

**A RESOLUTION APPROVING AND AUTHORIZING THE  
MAYOR TO EXECUTE AN AGREEMENT WITH FOCAL  
POINTE OUTDOOR SOLUTIONS INC. FOR MULCHING  
SERVICES.**

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**WHEREAS**, the City of Twin Oaks (the “City”) sought formal proposals in response to its invitation for bids for the delivery and spreading of three inches (3”) of mulch at various locations throughout the City, known as the “Mulching Services Project”; and,

**WHEREAS**, in response, the City received two proposals from MidWest Scapes and Focal Pointe Outdoor Solutions Inc. (“Focal Pointe”) for the Mulching Services Project; and,

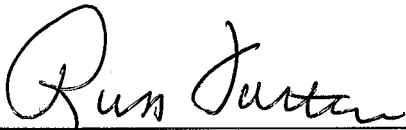
**WHEREAS**, the City has considered both bids under the guideline of Section 145.030 of the Twin Oaks Purchasing Code and has determined Focal Pointe’s bid to be the lowest and best bid.

**NOW, THEREFORE, 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 authorizes the Mayor to execute, the Contractor Services Contract with Focal Pointe Outdoor Solutions Inc., for the delivery and spreading of three inches (3”) of mulch at various locations throughout the City for a total price of \$17,625.00 (the “Agreement”), substantially in the form of the Agreement attached hereto as Exhibit 1 and incorporated herein by reference.

**Section 2.** This Resolution shall be effective upon its passage by the Board of Aldermen and execution by the Mayor.

THIS RESOLUTION WAS PASSED AND APPROVED THE 1<sup>ST</sup> DAY OF DECEMBER 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

**Exhibit 1**  
**Twin Oaks, Missouri**  
**CONTRACTOR SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of \_\_\_\_\_, 2021, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Focal Pointe Outdoor Solutions Inc.**, an Illinois corporation, hereinafter referred to as "Contractor," with a business mailing address of **11950 Missouri Bottom Road, Hazelwood, Missouri 63042**.

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain services relating to delivery and spreading of mulch ("mulching services") for areas throughout the City and including in Twin Oaks Park, Twin Oaks Town Hall, and at or near the intersection of Missouri Route 141 ("141") and Big Bend Road (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 services to the City: *Twin Oaks—2022 Mulching Services* which mulching services are particularly described in the attached **Exhibit A** incorporated herein (hereinafter referred to as the "Services").

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 Services.

The Services 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 Agreement and General Conditions (attached hereto and incorporated herein by reference) and the Proposal, this Agreement and its General Conditions shall prevail.

**II. SCHEDULING OF MULCHING SERVICES AND INTERFERENCE WITH TRAFFIC**

The City and the Contractor understand that in the course of the Services, the Contractor may be required to close a lane of traffic at or near the intersection of 141 and Big Bend Road or elsewhere. The Contractor's Services must be scheduled and accomplished in such that thru traffic is maintained. It shall be the Contractor's responsibility to provide a traffic way that is usable in all weather conditions.

When it is necessary to close a lane of traffic, the Contractor agrees that **it will be the responsibility of the Contractor** to provide all necessary traffic control and safety barriers, signage, lane markers, and all other equipment that may be necessary to assure safe and least restrictive lane closure. At all times until the City's final acceptance of the Services, the Contractor shall provide and maintain such necessary traffic control and safety barriers, signage, lane markers, and all other equipment necessary to assure safe and least restrictive lane closure and provide watchmen and flaggers as may be necessary to properly protect the Contractor's employees and provide for safe and convenient public travel. No additional payment shall be made for the traffic control and safety barriers, signage, lane markers, and all other equipment that may be necessary to assure safe and least restrictive lane

closure needed to maintain traffic and to protect the public. All labor, equipment, and material necessary to accomplish this task shall be considered incidental costs to Contractor.

