

City of Twin Oaks, Missouri
SERVICES CONTRACT
- FIREWORKS DISPLAY -

City of Twin Oaks, Missouri



FIREWORKS DISPLAY Request for Proposal

Bid Invitation and Specifications

City of Twin Oaks
1381 Big Bend Road
Twin Oaks, Missouri 63021
Kathy Runge, City Administrator/Clerk
krunge@cityoftwinoaks.com
636-225-7873

October 2019

NOTICE TO BIDDERS

Sealed Bids will be received by the City of Twin Oaks, Missouri, until **MONDAY, NOVEMBER 18, 2019** and will publicly be opened and read aloud at 10 A.M.

The City of Twin Oaks is soliciting technical and cost proposals from qualified, licensed and/or registered contractors to conduct an all-aerial Fireworks Display on **July 3, 2020 with an initial rain date of July 5, 2020, or in the event that neither July 3 or July 5, 2020 are feasible, a later date to be determined between the BIDDER AND CITY.** The proposed work includes the furnishing of materials, transportation, tools, equipment, labor and permits to conduct the fireworks display.

Proposals may be delivered in person, by carrier, or by mail. It is the sole responsibility of the vendor to see that his/her proposal is received in proper time. **No late proposals will be considered.**

Proposals should be submitted in a sealed envelope clearly marked **"TWIN OAKS FIREWORKS DISPLAY 2020"**.

The notice for proposal may be obtained on and after **Monday, OCTOBER 28, 2019**, from the City of Twin Oaks, 1381 Big Bend Road, Twin Oaks, Missouri, 63021, Monday through Friday, 8:00 A.M. to 3:00 P.M.

The CITY shall award any contract based on the proposal that, in its sole discretion, best meets the interests and requirements of the City. The CITY reserves the right in its sole discretion to reject any and all proposals or portions thereof, to waive technicalities or deficiencies in any or all the proposals, to negotiate with any or all bidders or others for more favorable terms or prices, and to award the contract to other than the bidder submitting the lowest cost proposal, with or without negotiation. No Bid may be withdrawn for a period of sixty (60) days subsequent to the specified time for receipt of Bids.

The CITY intends to issue the Notice to Award after completion of review.

The CITY hereby notifies all BIDDERS that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

All requests for clarifications should be directed to the City office at 636-225-7873.

INSTRUCTION TO BIDDERS

DEFINITIONS

The following terms used at any place in the contract documents shall be construed thus:

BIDDER: The individual or entity who submits a Bid directly to CITY.

CONTRACTOR: The individual, partnership, or corporation, which shall enter into the Agreement to perform the work, outlined in the contract documents with the CITY.

DAY(S): Calendar days, unless otherwise defined.

CITY: The City of Twin Oaks, Missouri.

SUCCESSFUL BIDDER: The lowest qualified, responsible, and responsive BIDDER to whom CITY (on the basis of the CITY'S evaluation as herein provided) makes an award.

BIDDING DOCUMENTS

The BIDDER may obtain a complete notice for proposal from:
City of Twin Oaks, 1381 Big Bend Road, Twin Oaks, Missouri 63021

The CITY in making copies of this notice does so only for the purpose of obtaining bids for the work and does not confer a license or grant for any other use.

The BIDDER shall ensure that he/she is familiar with the entire performance site for display prior to submitting a proposal. The discharge of fireworks shall be in accordance with the International Fire Code, as adopted by the Valley Park Fire District and the referenced NFPA 1123 code for Fireworks Display. The individual on site and responsible for the shooting of the fireworks display must be licensed to shoot fireworks by the State of Missouri Fire Marshal's office.

The BIDDER must maintain commercial general liability insurance providing for a limit not less than \$2,000,000.00 per occurrence and \$5,000,000.00 in the aggregate (bodily injury, property damage liability, and personal injury liability) and shall submit to CITY a valid certificate of insurance before work commences. The City of Twin Oaks must be listed as an additional insured on the insurance certificate with Worker's Compensation insurance as required by statute. The BIDDER agrees that thirty (30) days prior to termination, expiration, cancellation, or reduction of the insurance afforded by this policy with respect to the contract awarded, written notice will be served by registered mail to the CITY.

