided by GameTime Turf Care Inc. in the amount of \$27,195.00 to complete this work.

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

Justin Merkey
Department Director/Administrator

JM
City Attorney

BB
City Manager

AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of August, 2023, (the "Effective Date") by Game Time Athletics (hereinafter "Contractor") and the City of Gladstone, Missouri (hereinafter "City").

WHEREAS, the City desires to engage the Contractor to provide services to the City as more fully described in the Contractor's proposal dated August 18, 2023 (hereinafter referred to as the "Project Services") attached hereto as Exhibit A and incorporated herein by reference.

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his or their executors and administrators, as follows:

SECTION 1. Term of Agreement. This Agreement shall begin as of the Effective Date. The Contractor shall complete the Project Services no later than October 1, 2023, unless otherwise extended or terminated as provided herein.

SECTION 2. Scope of Services. The Contractor shall provide the Project Services described in Exhibit A. The Contractor will hire, train, supervise, direct the work of, and discharge all personnel engaged by them to perform the Project Services. The Contractor is solely responsible for payment of wages, salaries, fringe benefits and other compensation of, or claimed by, the Contractor's personnel in the performance of the Project Services, including, without limitation, contributions to any employee benefit plans and all payroll taxes.

The Contractor will utilize the personal services of its staff to deliver the Project Services. The Contractor may also engage third-party contractors and other parties in connection with its performance of the Project Services, subject to prior approval by the City.

SECTION 3. Payment. The Owner hereby agrees to pay the Contractor, for the Project Services, the sum of \$27,195.00 unless authorized by the City pursuant to a change order approved by the City in accordance with applicable City ordinance requirements. The City will pay all proper invoices within thirty (30) days of receipt. The following establishes the invoice procedure:

1. All invoices shall contain a narrative entry sufficient to describe the work or task performed and an indication of the person and job classification who performed the work.
2. Time shall be billed in quarter hour increments.

SECTION 4. Prevailing Wages. The Contractor shall comply with all laws regarding the payment of prevailing wages to employees of the Contractor or subcontractor, if applicable. Contractor shall indemnify the City for any damage resulting to the City from failure of either the Contractor or any subcontractor to pay prevailing wages pursuant to applicable laws.

SECTION 5. Construction Safety Training.

- A. The Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees have not previously completed a construction safety program, Contractor shall require those on-site employees to complete a construction safety program within sixty (60) days after the

date work on the project commences.

- C. The Contractor acknowledges and agrees that any of Contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. The Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675, RSMo.

SECTION 6. Notice of Penalty Provisions

- A. Pursuant to Section 292.675, RSMo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by Contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5B and 5C above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

SECTION 7. Unauthorized Aliens. Pursuant to 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit B and incorporated herein, Contractor hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Furthermore, Contractor affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

SECTION 8. Insurance Requirements.

- A. General Provisions. Contractor shall file (by the Effective Date) with the City evidence of liability insurance that is consistent with the amounts set forth below, and shall maintain such insurance until this contract is terminated.
- B. Limits and Coverage.
 - 1. Commercial General Liability Insurance: Commercial General Liability Coverage in an aggregate amount of not less than the limit on liability pursuant to Section 537.610 RSMo for all claims arising out of a single accident or occurrence and \$1,000,000 for any one person in a single accident of occurrence.
 - a. The following endorsements shall attach to the policy:
 - (i) The policy shall cover personal injury as well as bodily injury.
 - (ii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 - (iii) Broad form property damage liability shall be afforded.
 - (iv) The City shall be listed as an additional insured.
- C. Workers' Compensation Insurance: The Contractor shall obtain and maintain Workers' Compensation Insurance for a limit of \$500,000 for all of their respective employees, and in case any work is sublet, the Contractor shall require any subcontractors to provide Workers' Compensation insurance for all

subcontractors' employees, in compliance with Missouri law. The Contractor hereby indemnifies the City for any damage resulting to it from failure of either the Contractor or any contractor or subcontractor to obtain and maintain such insurance.

- D. Commercial Automobile Liability Insurance: Contractor shall obtain and keep in force commercial automobile liability insurance with a minimum combined single limit of \$100,000, covering scheduled automobiles. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with this Agreement, by the Contractor or subcontractor. The minimum limits for commercial automobile liability insurance may be satisfied by maintaining excess/umbrella liability coverage in an amount sufficient to meet the minimum limits.

