

BILL NO. 48-14

ORDINANCE NO. 2179

AN ORDINANCE TO AUTHORIZE THE MAYOR TO SIGN A RECREATIONAL LEAGUE MANAGEMENT AGREEMENT BETWEEN THE CITY OF WARRENTON, MISSOURI AND GAMETIME TOURNAMENTS

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON MISSOURI, AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to sign an agreement on behalf of the City of Warrenton with GameTime Tournaments for recreational league management. A copy of said agreement is attached hereto as Exhibit "A" and made a part hereof by reference.

SECTION II. If any section, subsection, sentence, clause, phrase or portion of this amendment is for any reason held invalid or unconstitutional by a judgment of a court of competent jurisdiction, as to which not further appeal right exists, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity or remaining portions hereof.

SECTION III. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.


SECTION IV. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 1st day of July, 2014.



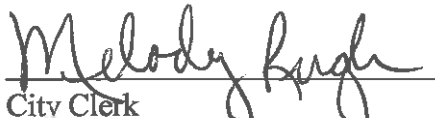
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 1st day of July, 2014.



Mayor

ATTEST:



City Clerk

**CITY OF WARRENTON
RECREATIONAL LEAGUE MANAGEMENT AGREEMENT**

THIS AGREEMENT (the "Agreement") is made as of the 1st day of July, 2014, by and between the CITY OF WARRENTON, a municipal corporation organized under the laws of the State of Missouri, hereinafter called the "City" and Todd Hamlett, whose address is 117 Bombadill Blvd., Wright City, MO 63390 and Robert Worstenholm, whose address is 16 Hampton Woods Ln., O'Fallon, MO 63368 who operate GAMETIME TOURNAMENTS a Missouri registered Fictitious name (hereinafter referred to as "Contractor").

WHEREAS, the City desires to promote the general health, safety and welfare of the citizens by hosting recreational sports leagues in the spring, summer and fall, primarily at the Warrenton Recreational Complex located at the intersection of Hickory Lick Road and Jaspering Lane (hereafter referred to as the "Complex") and at Khoury Park located at 609 East Walton Street (hereafter referred to as the "Park"),

WHEREAS, the City desires to enter into this Agreement for the management of its recreational sports leagues with a qualified management company; and,

WHEREAS, Contractor possesses the expertise and experience necessary to provide management of the City's recreational sports leagues; and,

WHEREAS, the City desires to retain Contractor to manage the City's recreational sports leagues on behalf of the City.

THEREFORE, and in consideration of mutual covenants herein contained, it is agreed as follows:

**SECTION A
REPRESENTATIONS AND WARRANTIES OF
CONTRACTOR**

Contractor hereby represents and warrants as follows:

1. Under this Agreement, Contractor will manage the operations of the City's recreational sports leagues per the scope of duties as outlined in Section B as set forth below.
2. Contractor will coordinate its activities with City staff in an effort to reduce duplication of services.
3. Contractor warrants and represents that the services provided under this Agreement will, at all times, be performed and delivered in a competent, skillful and workmanlike manner, and that Contractor will in all respects be fit for what it has agreed to per this Agreement including the proper care and custody of City property.
4. Contractor warrants and represents that it is duly qualified to do business in Missouri and that it possesses all necessary statutory authority to transact business in the state of Missouri as a limited liability corporation. Contractor hereby represents and warrants that it has and will continue to maintain all applicable organization charters and approvals to conduct business and that it will at all times conduct its business in a reputable manner.

SECTION B
SERVICES TO BE PROVIDED BY CONTRACTOR AND CITY

1. Operation and Maintenance of Leagues

Contractor shall provide for the management and operational services of the spring-summer youth baseball, softball and T-ball leagues (the "Spring Leagues") and fall youth soccer leagues. Contractor shall have the right, with written approval from the City's designee, to offer additional recreational leagues, including, but not limited to, adult softball, youth and adult kickball and youth fall baseball (Collectively, the Spring Leagues, the fall soccer leagues and all other leagues shall be referred to as the "Leagues"). The Contractor shall be responsible for all aspects of the Leagues without recourse to the City. The City shall make the Complex and the Park available for the following program sessions, where applicable: August 1, 2014 to December 30, 2014 and February 1, 2015 to December 31, 2015, Monday through Friday, 5:00 PM to 12:00 PM. The Contractor reserves the right to request use of the Complex and the Park on Saturdays and Sundays with advance written permission from the City's designee.

