

RESOLUTION NO. 2023-14

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN APPROVING
AN AGREEMENT WITH TOPPS PAVING AND SEALING FOR
SEALCOATING AND RESTRIPIING THE PARKING LOT AT TWIN OAKS
TOWN HALL.**

**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 Twin Oaks with Topps Paving and Sealing, LLC, for services relating to sealcoating and restriping the parking lot at Twin Oaks Town Hall located at 1381 Big Bend Road, Twin Oaks, MO 63021, to be provided under the terms set forth in Exhibit 1.

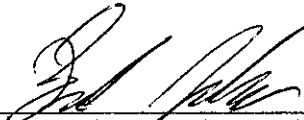
Section 2. This Resolution is adopted and shall be in full force and effect on and after its passage and approval.

THIS RESOLUTION WAS PASSED AND APPROVED THE 12th DAY OF JULY 2023, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:



Frank Johnson, City Clerk/Administrator

Exhibit 1

Twin Oaks, Missouri CONTRACTOR SERVICES CONTRACT

THIS AGREEMENT, made and effective as of _____ 2023, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Topps Paving and Sealing, LLC**, a Missouri corporation, hereinafter referred to as "Contractor," with a business mailing address of 11502 Dorsett Road, Maryland Heights, Missouri 63043.

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for services related to the sealcoating and restriping of approximately 1,013 square yards of asphalt parking lot at the Twin Oaks Town Hall located at 1381 Big Bend Rd., as described on Exhibit A (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: *Parking Lot Sealcoating and Restriping—Twin Oaks Town Hall.*

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

A. **Basic Compensation.** The City hereby agrees to pay the Contractor as full compensation upon the completion of the Work:

Sealcoating (weekend rate)	\$2,206.00
Striping	\$825.00
<u>Total Due at the City's final acceptance of the work:</u>	<u>\$3,031.00</u>

If the work is performed on a weekday, a discount of \$221.00 shall be applied to the amount due.

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 be commenced on _____, 2023, and shall be completed in a reasonable manner no later than _____, 2023. 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 \$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.

TOPPS PAVING AND SEALING, LLC

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.

ACCEPTANCE: This proposal must be signed and returned before any field work can commence and it expires thirty (30) days from the date hereof and may be accepted at any later date at the sole option of Toppa Paving & Sealing LLC, (hereinafter referred to as contractor). Upon receipt it is understood the foregoing, including the terms, conditions and notices set forth below, will constitute the full and complete agreement between us.

COMMENCEMENT OF WORK: If Contractor is delayed in the performance of the Work by any act or omission of Owner or of any employee, agent, or subcontractor of Owner, or by any Change Order, any strike or other labor dispute, or unavoidable casualty, unusual weather conditions, or any other cause which the Contractor could not reasonably control, the time for completion shall be extended for a period equal to the length of such delay. Contractor will not be held liable for loss, damage, or delay occasioned by material shortage, inclement weather, strikes, force majeure, inadequate site conditions or any other cause beyond the reasonable control of Contractor. Contractor shall be granted unimpeded access to perform its scope of work. Contractor shall be compensated for delays due to others at the project site.

UNFORESEEN CONDITIONS: Should concealed conditions encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in existing structures be at variance with the conditions indicated by the Plans and Specifications of other written instruments or documents provided by Owner or Owner's Architect/Engineer, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in existing structures of an unusual nature, differing materially from those ordinarily encountered in work of the character provided for herein, be encountered, Contractor may require the Contract Sum and the time of completion be equitably adjusted upon written claim made within thirty (30) days after Contractor's first observance of the conditions. If Owner does not approve Contractor's claim within ten (10) days after its receipt, Contractor shall have the right to stop all work until Owner & Contractor can agree upon appropriate adjustments.

NOTE: Excavation of existing asphalt is bid for 2-3" depth of removal. Asphalt excavation exceeding 3" because of unforeseen overlay or other reason will be billed to Owner to compensate Contractor appropriately for any additional expenses incurred from excavating beyond 3" depth and an appropriate margin of profit as based on the job total.

PRICES: This proposal is based on labor, material and equipment costs on the date hereof and is subject to changes in price on a dollar to dollar basis in labor and or material incurred or occurring after the proposal valid date and prior to contract execution. Contractor shall be compensated for work performed at the verbal or written request of owner or owner's representative which is not within the scope of work.

