

1st Reading:
2nd Reading:

SPONSOR: HUELS

ORDINANCE NO. ____

BILL NO. 22-17

**AN ORDINANCE OF THE CITY OF FENTON, MISSOURI,
AUTHORIZING THE MAYOR TO EXECUTE AN
AGREEMENT WITH ST. LOUIS BASEBALL & SOFTBALL
ACADEMY, INC. D/B/A OSSA SPORTS ACADEMY FOR
FENTON T-BALL/COACH PITCH PROGRAM.**

WHEREAS, St. Louis Baseball & Softball Academy, Inc. d/b/a OSSA Sports Academy (“OSSA”) has partnered with the City for approximately 7-8 years prior to covid to provide a T-Ball/Coach Pitch Program; and

WHEREAS, this was a very popular and successful program and many have asked staff whether the City would be interested in doing this partnership again; and

WHEREAS, after discussion, the City and OSSA desire to enter into an agreement to provide a 2022 T-Ball/Coach Pitch Program to consist of instructional training for baseball and softball for participants aged 4-12; and

WHEREAS, the Board of Aldermen finds that it is in the best interest of the City to waive its bidding procedures and to enter into a services agreement for such 2022 T-Ball/Coach Pitch Program with OSSA.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby finds good cause to, and hereby does, waive its bidding procedures and authorizes the Mayor to execute on behalf of the City a contract with OSSA to provide training and coaching for the 2022 T-Ball/Coach Pitch Program in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference.

Section 2. This ordinance shall be in full force and effect from and after the date of its passage and approval.

ORD. NO. ____

ORD. NO. ____

PASSED this 24th day of March, 2022.

BOB BRASSES, MAYOR

APPROVED this 24th day of March, 2022.

BOB BRASSES, MAYOR

ATTEST:

Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

ORD. NO. ____

EXHIBIT 1

**CITY OF FENTON, MISSOURI
CONSULTANT/SERVICES CONTRACT**

THIS AGREEMENT by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and St. Louis Baseball & Softball Academy, Inc. d/b/a OSSA Sports Academy (“OSSA”) with principal office at 13421 Manchester Road, Ste. 103, St. Louis, MO 63131, hereinafter referred to as “Consultant.”

WITNESSETH: That the parties hereto, for the considerations hereinafter set forth, agree as follows:

I. SCOPE OF SERVICES

Consultant services are necessary for the following Project of the City: **2022 T-Ball/Coach Pitch Program.**

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as providing instruction and coaching services for participants of the 2022 T-Ball/Coach Pitch Program, which consists of 2 6-week sessions to begin the first week of May.

Consultant shall provide the services to the highest standard of the industry. The above services (hereinafter referred to as the Work) shall be provided by the Consultant in accordance with all the provisions of this Contract and attached **City of Fenton General Conditions** for the Work that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment or exhibit.

II. COMPENSATION

A. Basic Compensation. The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

a sum not to exceed _____.

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A that is incorporated herein and subject to any such limits as established therein and in approving authorization.

B. Additional Compensation. Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Consultant shall be paid only as agreed to in writing.

III. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance of the Work for the fees, prices, rates, or schedule of values set forth above.

IV. CONTRACT SCHEDULE

The Work under this Agreement shall commence upon execution of the Agreement with the first session to begin the first week of May. Each session will consist of 6 weeks with a total of two sessions. The Agreement shall terminate upon completion of the second 6-week session. Provided this Agreement may be renewed for additional year terms upon mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date.

CONSULTANT

By: _____

Title: _____

DATED: _____

CITY OF FENTON, MISSOURI

By: _____
BOB BRASSES, MAYOR

DATED: _____

ATTEST:

CITY OF FENTON
CITY CONSULTANT/PROFESSIONAL SERVICES AGREEMENT GENERAL CONDITIONS

Independent Consultant. The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.

Compliance with Laws. The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, environmental laws, Title VI, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Work, the Consultant shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Consultant in an effort to resolve any such conflict.

Subcontracts. The Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant.

Taxes. The City is exempt from federal excise tax and Missouri sales tax and the Consultant shall not charge the same to the City.

Indemnification. To the fullest extent permitted by law, and notwithstanding anything contrary within this Agreement, the Consultant 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 from breach of the Contract or out of services and operations negligently performed hereunder by the Consultant, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Consultant under the terms of this Agreement. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the City. Nothing in this Agreement shall require or permit the City to indemnify Consultant nor waive the City's sovereign immunity. Consultant shall be responsible for all damages to property caused by Consultant. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance.

Insurance. The Consultant shall obtain and maintain for itself during the term of the Project and the Contract liability insurance coverage of at least \$3,000,000 aggregate and \$450,000 per occurrence. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the compensation amount and no additional payment will be made therefor by the City. In addition, the Consultant shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services.

Before commencing any Work, the Consultant shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the Consultant under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the Consultant has adequate insurance to cover the Consultant for tort claims that may arise out of the Work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the Consultant's Work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured on the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Fenton as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity." Nothing in this requirement shall be deemed a waiver of the City's sovereign immunity.

Attorney Fees' and Costs. The Consultant shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Consultant's breach of the Agreement, the Consultant's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

Changes. No work or change shall be undertaken or compensated for without prior written authorization from the City.

Termination. The City shall have the right to terminate the Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Nondisclosure. Notwithstanding anything to the contrary, the Consultant 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 Contract. Nothing herein shall preclude disclosure of information by the City.

Accounting. During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract 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 invoices submitted hereunder by the Consultant.

Other Consultants. The City reserves the right to employ other consultants in connection with the Work.

Personnel. The Work shall be performed exclusively by the personnel of the Consultant.

Project Records and Work Product. Notwithstanding anything to the contrary, the Consultant shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Work.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in **Exhibit B**. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

Representations. Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties. The Consultant represents and warrants that the Consultant has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Consultant owns sufficient equipment and engages sufficient personnel to perform the Consultant's obligations under this Agreement. The Consultant further represents and warrants that the Consultant is an equal opportunity employer. The Consultant agrees that the Consultant shall not use in any form or medium the name of the City for any advertising unless the Consultant receives the prior written consent of the City

Governing/Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, with venue in St. Louis County, Missouri. As a prerequisite to the Consultant filing any claim against the City in any court of law or equity (including mediation) pursuant to this Contract, the Consultant agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code. This Agreement is not intended to and shall not create any rights enforceable by any third-party beneficiary.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

EXHIBIT A

The program for 2022 will consist of instructional training for T-Ball/Coach Pitch age participants for Baseball and Softball.

**AGES 4-6: \$59 for Residents
\$69 for Non-Residents**

**AGES 7-9: \$69 for Residents
\$79 for Non-Residents**

**AGES 10-12: \$69 for Residents
\$79 for Non-Residents**

The City will provide the Shirts (roughly \$6 each). The plan would be to offer two 6-Week Sessions this Spring/Summer.

OSSA will provide all the instructors, with the City supplying some equipment already owned by the City. The sessions will be held at Fenton City Park. Each session will run independently of each other.

Under the agreement, the City will advertise, register, and collect fees for all participants for the programs offered. OSSA would provide the instruction and coaching for the programs and have agreed to compensation of a 70%-30% per participant per session.

If approved, the first session will be scheduled to begin the first week of May. Each session would consist of six weeks.