1.1 Contractor Responsibilities

Contractor shall be responsible for all aspects related to the organization, management, coordination and operations of the Leagues as specified herein:

A. Maintain written documentation of all background checks (National-FBI, State and local) and "Code of Conduct" training verification along with signed acknowledgement of appropriate conduct for all employees, head coaches, and managers. Contractor shall provide copies of all documentation listed herein upon request of the City.

B. Ensure that all parents, players and coaches adhere to a "Code of Conduct" to be agreed upon between the City and Contractor prior to start of Leagues under this Agreement.

C. Create field schedules for all practices and games of the Leagues and provide schedules to the City at least five (5) days prior to the start of the respective league or program. Contractor shall manage master field schedule and provide access to City staff. Contractor shall provide awards similar to or better than recreational leagues in surrounding communities.

D. Contractor shall inspect and document the conditions of the Complex and Park, equipment (including but not limited to benches, tables, fencing, irrigation system, concession stands, restrooms and pavilions) and notify the City designee of damages, deficiencies and/or graffiti within 24 hours.

E. Contractor will notify, via email to the City's designee, of any complaint and when applicable, the resolution of the complaint. Contractor agrees that, in the event a complaint cannot be resolved directly with Contractor, a decision by the City's Board of Aldermen's Recreation Committee shall be binding on Contractor.

F. Contractor will ensure that all participants, players and spectators are supervised at all times and clean up all debris immediately after use. In the event that the City must clean-up debris or repair damaged property the Contractor shall reimburse the City the cost for debris clean-up or damage

repair. Contractor will be responsible for the cleaning and stocking of restrooms (supplies to be provided by the City).

G. Contractor shall adhere to all Federal, State and local laws, including City ordinances and all facility rules and utilize the Complex and Park for the intended sport for which it was designed and built within the pre-established scope and permitted date and times established herein. Parking on the grass, playing fields, sidewalks, or walkways in the Complex or Park is prohibited.

H. Contractor shall make determination of rain outs or other weather cancellations by 4:30 pm of any applicable game or practice day and shall notify participants via Contractor's website and rain-out line. Safety of participants will always be the deciding factor in making the determination. City shall retain the right to close the Complex or Park at any time due to weather or hazardous conditions.

I. Contractor shall meet with City designees to address service concerns and ensure all tasks are performed adequately and according to schedule.

J. Contractor shall respond to and correct any deficiencies in performance of the service identified by the City's designee. Deficiencies shall be corrected within the time limits agreed upon with the City.

K. Contractor shall provide for the registration, in-person and online payments for participants.

L. Contractor will supply all necessary equipment, supervisory personnel, referees, and umpires for Leagues without recourse to the City. Contractor will provide discounted rates for the Leagues to City residents.

M. Contractor shall be required to maintain in full force and effect a surety bond in an amount as directed by the City.

N. Contractor shall provide a report containing registration numbers and receipts and other information in a format acceptable to the City within 15 days after completion of each registration period.

1.2 City Responsibility

A. City shall monitor Contractor's performance and compliance with the terms of this agreement.

B. City will promote and advertise Leagues on the City website. City will promote Leagues with other sponsors and associates at City's discretion. City will allow the use of permitted/approved signs for promotion of the Leagues.

C. City will provide all grounds and facility maintenance and prepare fields prior to the start of designated game days for Leagues.

D. City will provide needed maintenance and/or supplies for field equipment. City will provide restroom cleaning supplies and toilet paper.

E. City will coordinate all field, Complex and Park maintenance for Contractor through the Grounds and Maintenance Director.

F. City will turn over to Contractor existing practice equipment, without recourse to the City, for 2015 Leagues when available to be used by coaches of City teams. In the event this Agreement is terminated, all keys, materials, supplies and equipment provided to Contractor shall be returned in good condition (except for normal wear and tear) to City within 24 hours of either party receiving written notice of termination.