The BIDDER shall ensure all fireworks materials and devices in transit to the fireworks discharge site shall be transported in accordance with Title 49, *code of Federal Regulations*, 'Federal Regulation for Transport', NFPA 1124, *Code for the Manufacture, Transportation, and Storage of Fireworks*, and Title 27, *Code of Federal Regulations*, part 18, Bureau of Alcohol, Tobacco and Firearms, Part 181, Commerce in Explosives and shall provide CITY copies of all accompanying licenses in the bid response including BIDDER's Hazardous Materials Safety Permit FMCSA, Hazardous Materials Certificate of Registration PHMSA, and BATFE License. BIDDER must provide a safe, dry area for storage of firework materials, contractor must provide trailer or other suitable

container for storage the day of the event and no overnight storage will be allowed on site for either event.

The BIDDER shall ensure that fireworks (excluding "cakes") are to be fired from properly secured, approved mortar racks. Placement of such racks shall require minimal disturbance to the grounds on which they are set. Use of single individual mortar tubes, placed in sand filled boxes will not be allowed.

LENGTH OF AGREEMENT.

This Agreement will be for one (1) year from the date of award with an additional two (2) year option. The City's form of agreement is attached hereto.

USE OF THE CITY NAME OR LOGO IN ADVERTISING.

The successful BIDDER is specifically denied the right of using in any form or medium the name OR logo of the City for public advertising unless express written permission is granted.

SUBCONTRACTS AND SECOND TIER SUBCONTRACTING.

Subcontractors are not allowed.

TOTAL COSTS.

Proposal pricing shall be all inclusive and shall provide for all necessary labor, transportation, storage, tools, materials, equipment, consumables, and permits to conduct the fireworks display. No other costs will be permitted the vendor beyond those stated in his bid. The bid should be exclusive of all taxes as the City of Twin Oaks, MO is deemed a Tax-Exempt entity and has been granted "Tax Exempt Status" pursuant to Section 144.130.1 RSMo.

BIDDER PROVIDED SERVICES: Contractor shall provide the following services with costs for such services being included in their total submitted price:

- Furnish, deliver, and secure fireworks to a designated point of fire.
- Provide sufficient number of experienced technicians and support staff to set up, coordinate and cue display, fire display, clean up, and dispose of waste.
- Provide the CITY, at least four (4) weeks before the scheduled display, a copy of all applicable permits from the State of Missouri, St. Louis County, Valley Park Fire District, and the FAA.
- Provide the CITY, at least four (4) weeks before the scheduled display, a valid certificate of insurance satisfying all insurance requirements.
- Shall allow CITY representative(s) complete access on the night of the show to all information about Contractor operations and will reasonably respond to City requests at all times on the day of the display.
- Shall provide a list of personnel's vehicles that will be entering the park gate after 6 p.m. including spouses and children or have badges for all persons entering the display area.
- Shall assume all responsibility and liability in connection with the storage of the fireworks and materials needed for the display.
- **Production must be ready to go no later than 6 p.m. the night of the performance.**

CITY PROVIDED SERVICES: The City of Twin Oaks shall provide the following services related to the event:

- St. Louis County Police Officers shall be available for patrolling the display area to maintain a safety zone.
- The CITY will coordinate with the contractor and act as a liaison for the CITY on matters relating to the display and to the public.
- CITY has authority to call the show on a technical delay of thirty (30) minutes, or on a weather delay of one (1) hour. In the event of either type of delay, the show defaults to make-up date.

DISPLAY REQUIREMENTS.

The display shall include:

1. *A full 20 minute display program not to exceed \$26,000.*
2. Large shells (define sizes and quantities). No shell larger than 4" diameter will be allowed. No more than 50% of total shells fired (including special effects) shall be 3" diameter, or less, shells.
3. Special attractions and displays (define).
4. 100% of the shows (excluding ground displays) are to be electronically fired.
5. Coordination with musical accompaniment, with accompaniment capable of being broadcast through local sound reinforcement system or radio broadcast.
6. Bidder may submit bids on one or both of the following two options: OPTION 1: 20 minute soundtrack or OPTION 2: choreographed music. If the choreographed option (Option 2) is chosen, please state if the quantities of shells fired will change.
7. Cleanup of area up to fire line required.
8. No wooden crates.
9. All mortars to be anchored.

PREPARATION OF BID FORM.