Any injury to person or property due to the Contractor's failure to adequately provide all necessary traffic control and safety barriers, signage, lane markers, and other necessary equipment—including, but not limited to, injury to the public, injury to the Contractor's or the City's employees, or damage to property—will be the sole responsibility of the Contractor and Contractor expressly holds City harmless and agrees to indemnify the City as set forth in the City's General Conditions which are attached and incorporated herein by reference. The Contractor's failure to adequately provide all necessary traffic control and safety barriers, signage, lane markers, and other necessary equipment indicating closure of a lane at or near the intersection of Big Bend Road with 141 or Boly Lane shall be a material breach of this Contract.

**III. COMPENSATION**

The City hereby agrees to pay the Contractor the sum set forth in the Proposal, as full compensation after the complete and satisfactory performance of the Services, which include all expenses and costs related thereto.

**IV. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted in triplicate 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 Services for the fees, prices, rates, or schedule of values set forth in the Proposal.

**V. CONTRACT SCHEDULE**

Time is of the essence. The mulch shall be delivered and installed **between February 10 and March 20, 2022**, and the Services shall be completed in a reasonable manner no later than March 20. Failure to complete the Services by the completion date shall result in a reduction in the amount due to the Contractor under this Contract in the amount of \$100.00 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.

**FOCAL POINTE OUTDOOR SOLUTIONS INC.**

**CITY OF TWIN OAKS**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

City Clerk

**TWIN OAKS 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 Services, 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:

- **Work Authorization Program.** If the Contract is for services expected to cost more than \$5,000.00, the Contractor shall comply with Section 285.530 RSMo., pertaining to enrollment and participation in a federal work authorization program (as defined therein) and shall provide verification through an affidavit (attached as Exhibit B) that the Contractor (1) does not knowingly employ any person who is an unauthorized alien in connection with the Contract and (2) is enrolled in a federal work authorization program and provide documentary proof thereof. The affidavit shall contain the notarized signature of the registered agent, legal representative or corporate officer of the business entity including but not limited to the human resources director or their equivalent.
- **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 Services 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.** The Contractor shall obtain and maintain for itself during the term of the Project and the City-Contractor Agreement liability insurance coverage of at least \$2,000,000 aggregate and \$450,000 per occurrence or as maybe provided in the Agreement. 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 Bid Amount and no additional payment will be made therefor by the City

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services. Before commencing any Services, the Contractor 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 Contractor 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 Contractor has adequate insurance to cover the Contractor for tort claims that may arise out of the Services. 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 Contractor's Services 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 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 Twin Oaks 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."

**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 Services or terms being performed. The Contractor shall make any and all changes in the Services 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 Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. 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 Services. No Services 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 Services 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 Services.

**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 Services 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 Services 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 Services 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 Services, 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 Services").

**Project Records and Work Product.** The Contractor shall provide the City with copies of all documents pertinent to the Services 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 Services.

**Personnel.** The Services 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 Services 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**

**Bid Proposal Form  
Mulching Services  
2022  
CITY OF TWIN OAKS**

**Name of Company Submitting Bid:** Focal Pointe Outdoor Solutions

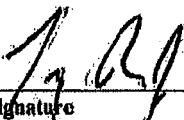
**Name of Person Submitting Bid:** TJ Rau

**Address:** 11950 Missouri Bottom Rd  
Hazelwood MO 63042

**Telephone Number:** 314-281-4130

**Email:** tjrau@yourfocalpointe.com

2022 Mulching Services					
Item No.	Description	Units	Quantity	Unit Price	Total
1	Twin Oaks Park Flower Beds — Triple Ground "Black Forest" Mulch (evenly spread at 3" depth)	CY	65	4,950.00	4,950.00
2	Twin Oaks Park Wooded Trail — Double-Ground "Playground" Mulch (evenly spread at 3" depth)	CY	100	11,200.00	11,200.00
4	Big Bend Road and Highway 141 Intersection Planters and Beds — Triple Ground "Black Forest" Mulch (evenly spread at 3" depth)	CY	38	935.00	935.00
5	Boly Lane Entrance Median — Triple Ground "Black Forest" Mulch (evenly spread at 3" depth)	CY	3	540.00	540.00
<i>Total Charges for Mulching Services</i>					17,625.00

  
\_\_\_\_\_  
Signature

11-19-21  
\_\_\_\_\_  
Date