G. City shall accept in-person registration payments for League participants.

1.3 Personnel

Contractor shall furnish sufficient personnel to operate and manage Leagues at all times. All personnel must be uniformly identified at all times. All personnel employed by Contractor relating to the operation of the Leagues shall be considered employees of the Contractor and not of the City. All personnel employed by Contractor shall be paid in accordance with the minimum Federal Wage and Hour Laws. Contractor shall be responsible for the payment of all employment taxes and Social Security taxes related to the employment of the aforementioned personnel. The City shall have the right to request the replacement of any Contractor employee whose conduct, character or performance is detrimental to the best interest of the City. Further, Contractor agrees to make such a replacement within twenty-four (24) hours of verbal notification by the City.

At the request of the City at any point in time, Contractor will drug test all personnel employed by Contractor. The cost for the drug test will be borne by the City.

The Contractor shall provide to the City a complete list of employees, two weeks prior to the beginning of any league. This list shall include the name, address and phone number of each employee. Additions to this list shall be made at the time additional personnel are hired.

1.4 Modification of Agreement Terms

The terms of this Agreement may be modified by mutual written consent to increase or decrease the scope of the work or for such other purpose as shall become necessary during the conduct of the Agreement period. Such amendments shall be accomplished in writing as an addendum to the Agreement.

1.5 Payment

Contractor shall receive 100% of participants' registration fee as consideration and payment for management services provided herein, without guarantee or warranty from the City. At the request of the City, Contractor shall provide either audited financial statements or allow City personnel to conduct an audit of their financial statements under terms and conditions as directed by the City. Should either party terminate this Agreement at any time, the responsibility of Contractor to provide audited financial statements shall survive and Contractor agrees to pay \$25.00 a day as liquidated damages thirty (30) days after receiving a written request from the City to provide said audited financial statements or allow City personnel access to records to conduct said audit. Any payments collected by the City shall be turned over on a monthly basis and both parties shall meet periodically, but at a minimum monthly, to reconcile all payments received by either party. Contractor is required to submit to the City a report containing

details of payments received, number of participants, and other information as requested by the City within 15 days of close of registration for each League managed by Contractor.

2. Term

This Agreement shall be effective upon its approval and execution, and shall terminate on December 31, 2015 unless the City exercises the option to renew, one year at a time, for up to an additional three terms.

3. Insurance

A. By signing this Agreement, Contractor hereby warrants and represents to the City that it maintains and will continue to maintain commercial general liability and other insurance coverage in such coverage amounts as are reasonable and customary in Contractor's business or trade and sufficient in scope and coverage amounts as to adequately insure against all usual and foreseeable risks associated with the work to be performed by Contractor under this Agreement.

B. Contractor warrants and represents that Contractor shall indemnify and hold harmless the City, its employees, officers, agents, independent contractors, attorneys and insurers from and against any and all liability and expense, including attorneys' fees and costs of pursuing or defending any action which the City should incur as a result of any breach of the representation and warranties set forth in this section or elsewhere in this Agreement.

C. Contractor's insurance coverage shall be maintained pursuant to this Agreement shall be primary insurance with respect to City, its employees, officers, volunteers and agents. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be considered in excess of Contractor's insurance and shall not contribute to it. All coverage for subcontractors shall be subject to all of the requirements stated herein.

D. The following is a list of standard insurance policies, along with their respective minimum coverage amounts, as required in the Agreement:

(i) Workers' Compensation Policy: Statutory amounts required by Missouri law;

(ii) Commercial General Liability Policy: General aggregate of \$1,000,000 and a minimum of \$2,000,000 per occurrence. No coverage shall be deleted from standard policy without notification of individual exclusions being attached for review and acceptance by the City;

(iii) Automobile Liability Policy, which shall include all owned and hired autos, if applicable: An aggregate amount of \$1,000,000 or similar coverage subject to the final approval of the City.

(iv) Before performing any of the obligations pursuant to this Agreement or occupying the improvements at the Complex and Park, Contractor shall file with the City Finance Director valid certificates of insurance and endorsements acceptable to the City and naming the City as additional insured.

