

RESOLUTION NO. 20-14

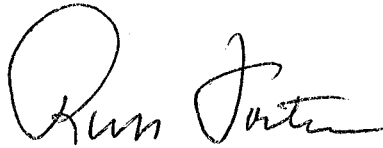
**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN
APPROVING AN AGREEMENT BETWEEN THE CITY OF TWIN OAKS
AND J & M DISPLAYS, INC. FOR FIREWORKS DISPLAYS**

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby approves, and the Mayor is hereby authorized to enter a contract on behalf of the City of Twin Oaks with J & M Displays, Inc., for fireworks displays. Such contract shall be in substantially the form of the contract, marked "Exhibit 1" attached hereto and incorporated herein by reference.

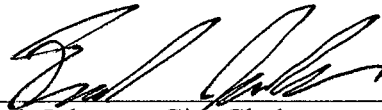
Section 2. This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 17th DAY OF JUNE, 2020, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:



Frank Johnson, City Clerk

Exhibit 1
City of Twin Oaks, Missouri
FIRST AMENDMENT TO
SERVICES CONTRACT
- FIREWORKS DISPLAY -

WHEREAS, after seeking bids for technical and cost proposals from qualified bidders for aerial firework display services on October 28, 2019 for an initial term of one-year, with options to renew for two additional years for the City's annual Independence Day celebration, the City contracted with J&M to provide the fireworks display on July 3, 2020 at a cost of \$26,000 and which included an option for two additional years at the same level of display and price; and,

WHEREAS, the Services Contract, dated December 6, 2019, was approved by the Board of Aldermen by Resolution 2019-24 (the "Contract"); and,

WHEREAS, after the City paid \$26,000 for the 2020 fireworks display but before J&M could perform the initial term of the Contract, the various states of emergencies, stay-at-home orders, social distancing requirements resulting from the COVID-19 pandemic caused the cancellation of the 2020 firework display;

WHEREAS, the Parties have agreed to postpone the 2020 fireworks display until July 3, 2021, with agreement that J&M will keep \$5,000 as a deposit and return the balance of the \$26,000 fee the City already paid; and,

WHEREAS, the Parties wish to amend the Contract to reflect the new term and to extend the two (2) option years to 2022 and 2023;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth in the this First Amended Contract, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that the Contract is amended as follows:

Amendment 1. Section II, *Term*, is amended to read as follows:

II. TERM

- A. This Agreement will be for one (1) year from the Date of the First Amended Contract.
- B. Options: At its sole discretion, the City shall have an option to renew this First Amended Contract for the year 2022 and, if the City exercises that option, it shall have the option to renew for the year 2023.

Amendment 2. Section III, *Compensation*, is amended to add the following underlined words to Section II so that it now reads as follows:

III. COMPENSATION

- A. **Basic Compensation.** The City hereby agrees to pay the Contractor a total of \$26,000 as full compensation for the complete and satisfactory performance of the contract and the specific display set forth in Exhibit A, and all expenses and costs related thereto, as follows:

- \$5,000* City's deposit due upon execution of the Agreement
- \$21,000 * Due upon satisfactory completion of the Services by the Contractor

*The City paid Contractor the full 2020 contract price of \$26,000 in 2019 in anticipation of the 2020 fireworks display. However, the parties hereby agree that Contractor will return \$21,000 to the City within ten business days of the date of this First Amended Contract and the Parties further agree that Contractor will keep \$5,000 as the City's deposit for the July 3, 2021 fireworks display.

B. Option Years. The price for the option years shall be as set forth in the bid proposal and shall be on July 3 of each year or such other date and alternate display date set may be set by the City at the time of exercising the option. The option shall be exercised by the City no less than one hundred twenty (120) days prior to the date of the fireworks display. A form of letter exercising the option is attached as Attachment 1 and incorporated herein by reference.

Amendment 3. Section IV is amended to read as follows:

IV. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted by mail or electronically to the City Clerk, Frank Johnson - fjohnson@cityoftwinoaks.com, and payment shall be made as set forth in Section II above.

Amendment 4. Section V is amended to read as follows:

V. CONTRACT SCHEDULE

The display will occur on July 3, 2021 at approximately 9 p.m. In the event that weather conditions result in a cancellation of the display, the display will occur on July 10, 2021. If the display is not able to occur on July 3 or July 10, 2021, for any reason, the Parties shall come to a mutually agreeable date that is within one (1) year of July 4, 2021. The terms of the General Conditions notwithstanding, should the City cancel the fireworks display less than 30 days prior to the fireworks display date, the City shall pay Contractor an amount equal to 50% of the Compensation agreed to herein; if the cancellation is more than 30 days prior to the display date, the City shall be entitled to a full refund of the deposit less any actual cost incurred by the Contractor for purchasing fireworks for the display, not to exceed the deposit amount. This shall be Contractor's sole remedy for the City's cancellation of this contract. If the City exercises one or more of its options, the above schedule shall apply for the option year.

This contract shall be complete upon satisfactory performance by both parties. Nothing herein shall limit the application of the indemnification provision after performance of the Fireworks Display Services.

Amendment 5. All other provisions of the Agreement, including but not limited to the General Conditions, Scope of Services, and response to request for proposal shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have signed this First Amended Agreement as of the effective date of Contract first above written.

J & M DISPLAYS, INC.

CITY OF TWIN OAKS, MISSOURI

By: _____

By: _____

Mayor

Title: _____

DATED: _____

DATED: _____

ATTEST:

City Clerk

Attachment 1
Exercise of Option Form

J&M Displays, Inc.
9555 State Road Y
Dittmer, MO 63023

Via email: kwischmeyer@jandmdisplays.com

Dear Mr. Wischmeyer:

Pursuant to Section III of our Services Contract as amended (the "Agreement"), this will confirm that the 2021 Display will occur on **Saturday, July 3, 2021** at approximately 9 p.m. (the "Display"). This will also confirm that, per Section III of the Agreement, the Display will substantially similar in length and presentation as the display described in Exhibit A to the Agreement and that the cost of the Display shall not exceed \$26,000. The City encloses herewith a deposit of \$5,000 for the Display.

Per the Agreement, should weather conditions result in a cancellation of the July 3 Display (the "Original date"), the Display will occur on July 10, 2021 (the "Alternate Date"). If the Display is not able to occur on the Original Date or the Alternate Date, the parties will mutually agree on another date that is within one (1) year of July 4, 2021. If the fireworks display is permanently cancelled by the City, less than 30 days prior to the fireworks display date, the City shall pay Contractor an amount equal to 50% of the compensation agreed to herein. All terms shall be governed by the Agreement.

Please indicate your agreement with these terms for the Display by signing at the bottom and returning to me.

Sincerely,

Frank Johnson,
City Clerk

Agreed to and accepted:

J&M Displays, Inc.

By: _____