The bid must be submitted on the prescribed Bid Form. All blank spaces for bid prices must be filled-in with indelible ink or typewritten. The "Total" must be completed in both words and figures on the Bid Form.

The BIDDER shall include the following items:

1. A list of shells, including size and effect for each shell to be included in the display. Visual depictions of shell effects, either in the form of pictures or video are requested, but not required. The company shall elaborate on the ability to coordinate between musical selections and fireworks display, clearly stating if such coordination will result in a fully choreographed musical fireworks display.
2. A listing of key personnel, including designer for the shows and the individual who will be on site and responsible for supervision and execution of the shows throughout the loading, performance and cleanup of the show. Include the experience, qualifications and certifications for all personnel listed.
3. An estimate of the length of each of the fireworks displays based on the list of shells provided.
4. A timetable of all events for loading, performing and cleanup for each of the fireworks displays. Include the length of time required from the time fireworks arrive on the shooting site until the show is executed.
5. A list of references, including contact person, phone number, mailing address and e-mail addresses if available. References shall be from clients from either the years of 2018

and/or 2019 with similar size shows with similar features. Special effort should be given to provide references from the St. Louis, Missouri metro area.

6. Safety measures to be taken during the loading, performance and cleanup of each of the fireworks displays. Elaborate on safety precautions such as protective clothing to be used during the fireworks displays.
7. Copies of all required local, state, and Federal licenses.
8. Proof and description of liability insurance coverages for the fireworks display including coverage limits.

The proposal will be awarded to the company who best serves the interest of the City. Proposals will be evaluated on the following criteria:

1. The number, size and quality of shells proposed for the fireworks display, as well as the length of the display and ability to coordinate the display with music.
2. Effectiveness of the proposed safety program for the fireworks display.
3. Effectiveness of timetable proposed for the overall fireworks display set up and firing process.
4. Experience of the company in providing similar fireworks displays.
5. Qualifications and experience of key personnel involved with designing and performing the fireworks display.
6. Overall quality of the proposal.
7. Ability of the company to meet or exceed the insurance requirements outlined in the Request for Proposal.
8. The CITY may interview one or more companies to gain a better understanding of the company's proposal prior to final selection of a company for the displays.

BID SECURITY

Each Bid shall be accompanied by a certified check or bank draft on a responsible solvent bank or a satisfactory bid bond executed by the BIDDER and a surety company and payable to the CITY, in an amount of not less than five percent (5%) of the Base Bid. If the BIDDER fails to enter into a contract with the CITY ON THE TERMS STATED IN THIS Bid, the amount of the Bid Bond shall be forfeited to the CITY.

The CITY will have the right to retain the Bid Bond of BIDDERS, to whom an award is being considered until either (a) the "City-Contractor Agreement" has been executed, (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

Such cash, check, or bid bond will be returned to all except the three (3) lowest BIDDERS within fifteen (15) days after the opening of the bids; and the remaining cash, checks, or bid bonds will be returned promptly after the CITY and accepted BIDDER have executed the contract, or, if no award has been made within sixty (60) days after the date of the opening of bids, upon demand of the BIDDER at any time thereafter, so long as he has not been notified of the acceptance of his bid.

Signature of BIDDER based on type of business shall be as follows:

A Bid by a Corporation shall be executed in the corporate name by the president or the vice-president or by another corporate officer, accompanied by evidence of authority to sign for the corporation.

A Bid by a Partnership shall be executed in the partnership name and signed by a partner, accompanied by evidence of authority to sign.

A Bid by a Limited Liability Company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm shall be shown below the signature.

A Bid by an Individual shall show the BIDDER's name.

A Bid by a Joint Venture shall be executed by each joint venturer in the manner indicated on the Bid Form.

The names of all persons signing shall be legibly printed below their signatures. A Bid by a person who affixes to its signature the word "president", "secretary", "agent", or other designation without disclosing its principal may be held to be the Bid of the individual signing. When requested by the CITY, evidence of the authority of the person signing shall be furnished.

No alterations in a Bid by erasures, interpolations, or otherwise, will be acceptable unless each such alteration is signed or initialed by BIDDER; if initialed, the CITY may require BIDDER to identify any alteration so initialed.

EXECUTION OF CONTRACT.