4. Independent Contractor

Contractor is retained by the City only for the purposes of, and to the extent set forth in, this Agreement, and the relationship of Contractor with the City under this Agreement during the term of this Agreement shall be that of an independent contractor and not an employee, partner, member, owner, officer, director or other agent of the City. Contractor agrees to devote sufficient time, effort, resources, ability, skill and attention as may be necessary for Contractor to perform the services required to be provided to the City under this Agreement, but performing such services subject to the provisions of this Agreement, all applicable laws, rules, regulations governing the business of Contractor and the work to be performed hereunder. Contractor shall not be considered by reason of the provisions of this Agreement or otherwise as being an employee of the City. This Agreement will not be deemed to create a partnership, joint venture, agency or fiduciary relationship between the parties. Contractor shall have no right to bind the City to any agreement with any other person or entity and is not authorized to act for the City in any manner except as expressly set forth in the Agreement.

5. Parties in Interest: No Third-Party Beneficiaries

Except as expressly set forth herein, this Agreement will not provide any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, cause of action or other right.

6. Non-waiver

The failure to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this agreement, or any part hereof, or the right of either party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

7. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a U. S. Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other part at the address described below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

Contractor: Gametime Tournaments
Attn: Robert Worstenholm
16 Hampton Woods Lane
O'Fallon, MO 63383

City: City of Warrenton
Attn: Terri Thorn
Director of Operations
200 West Booneslick
Warrenton, MO 63383
Fax: (636) 456-8135

8. Indemnification

To the fullest extent permitted by law, Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising out of services and operations negligently performed hereunder by Contractor, including the City's reliance on or use of the services or products provided by Contractor under the terms of this Agreement. Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, Contractor agrees that this indemnification requires Contractor to obtain insurance in amounts specified herein and that Contractor has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement. Notwithstanding to the foregoing, Contractor's indemnity obligations are limited solely to the extent directly caused by Contractor's fault or negligence. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges and immunities as set forth under the Constitution of the State of Missouri or under any other law of the State of Missouri.

9. Nondisclosure

Contractor agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

10. Termination

Either party shall have the right to terminate this Agreement at any time for any reason, without cause or penalty, by giving thirty (30) days prior written notice to such effect. Neither the City nor the Contractor shall be liable to the other party for any damages on account of such termination, including loss of anticipated future profits with respect to the remainder of the work however, that the provisions of Section 1.5 continue to apply.

11. Accounting

During the period of this Agreement, Contractor shall maintain accounting records containing details of payments, expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all reports submitted hereunder by Contractor.

12. Entire Agreement

This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. Any oral representations or modifications concerning this instrument are of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

13. Severability

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

14. Transferability

Neither this Agreement nor any rights or obligations hereunder shall be assigned by Contractor because of the personal service nature of this Agreement. Contractor may not delegate, assign or subcontract any of Contractor's obligations or responsibilities under this Agreement without the prior written consent of the City, which consent may be withheld for any reason, even arbitrarily, in the City's sole and absolute discretion.

15. Choice of Forum and Governing Law

In light of City and Contractor's substantial contact with the State of Missouri and Warren County, Missouri in particular, the parties' interests in ensuring that disputes regarding the interpretation, validity and enforceability of the Agreement are resolved on a uniform basis, and City's execution of, and the making of, this Agreement in Warrenton, Missouri, the parties agree that:

- (i) any litigation involving any noncompliance with or breach of the Contractor, shall be filed and conducted in the Circuit Court for Warren County, Missouri; and
- (ii) the Agreement shall be interpreted in accordance with and governed by the laws of the State of Missouri, without regard to any conflict of law principles thereof.

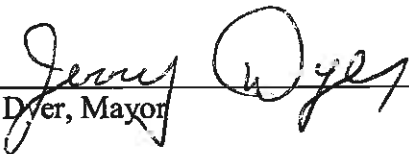
16. Right to Recover Attorneys' Fees and Costs

Contractor undertakes and agrees that if Contractor breaches or threatens to breach any provision of this Agreement, Contractor shall be liable for any attorneys' fees and costs incurred by the City in enforcing its rights under this Agreement, whether or not a lawsuit is filed in connection with such efforts to enforce the City's rights under this Agreement including, but not limited to, any of the covenants set forth in this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement in multiple copies, each of which shall be an original.

CITY OF WARRENTON

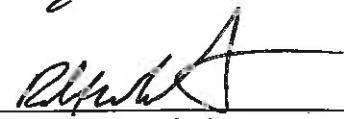
CONTRACTOR



Jerry Dyer, Mayor




Todd Hamlett



Robert Worstenholm

ATTEST: 7-22-14

ATTEST:



Melody Rugh (City Clerk)

Name and Title