

RESOLUTION NO. 2021-20

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN APPROVING  
AN AGREEMENT WITH NICK DAMATO, DBA STL HOLIDAY LIGHTING,  
FOR ANNUAL MAINTENANCE OF THE PERMANENT LIGHTING  
INSTALLED ON TWIN OAKS TOWN HALL.**

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**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 execute, a contract substantially in the form of "Exhibit 1" attached hereto and incorporated herein, on behalf of Nick Damato, DBA STL Holiday Lighting, for services relating to the annual maintenance of the permanent lighting installed on Twin Oaks Town Hall to be provided under the terms set forth in Exhibit 1.

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

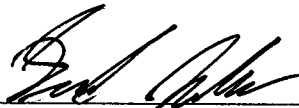
THIS RESOLUTION WAS PASSED AND APPROVED THE 16<sup>th</sup> DAY OF JUNE 2021, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



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Russ Fortune, Mayor

Attest:



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Frank Johnson, City Clerk

## **Twin Oaks, Missouri CONTRACTOR SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of \_\_\_\_\_ by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and Nick Damato, DBA STL Holiday Lighting, hereinafter referred to as "Contractor," with a business mailing address of 19027 Old Manchester Road, Wildwood, MO 63069.

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** (the "Proposal") and incorporated herein by reference, for maintenance of the permanent lighting installed on Twin Oaks Town Hall, as described on the Proposal, and the City wishes to engage the Contractor as provider of those services to the City, in accordance with the terms of this Agreement;

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

### **I. SCOPE OF SERVICES**

Contractor's services are necessary for the following Project of City: *Annual Maintenance of Permanent Lighting — Twin Oaks Town Hall, 1381 Big Bend Rd.*

Except as expressly specified herein, Contractor hereby agrees to provide the expertise, supplies, supervision, labor, skill, materials, equipment, and apparatus to perform all the services and do all the things necessary for the proper completion of the scope of services for the Project listed above and as more particularly described in the attached **Exhibit A**.

The above-referenced services (hereinafter referred to as the "Work") shall be provided by the Contractor in accordance with all the provisions of the Proposal and the attached **Twin Oaks General Conditions** which are incorporated herein by reference, and the terms of the General Conditions shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment, including the Proposal. If there is any conflict between the City's General Conditions (attached hereto and incorporated herein by reference) and the Proposal, this Agreement and its General Conditions shall prevail.

### **II. COMPENSATION**

Upon completion of the Work to the satisfaction of the City, and within thirty days (30) days of final written invoice by the Contractor, the City hereby agrees to pay the Contractor an amount not to exceed \$400.00 for the Work as set forth in the Proposal as full compensation for the complete and satisfactory performance of the Work.

### **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 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 below.

### **IV. CONTRACT SCHEDULE**

Time is of the essence. The Work shall consist of four (4) quarterly comprehensive service visits to begin in June 2021 and be completed approximately every 3 months, ending in June 2022. Failure to complete the Work by the completion date shall result in a reduction in the amount due to the Contractor under this

Contract in the amount of \$25.00 per day as liquated damages, herein acknowledged to be reasonable compensation for such delay, in addition to any other remedy that the City may have hereunder.

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

**NICK DAMATO**  
**STL HOLIDAY LIGHTING**

**CITY OF TWIN OAKS**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

**GENERAL CONDITIONS**  
**CITY OF TWIN OAKS, MISSOURI**  
**CONTRACTOR SERVICES AGREEMENT**

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

**Compliance with Laws.** The Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, 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. Specifically, Contractor shall comply with the following state law requirements:

- *Proof of Lawful Presence.* Section 208.009 RSMo., requires that all applicants *at the time of application* for any contract provided by a local government provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States." Contractor's affirmative proof must be established through (i) a Missouri driver's license, (ii) any "documentary evidence recognized by the department of revenue when processing an application for a driver's license," or (iii) "any document issued by the federal government that confirms an alien's lawful presence in the United States." §208.009.3.

**Subcontracts.** The Contractor 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 Contractor.

**Indemnification.** To the fullest extent permitted by law, the 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 from Contractor's breach of the Contract or out of services and operations performed hereunder by the Contractor, including the City's reliance on or use of the services or products provided by the Contractor under the terms of this agreement. The 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.

**Insurance.** Contractor shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on Exhibit B, but unless otherwise provided shall be no less than the maximum amounts of liability set forth in Chapter 537.610 RSMo., applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Contractor's work, as determined by the City, shall be named as additional insured and the applicable insurer shall owe the City a duty of defense on all insurance policies required hereunder. The Contractor shall provide an Additional Insured Endorsement to the City that shall be approved by the City prior to commencement of any Work.

In addition to the foregoing, the Contractor shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached Exhibit B, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

**Nondisclosure.** The 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 Contract. Nothing herein shall preclude disclosure of information by the City.