The BIDDER to whom the Contract has been awarded shall sign two (2) copies of the City-Contractor's Agreement, and all certificates of insurance as set forth in the "Bidding Document" within ten (10) days after receipt of the Notice of Intent to Award from the CITY. Failure to return the required items above to the CITY within ten (10) days after receipt of the Notice of Intent to Award shall be cause for the annulment of the Contract award.

QUALIFICATION OF BIDDER.

The CITY may make such investigations as it deems necessary to determine the ability of the BIDDER to perform the work, and the BIDDER shall furnish to the CITY, all such information and data for this purpose as the CITY may request. The CITY reserves the right to reject any bid if the evidence submitted by, or reasonable investigation of, such BIDDER fails to satisfy the CITY that such BIDDER is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

INTERPRETATIONS OR CORRECTION OF BIDDING DOCUMENTS.

It is the responsibility of each BIDDER before submitting a Bid to:

BIDDER shall promptly notify the CITY of any ambiguity, inconsistency or error, which they may discover upon examination of the Bidding Documents or of the site and local conditions.

BIDDER shall request clarification or interpretation of the Bidding Documents by making an electronic or written request to the CITY at least seven (7) days prior to the date for receipt of Bids.

Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and BIDDERS shall not rely upon such interpretations, corrections and changes.

If the CITY determines that clarification of the terms and conditions of the Bidding Documents is necessary, an Addendum will be made available to all BIDDERS setting forth such clarification.

AWARD OF CONTRACT

The CITY reserves the right to reject any or all Bids, including without limitation, the right to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids. The CITY further reserves the right to reject the Bid of any BIDDER whom it finds, after reasonable inquiry and evaluation, to be non-responsive. The CITY may also reject the Bid of any BIDDER if the CITY believes that it would not be in the best interest of the Project to make an award to that BIDDER. The CITY also reserves the right to waive all informalities not involving price, time, or changes in the Work, and to negotiate contract terms with the Successful BIDDER.

PROPOSAL

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with the CITY in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

Communications concerning this Bid shall be sent to BIDDER at the following address:

BIDDER accepts all of the terms and conditions of the "Notice to Bidders" and the "Instructions to Bidders", including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance sixty (60) days after the day of Bid opening, or for such longer period of time that BIDDER may agree to in writing upon request of CITY.

In submitting this Bid, BIDDER represents that:

1. BIDDER has visited the Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost of the Work.
2. BIDDER is familiar with and is satisfied as to all Federal, State, and Local Laws and Regulations that may affect cost of the Work.
3. BIDDER has given the CITY written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by the Administrator/Clerk is acceptable to BIDDER.

4. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

5. BIDDER further represents that this Bid is genuine and is not made in the Interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over the CITY. Moreover BIDDER has completed and submitted with his bid an Anti-Collusion Affidavit.

6. BIDDER will complete the Work for the following unit prices. BIDDER acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and that final payment for all Unit Price Bid items will be based on quantities provided, determined as provided in the Contract Documents.

7. BIDDER has read and agrees to the terms of the City's form of *Services Contract – Fireworks Display* included in the bid documents.

If an Individual

By _____ Date _____
(signature of individual)

doing business as _____

Business address _____

Phone No. _____

If a Partnership

By _____ Date _____
(firm name)

(signature of general partner)

Business address _____

Phone No. _____

If a Corporation

By _____
(corporation name)

By _____
(signature of authorized person)

(title)

Business address _____

Phone No. _____

Date _____, _____

If a Joint Venture (Other party must sign below.)

If an Individual

By _____ Date _____
(signature of individual)

doing business as _____

Business address _____

Phone No. _____

LIST OF REFERENCES

LIST OF PROPOSED SUPPLIERS

The proprietary names and the suppliers of principal items or systems of materials and equipment proposed for the Work:

ANTI-COLLUSION AFFIDAVIT

STATE OF _____,

COUNTY OF _____,

_____, being first duly sworn, deposes and says that he is (sole city, partner, president, secretary, etc.) of _____, the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham; that said BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any BIDDER or anyone else to put in a sham bid, or that any one shall refrain from bidding; that said BIDDER has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said BIDDER or of any other BIDDER, or to fix any overhead, profit or cost element of such bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in such bid are true, and, further, that said BIDDER has not, directly or indirectly, submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said BIDDER in his general business.

