

**RESOLUTION NO. 2022- 2949**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH PLAYCORE WISCONSIN, INC. D/B/A GAMETIME FOR THE PURCHASE AND INSTALLATION OF OUTDOOR FITNESS EQUIPMENT AT TOWN BEACH ENDS, UTILIZING THE TERMS AND CONDITIONS OF THE CITY OF CHARLOTTE, NORTH CAROLINA, CONTRACT NO. 2017001134 PURSUANT TO SECTION 3-13(3) OF THE TOWN CODE; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(3) OF THE TOWN CODE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside (the "Town") seeks to purchase and install new outdoor fitness equipment at the Town's 95<sup>th</sup> street, 94<sup>th</sup> street, 92<sup>nd</sup> street, 90<sup>th</sup> street, and 89<sup>th</sup> street beach ends (the "Project");and

**WHEREAS**, the City of Charlotte, North Carolina, issued Request for Proposals No. 269-2017-0028 ("RFP") for playground and outdoor fitness equipment, site accessories, surfacing, and related products and services, and competitively awarded Playcore Wisconsin, Inc. d/b/a GameTime ("GameTime") Contract No. 2017001134 pursuant to the RFP ("Charlotte Contract"); and

**WHEREAS**, GameTime has provided the Town with a quote (the "GameTime Quote") for the Project in the amount of \$58,259.98 based on the terms, conditions, and rates of the Charlotte Contract; and

**WHEREAS**, Section 3-13(3) of the Town Code of Ordinances provides that purchases made under state service administration contracts, federal, county or other

governmental contracts, competitive bids with other governmental agencies or through cooperative purchasing are exempt from competitive bidding; and

**WHEREAS**, in accordance with Section 3-13(3) of the Town's Code, the Town Commission seeks to authorize the Town Manager to enter into an agreement, in substantially the form attached hereto as Exhibit "A" ("Agreement"), with GameTime for the Project in an amount not to exceed \$58,259.98; and

**WHEREAS**, the Town Commission finds that this Resolution is in the best interest and welfare of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval and Authorization of GameTime Agreement.** The Town Commission hereby approves the Agreement and the GameTime Quote for the Project in an amount not to exceed \$58,259.98 pursuant to Section 3-13(3) of the Town Code. The Town Manager is authorized to execute the Agreement with GameTime, in substantially the form attached hereto as Exhibit "A", consistent with the terms and conditions of the Charlotte Contract and the GameTime Quote, subject to the approval as to form and legal sufficiency by the Town Manager and Town Attorney.

**Section 3. Exemption from Competitive Bidding.** The Town Commission finds that the Agreement based on the terms and conditions of the Charlotte Contract with GameTime for the Project is exempt from competitive bidding pursuant to Section 3-13(3) of the Town Code.

**Section 4. Implementation.** The Town Commission hereby authorizes the Town Manager to take any action which is reasonably necessary to implement the Project, the Agreement and the purposes of this Resolution.

**Section 5. Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 15<sup>th</sup> day of November, 2022.

Motion By: Vice Mayor Rose  
Second By: Commissioner Meischeid


**FINAL VOTE ON ADOPTION:**

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischeid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>

  
\_\_\_\_\_  
Shlomo Danzinger, Mayor

**ATTEST:**  
  
\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF SURFSIDE  
AND  
PLAYCORE WISCONSIN, INC. D/B/A GAMETIME**

**THIS AGREEMENT** (this "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (the "Town"), and **PLAYCORE WISCONSIN, INC. D/B/A GAMETIME**, a Wisconsin for-profit corporation authorized to do business in Florida (hereinafter, the "Contractor"). Collectively, the Town and the Contractor are referred to as the "Parties."

**WHEREAS**, the Town seeks to purchase and install new outdoor fitness equipment at the Town's 95th street, 94th street, 92nd street, 90th street, and 89th street beach ends (the "Project") in an amount not to exceed \$58,259.98; and

**WHEREAS**, the City of Charlotte, North Carolina, issued Request for Proposals No. 269-2017-0028 ("RFP") for playground and outdoor fitness equipment, site accessories, surfacing, and related products and services, and competitively awarded the Contractor Contract No. 2017001134 pursuant to the RFP (the "City of Charlotte Contract"); and

**WHEREAS**, the Parties wish to incorporate the terms and conditions of the City of Charlotte Contract in this Agreement, except as otherwise modified or amended herein; and

**WHEREAS**, Section 3-13(3) of the Town Code of Ordinances provides that purchases made under state service administration contracts, federal, county or other governmental contracts, competitive bids with other governmental agencies or through cooperative purchasing are exempt from competitive bidding; and

**WHEREAS**, pursuant to Section 3-13(3) of the Town Code, the Town desires to engage the Contractor to implement the Project and provide the deliverables as specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Town and the Contractor agree as follows:

- 1. Incorporation of Contract.** The terms and conditions of the City of Charlotte Contract are incorporated as though fully set forth herein. Except as otherwise specifically set forth or modified herein, all terms in the City of Charlotte Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.
- 2. Conflicts; Order of Priority.** This document without exhibits is referred to as the "Agreement." In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference,

the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:

- A. First Priority: Agreement;
  - B. Second Priority: E-Verify Affidavit;
  - C. Third Priority: Exhibit A – City of Charlotte Contract.
  - D. Fourth Priority: Exhibit B – GameTime Quote
3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the City of Charlotte Contract unless otherwise provided in this Agreement. All references to the City of Charlotte shall be replaced with the Town of Surfside where applicable.
  4. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
  5. **Compensation.** Compensation to the Contractor for implementation of the Project shall be in an amount not to exceed \$58,259.98, in accordance with the rates of the City of Charlotte Contract attached hereto as Exhibit “A” and the quote attached hereto as Exhibit “B.”
  6. **Amending Section 8 of the City of Charlotte Contract.** Section 8.1.2 of the City of Charlotte Contract is hereby deleted in its entirety and replaced as follows:

