

**A RESOLUTION APPROVING AND AUTHORIZING THE  
MAYOR TO EXECUTE AN AGREEMENT WITH BYRNE &  
JONES CONSTRUCTION FOR THE 2022 CURB REPAIR  
PROJECT.**

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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 enter, an agreement on behalf of the City of Twin Oaks with Byrne & Jones Enterprises, Inc., d/b/a Byrne & Jones Construction, for construction work related to the 2022 Curb Repair Project in the City-Contractor Agreement attached hereto as Exhibit 1 and incorporated herein by reference and which City-Contractor Agreement shall be substantially in the form of Exhibit 1 hereto.

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

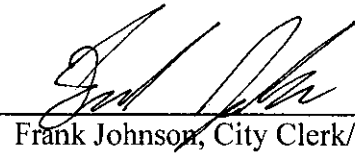
THIS RESOLUTION WAS PASSED AND APPROVED THE 21<sup>ST</sup> DAY OF SEPTEMBER 2022,  
BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



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Russ Fortune, Mayor

Attest:



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Frank Johnson, City Clerk/Administrator

Exhibit 1  
City-Contractor Agreement



## City-Contractor Agreement

THIS CITY CONTRACTOR AGREEMENT (this "Agreement" or "City-Contractor Agreement"), is made and entered into as of this \_\_\_\_\_ day of September, 2022 by and between **Byrne & Jones Enterprises, Inc., d/b/a Byrne & Jones Construction**, a Missouri Corporation having a principal office at 13940 Saint Charles Rock Road, Bridgeton, Missouri 63044-3826 (the "Contractor"), and the **City of Twin Oaks**, a Missouri municipal corporation located in St. Louis County (the "City"). All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).

### RECITALS

A. In response to the City of Twin Oak's RFP requesting bid proposals for the Curb Improvement Project (the "Project"), the Contractor has submitted a certain Bid Proposal in accordance with the Bid Documents to perform the Work.

B. After due consideration, the City has accepted the Bid Proposal of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Work in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents.** The entire agreement between the parties shall consist of this Executed City-Contractor Agreement and, without limitation, the following documents:

1. Notice to Bidders
2. Plans and Specifications
3. Instructions to Bidders
4. City-Contractor Agreement
5. General Conditions
6. Special Provisions
7. Applicable Missouri Annual Wage Order
8. Technical Specifications
9. Bid Proposal Form
10. Bid Bond (executed by Contractor and surety)
11. Form of Performance and Maintenance Bond (executed by Contractor and surety)
12. Form of Payment Bond (executed by Contractor and surety)
13. List of Resources and References
14. Subcontractor Utilization Form
15. Affidavit of Non-Collusion (executed by Contractor)
16. Certification of Non-Segregation
17. Anti-Discrimination Against Israel Act Certification
18. Form of Notice of Award (issued by City and receipt acknowledged by Contractor)
19. Form of Notice to Proceed (issued by City and receipt acknowledged by Contractor)
20. Closeout Submittals

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, any duly-issued Modifications, and all other documents contained or specified within the Plans and Technical Specifications, as such may be on file in the office of the City Clerk of Twin Oaks, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference). Unless otherwise stated, to the extent that any terms or provisions within Contractor's Bid Proposal conflicts with the terms or provisions within the City-Contractor Agreement or General Conditions, such terms and provisions within the City-Contractor Agreement or General Conditions shall prevail.

2. **The Work/Contract Sum**. The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is **Sixty-Six Thousand, Seven Hundred Eighty-One Dollars and Fifty Cents (\$66,781.50)**, which includes all compensation to Contractor due for the Work, which shall include all such work within the **Base Bid** only and *does not include any Work in the Alternate Bid*. Any additional Work not within the Base Bid that is hereinafter approved by the City in writing pursuant to a Change Order shall be completed for the unit prices set forth in the Contract Documents, if applicable.

3. **Time of Completion**. Contractor shall commence work under this Agreement promptly following receipt of written notice from the City to proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

4. **Guaranty**. The 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 Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

5. **Payment Bond**. If the Contract Sum is in excess of \$50,000 the Contractor shall furnish within five (5) days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

6. **Performance and Maintenance Bond.** The Contractor shall also furnish within five (5) days of notification of contract award a satisfactory Performance and Maintenance Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Performance and Maintenance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this City-Contractor Agreement. The submitted Performance and Maintenance Bond shall be substantially in the form of the "Form of Performance and Maintenance Bond" included within the Bid Documents.

7. **Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City-Contractor Agreement the insurance coverages at least equal to the coverages set forth in this paragraph 7, 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 RSMo. 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.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$450,000 per occurrence \$3,000,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$450,000 per occurrence \$3,000,000 aggregate

the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site. 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 paragraph 7 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 work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the Contractor's work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured 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."

Although the City will provide a policy of Builder's Risk "All-Risk" Insurance in the amount of the Project, the Contractor shall pay the City's deductible should any claims arise during the Project.

The City may waive or decrease any insurance coverages or amounts required by this paragraph 7 when the City deems it to be in the interest of the public health, safety, and general

12. **Required OSHA Training.** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such

Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

13. **Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

14. **Other Representations, Warranties and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.

15. **Amendment: Waiver.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

16. **Choice of Law: Venue.** 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. Venue shall exclusively be in the Circuit Court of St. Louis County or the United States District Court for the Eastern District of Missouri.

17. **Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

18. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this

Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

19. **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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

**BYRNE & JONES ENTERPRISES, INC.**  
d/b/a Byrne & Jones Construction

**CITY OF TWIN OAKS, MISSOURI**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Address

\_\_\_\_\_  
Attested

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date