**Changes.** No change in this Contract shall be made except in writing prior to the change in the Work or terms being performed. The Contractor shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. The Contractor, prior to the commencement of such changed or revised Work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and Contractor shall be compensated the reasonable value of such Work. **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 Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under the Contract an amount equal to the cost of all Work performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of the

**Contract Price.** The Contractor 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 Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**Accounting.** During the period of this Contract, the Contractor 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 Contractor.

**Correction Period.** Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the City specifications or contract. The Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract. The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as set forth herein, nor are they limited by any other remedies provided in the Contract.

**Request for Proposals.** If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Contractor in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Contractor Services Contract or proposal of the Contractor, the requirements of the City's Request for Proposal and this executed Contract shall control and supersede unless a change thereto is specifically stated in this Contract (including **Exhibit A**, "Scope of Work").

**Project Records and Work Product.** The Contractor 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. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Contract. Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

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

**Personnel.** The Work shall be performed exclusively by the personnel of the Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Work without the express written approval of the City.

**Representations.** Contractor 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.

**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.

**Other Special Provisions.** There are no additional special provisions set forth in the Contractor Services Agreement.

**EXHIBIT A**  
**Proposal**

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## **Maintenance Agreement Proposal for Permanent Lighting Installed on Twin Oaks City Hall**

### **Details Regarding your Previous Maintenance Agreement, which Expired in March 2021**

The maintenance contract you had with us last year covered 4 comprehensive maintenance visits throughout the year from March 2020 – March 2021 along with any additional repair visits needed for problems other than light bulbs being burned out for a flat price of \$300. Under that plan, we performed 4 comprehensive maintenance visits in which we checked the entire display and replaced all of the burned-out light bulbs in June, October, December, and March and we also performed a few additional repair visits for issues other than light bulbs throughout the year.

### **What We Will Be Doing This Month**

When we first installed your display, we used the same high-quality materials that we use for our seasonal holiday lighting displays. However, while those materials have worked great for us for short-term Christmas light displays, we have been disappointed with their performance and durability on your building as a permanent install, which is why we will be replacing your display with all new materials this month for NO additional charge.

At some point this month, most likely next week, we will be taking down all of the lighting materials on your building, replacing your lighting display with all new materials (including new socket wire, new gutter clips, and new light bulbs), and then putting your updated lighting display back up. (On the light bulbs, we will still be using the same color, shape, size and style/type of light bulbs that your display has now, but with new bulbs from a different, more expensive brand that we believe will have greater longevity.) To do this upgrade, the materials alone will cost us over \$700, but we will be doing this upgrade at NO additional cost to you. Our hope is that using new, more expensive, higher quality materials (some of which were not on the market when we first installed your display) will result in fewer light bulbs burning out and your display looking great between routine maintenance visits.

### **Proposed Maintenance Agreement for June 2021 – June 2022**

For this year, from June 2021 – June 2022, we are offering you a maintenance agreement with terms similar to last year's agreement, for a total price of \$400. (We have raised the price by \$100 as compared to last year because maintaining your display for the past few years has ended up requiring far more materials and labor than we had originally anticipated.) We are hoping that the new materials we will be installing this month will make your routine maintenance agreement work better for both you and us going forward.

For \$400, we will do all of the following from June 2021 – June 2022

- Continue to come out at your request for no additional charge for any needed maintenance issues *other than* replacing burned out light bulbs on an as requested, as-needed basis throughout the year.
- Provide you with 4 quarterly, comprehensive service visits that INCLUDE us replacing all burned out light bulbs
  - We will perform a total of 4 complete service visits, approx. every 3 months, starting in June 2021. (Quarterly service visits will take place in June, September, and December 2021 as well as March 2022.)

- As part of each quarterly service visit, we will check the entire display to make sure everything is as it should be AND replace ALL burned out or non-working light bulbs at that time. (That way, all non-working light bulbs will get replaced by us every 3 months.)
    - We will be considering our visit this month (in June), in which we will be installing all new materials for no additional charge, as the first of your 4 comprehensive maintenance visits for the year.
  - We will still leave the city extra light bulbs so that your staff can replace what we hope will be very few burned out light bulbs in between those 3 month service visits and then we would only charge extra beyond this maintenance agreement if you ask us to replace light bulbs outside of the four quarterly service visits.
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**Exhibit B  
Insurance**

Unless otherwise instructed in writing by the City, the Contractor shall obtain and maintain during the term of the Project and the Contractor Services Contract the insurance coverages at least equal to the coverages below, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. 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 proposal and no additional payment will be made therefor by the City.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$435,849 per occurrence \$2,905,664 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$435,849 per occurrence \$2,905,664 aggregate

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site. Unless instructed otherwise, the Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear. Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this Exhibit D. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, and shall bear 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 by this Exhibit when the City deems such waiver may be in the interest of the public health, safety, and general welfare.