SECTION 9. Labor and Materials Payment Bond

- A. Labor and Materials Payment Bond. **Not required for this project.** ~~Prior to commencement of construction, Contractor shall furnish a labor and materials payment bond in a form acceptable to the City Attorney, in an amount equal to 100% of the total cost of completing the Work, as determined by the City, conditioned upon the payment for all labor and materials suppliers. Copies of certifications of such bond shall be delivered to the City prior to the commencement of construction.~~

SECTION 10. General Conditions

- A. Compliance with Laws and Safety Regulations. Contractor shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the Project Services. Contractor shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement. In the performance of the Project Services, Contractor shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any other pertinent federal, state and/or local safety or environmental laws or regulations.

Contractor shall obtain and maintain an occupational or business license with the City, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor.

- B. Contractor's responsibility for subcontractors. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.
- C. General Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws.
- D. Liquidated Damages. Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in this contract, Contractor (or surety) shall be liable to the City in the amount of \$100.00 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The

amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

- E. Termination. The City shall have the right at anytime by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

- F. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph E above, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

G. Liability.

1. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.
2. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.
3. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
4. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

5. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.
6. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.
- H. Conflict of Interest. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Gladstone, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of Section 105.450 et seq., RSMo., shall not be violated.
- I. Assignment. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.
- J. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- K. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this contract:
1. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570, RSMo.
 2. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230, RSMo.
- L. Notices. Any notice, approval or other communication between the City and the Contractor pursuant to this Agreement shall be made in writing and shall be deemed to be effective upon receipt or refusal of service and may be given by personal delivery, courier, reliable overnight delivery or deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, to the address specified below or to such other address as may later be designated by written notice of the other party:

The City: City of Gladstone, Missouri
Attn: Justin Merkey
7010 North Holmes
Gladstone, Missouri 64118

Contractor: GameTime Athletics
Attn: Blake Siler
PO Box 55
Weston, MO 64098

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and the Contractor.

- M. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.
- N. Jurisdiction. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Clay County, Missouri.

IN WITNESS WHEREOF, the Contractor and the City have executed this Agreement as of the Effective Date.

GAME TIME ATHLETICS:

By: Blk Sil
Name: Blake Siler
Title: President

CITY OF GLADSTONE, MISSOURI:

By: [Signature]
Name: Robert M. Baer
Title: City Manager

EXHIBIT A
PROJECT SERVICES
(see attached)



P.O. Box 55
Weston, MO 64098
816.916.8953
Email:
bsiler@GameTimeAthletics.com

August 18, 2023

Organization: Gladstone Parks & Recreation - Happy Rock Park

Project: Softball Infield Maintenance

Field: Field 2, 3 & 5

Estimated Area: Infield 15,000 Square Foot

Scope of Work:

1. Clearly mark all base pegs, home plate & pitching rubbers or pegs (Completed by owner)
2. Laser Grade infield
3. Roll Infield
4. Import 1 truckload of Redfield Infield conditioner - 3/8" Depth
5. Topdress infield conditioner onto infield
6. Drag infield

Estimated Cost - \$28,395 - All 3 Fields
Multi-Field Discount - \$1,200

Grand Total - \$27,195 - All 3 Fields

Notes:

- GameTime is not responsible for unmarked utilities including irrigation
- All spoils to be dumped onsite
- All extra materials will be dumped onsite
- A fuel surcharge will be charged if price of diesel is \$6 per gallon or more during construction
- Quote valid for 45 days

Blake Siler, President

816-916-8953

A handwritten signature in dark ink, appearing to be "BS" or "B. Siler", written over a horizontal line.

EXHIBIT B

CITY OF GLADSTONE, MISSOURI
WORK AUTHORIZATION AFFIDAVIT
PURSUANT TO 285.530, RSMo
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

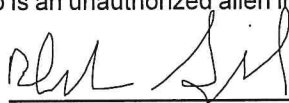
BEFORE ME, the undersigned authority, personally appeared Blake Siler, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is Blake Siler and I am currently the President of GameTime Athletics (hereinafter "Contractor"), whose business address is PO Box 55 Weston, MO 64098 and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the Roof Replacement of Municipal Pool Bathhouse contracted between Contractor and the City of Gladstone, Missouri.

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.



Affiant

Blake Siler

Printed Name

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

SEAL