To obtain approval for a price increase (if applicable), the Contractor shall submit a written request at least sixty (60) days prior to each calendar year during the term of the contract. All requests must be submitted to the Town Manager or the Town Manager’s designee, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

Town of Surfside  
Attn: Town Manager  
9293 Harding Avenue  
Surfside, FL 33154

7. **Amending Section 9 of the City of Charlotte Contract.** Section 9 of the City of Charlotte Contract is hereby deleted in its entirety and replaced as follows:

Contractor shall deliver an invoice to Town no more often than once per month detailing Services completed and the amount due to Contractor under this Agreement. Fees shall be paid in arrears each month, pursuant

to Contractor's invoice, which shall be based upon the percentage of work completed for each task invoiced. The Town shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Work or Services by the Town Manager.

8. **Amending Section 13 of the City of Charlotte Contract.** Section 13.1 of the City of Charlotte Contract is hereby amended as follows:

**13. GENERAL WARRANTIES.** Company represents and warrants that:

13.1 It is a corporation duly incorporated, ~~validly existing and in good standing under the laws of the state of Alabama,~~ and is qualified to do business in ~~North Carolina~~ Florida;

\*\*\*

9. **Amending Section 32 of the City of Charlotte Contract.** Section 32 of the City of Charlotte Contract is hereby amended as follows:

32. INDEMNIFICATION: To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Products or deliverables provided to the Town pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the Town, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the Town and each of the Town's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts) or any other legal theory or principle, in connection with an Infringement Claim.

This indemnification requirement is not intended to cover, and the Company is not responsible for, any damages that result from lack of maintenance; inadequate supervision; negligence; intentional misconduct of anyone other than the Company, its subcontractors, or their affiliates; inadequate surfacing that was not provided by or recommended by the Company, its subcontractors, or their affiliates; or vandalism.

It is the intent of any insurance provided by Company to protect the Company and any subcontractor performing work under the Contract for

(1) Product liability Claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by the Company, Company's subcontractors, or their affiliates pursuant to this Contract;

(2) Claims arising from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; and

(3) Claims relating to worker's compensation for any employee or subcontractor of the Company;

This clarifies and supersedes any other section of the Contract concerning indemnification that could be interpreted otherwise.

Nothing herein is intended to serve as a waiver of sovereign immunity by the Town nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Town is subject to section 768.28, Florida Statutes, as may be amended from time to time.

The provisions of this section shall survive termination of this Agreement.

**10. Amending Sections 42, 43, and 44 of the City of Charlotte Contract.**

Section 42, "Confidentiality," Section 43, "Restrictions," and Section 44, "Exceptions," of the City of Charlotte Contract are hereby deleted in its entirety and replaced as follows:

**Ownership and Access to Records and Audits.**

- A. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the Town. Contractor shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town

(whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

- B.** Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- C.** Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- D.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- E.** Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- F.** Any compensation due to Contractor shall be withheld until all records are received as provided herein.



G. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

H. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: SANDRA MCCREADY, MMC, 9293 HARDING AVENUE, SURFSIDE, FL 33154, 305-861-4863, SMCREADY@TOWNOFSURFSIDEFL.GOV.

11. **Amending Section 45.3 of the City of Charlotte Contract.** Section 45.3 of the City of Charlotte Contract is hereby deleted in its entirety and replaced as follows:

45.3. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

12. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

13. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

**[Remainder of page intentionally left blank. Signature pages follow.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

**TOWN OF SURFSIDE**

**PLAYCORE WISCONSIN, INC. D/B/A GAMETIME**

By: \_\_\_\_\_  
Andrew Hyatt  
Town Manager

By: \_\_\_\_\_

Attest:

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

Title: \_\_\_\_\_

Entity: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**Addresses for Notice:**

Town of Surfside  
Attn: Town Manager  
9293 Harding Avenue  
Surfside, FL 33154  
305-861-4863 (telephone)  
ahyatt@townofsurfsidefl.gov (email)

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Lillian M. Arango, Esq.  
Town of Surfside Town Attorney  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, FL 33134  
larango@wsh-law.com (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**EXHIBIT "A"**

**City of Charlotte**  
**Contract No. 2017001134**

A copy of the City of Charlotte Contract No. 2017001134 is on file with the Town Clerk of Surfside.

**EXHIBIT "B"**

**GAMETIME QUOTE**  
**FOR TOWN BEACH END OUTDOOR FITNESS EQUIPMENT**

## E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Town of Surfside requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

**The contracting entity must provide of its proof of enrollment in E-Verify.** For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

**Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

\_\_\_\_\_  
Witness #1 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness #2 Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Entity Name: \_\_\_\_\_

### ACKNOWLEDGMENT

State of Florida

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of person) as \_\_\_\_\_ (type of authority) for \_\_\_\_\_ (name of party on behalf of whom instrument is executed).

\_\_\_\_\_  
Notary Public (Print, Stamp, or Type as  
Commissioned)

\_\_\_\_\_  
Personally known to me; or

\_\_\_\_\_  
Produced identification (Type of Identification: \_\_\_\_\_)

\_\_\_\_\_  
Did take an oath; or

\_\_\_\_\_  
Did not take an oath