SIGNED: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Seal of Notary

Notary Public _____

In completing this form the title that is not applicable should be struck out. For example, if the CONTRACTOR is a corporation and this form is to be executed by its president, the words "Sole city, a partner, secretary, etc." should be stricken.

City of Twin Oaks, Missouri
SERVICES CONTRACT
- FIREWORKS DISPLAY -

THIS AGREEMENT, made and effective as of _____, __ 20__ , by and between the **City of Twin Oaks**, a Missouri municipal corporation, hereinafter referred to as the "City", and _____, located at _____ hereinafter referred to as "CONTRACTOR,"

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

I. SCOPE OF SERVICES

Contractor services are necessary for the following services to be proved to the City: **Fireworks Display in Twin Oaks Park.**

Except as expressly specified herein, Contractor hereby agrees to provide all 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 project which are particularly described in the attached in Contractor's proposal (attached as **Exhibit A** and incorporated herein) subject to the following specific conditions:

1. Contractor shall have insurance in the amount set forth in the Request for Proposal (incorporated herein by reference) and furnish the City with a copy of the certificate of insurance showing that the City is named as additional insured with duty of defense on all insurance policies required hereunder.
2. No live fireworks material shall remain in the Twin Oaks Park over-night. During set up, any required security to protect and preserve the fireworks and the area immediately surrounding the location where the fireworks display is to be set up, other than that specifically outlined in the Request for Proposal, and all related costs for said security shall be the responsibility of the Contractor.
3. The Contractor shall also provide the flowing services as part of the Fireworks Display Services:
 - a. Obtain fireworks display permit or other required government authorization (local, state, and/or federal) to conduct fireworks display;
 - b. Store fireworks and other necessary materials until the display date;
 - c. Set up of fireworks display;
 - d. Choreography for fireworks display;
 - e. Tear down of fireworks display;
 - f. Clean up after fireworks display with 24-hours of event.
4. Contractor shall at all times during the performance of its obligations under this Agreement comply with all applicable federal, state, and local laws, ordinances, and regulations related to the storage, possession, use and conduct of a public fireworks display, including those of the National Fire Protection Association.

The above services (hereinafter referred to as the Work) shall be provided by the Contractor in accordance with all the provisions of the Contract and attached **City of Twin Oaks General Conditions** for the project 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 exhibit.

II. TERM

- A. This Agreement will be for one (1) year from the Agreement Date.
- B. Options: The City shall have an option to renew after year one and after year two for an additional year. Whether to exercise its options for year 2 and/or 3 shall be at the City's sole discretion.

III. COMPENSATION

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

- For Year 2020, a sum not to exceed \$ _____ for the specific display set forth in Exhibit A.

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.

IV. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted by mail or electronically to the City Hall (Kathy Runge - krunge@villageoftwinoaks.org) and payment shall be made as set forth in Section II above.

V. CONTRACT SCHEDULE

The display will occur on July 3, 2020 at approximately 9 p.m. In the event that weather conditions result in a cancellation of the display, the display will occur on July 5, 2020. If the display is not able to occur on July 3 or July 5, 2020, the Parties shall come to a mutually agreeable date that is within one (1) year of July 3, 2020. Should the fireworks display be 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. 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.

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

CONTRACTOR

CITY OF TWIN OAKS, MISSOURI

By: _____

By: _____

Title: _____

DATED: _____

ATTEST:

DATED: _____

**CITY OF TWIN OAKS
SERVICES AGREEMENT
GENERAL CONDITIONS**

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, 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. If applicable, the provisions and requirements of section 290.250 R.S.Mo. shall apply and are incorporated herein. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the Contractor shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Contractor in an effort to resolve any such conflict.

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 breach of the Contract or out of services and operations negligently performed hereunder by the Contractor, 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 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 A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions unless otherwise agreed by the City. 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. 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 A**, 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 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 with duty of defense on all insurance policies required hereunder. 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 to permit a cause of action against the City for damages or 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 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. 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.

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

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 Contractor/Professional Services 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.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Contractor 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 Contractor 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 Contractor 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 Contractor shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Contractor is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Contractor (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Contractor 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.

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any Contract awarded to the Contractor.

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.

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.

City of Twin Oaks, Missouri
SERVICES CONTRACT
- FIREWORKS DISPLAY -

Exhibit A

Scope of Services