CONTRACT SUM-PAYMENT: As payment for Contractor's Work hereunder, Owner shall pay Contractor the Contract Sum in cash or by good check, pursuant to the following procedure. Payment shall be based on Contractor's invoice and shall be made immediately after Contractor's submission of its invoice to Owner. Contractor may obtain progress payments before completion of the Work upon preparing and submitting appropriate invoices to Owner. No payment shall constitute acceptance of defective or improper work. No portion of the Contract Sum shall be retained for any reasons. A late payment charge of 1 and 1/2% per month (18% annually) will be added on any overdue amount past 7 days. Owner agrees to pay the finance charge on any outstanding balance, and all reasonable attorney's fees, and other costs and expenses incurred in any suit or other legal action to enforce the terms of the contract. No more than 10% of the contract price may be withheld from payment due to disputes or workmanship of the scope of services. If the Project is not ready for commencement of the Work, or if Contractor has not received Notice to Proceed, on or before the proposed commencement date set forth on the front side of this document, the Contract Sum shall be increased by all cost increases incurred by Contractor above the prices available to Contractor as of that date.

ADDITIONAL OBLIGATIONS OF OWNER: Owner further agrees:

- A. To secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or facilities, or for permanent changes in existing structures or facilities.
- B. To be responsible for locating and clearly marking all underground utilities and other underground or concealed structures, facilities, and obstacles. Contractor shall be compensated for any costs resulting from damages to such underground items not adequately marked and called to the attention of the contractor.
- C. To maintain reasonable safeguards against injury or damages to persons or property on or about the Work Site at any time that Contractor is not actively conducting operations on the site. D. In the event Owner fails to so prepare and maintain the Project site and coordinate the others working on the Project, and in the event Contractor is thereby unable to perform its Work on a continuous uninterrupted basis, Contractor shall have the right to stop the Work until Owner and Contractor agree to appropriate adjustments in the Contract Sum.
- E. To secure and pay all permits and government fees, licenses and inspections necessary for the completion of work.

CLEARING: Contractor shall be compensated for moving of materials, debris and/or obstacles from the work area, unless specifically noted otherwise in the scope of work, and if such work is necessary for contractor to do the contract work.

GRADES: Subgrade elevations are to be brought within plus or minus one (1) inch by others unless specifically noted otherwise in the scope of work before the contracting crews move in. If it is necessary for the contractor to remove excess overburden or add fill to said work areas over and above said limits, contractor shall be compensated for such extra work and materials. Contractor is not responsible for backfilling or adjusting grades adjacent to its work, unless specifically noted in the scope of work.

LINES & LEVELS: Owner shall be responsible for all survey lines and grade elevations necessary for contractor to locate and install its work unless specifically noted otherwise in the scope of work. Contractor may rely on such lines and levels to be correct.

SUBGRADE CONDITIONS: Owner shall be responsible for subgrade conditions and degree of compaction. Contractor shall not be held responsible for paving defects resulting from subgrade pumping or yielding under normal construction paving conditions.

SITE CONDITIONS: Contractor shall be relieved of all responsibility when ordered by owner to install work, when in the contractor's stated opinion, the temperature, weather, soil or fill conditions are unsuitable and said conditions may have a detrimental effect on the finished installation.

DRAINAGE: Contractor shall make a reasonable effort to install the work to avoid puddles or ponding water. Contractor shall not be held responsible for puddles or ponding or running water where insufficient slope (normally 3/16" per foot) or paving exists, or for surface tolerance less than 3/8" in eight feet horizontal distance.

INDEPENDENT CONTRACTOR: In performing its obligations hereunder, Contractor shall be deemed an independent contractor and not an agent or employee of Owner. Contractor understands that as an independent employing unit it is subject to all applicable income tax withholding and unemployment compensation laws.

TERMINATION OF AGREEMENT: This Agreement may be terminated in the following manner if:

- (i) Owner becomes insolvent, a petition in bankruptcy is filed by or against Owner, Owner makes a general assignment for the benefit of its creditors, or a receiver is appointed for Owner;
- (ii) Owner fails to make payment of any part of the Contract Sum as provided hereof;
- (iii) Contractor elects to terminate this Agreement because the Contractor and Owner are unable to agree to adjustments under the provisions hereof;
- (iv) Performance of the Work is prohibited, prevented or substantially impeded for a period of thirty (30) days or more under an Order of any Court or other public authority having jurisdiction, or as a result of any act of government, or as a result of any interference or hindrance caused by Owner, Owner's Architect/Engineer, or any of their agents, servants, employees or contractors; or
- (v) Owner defaults in the performance of any other covenant or condition hereunder, and fails to remedy such default within fifteen (15) days after receipt of written notice thereof from Contractor; then Contractor may terminate this Agreement by giving written notice thereof to Owner. Upon such termination, Contractor may remove all of its equipment, tools, and machinery from the Project site and may recover from Owner payment for all Work performed through and including the date of termination and may recover from Owner all losses sustained as a direct result of any breach by Owner, including Contractor's lost profits.

ADDITION AS TO GUARANTEE

Contractor hereby warrants and guarantees to Owner, in lieu of all other warranties, express or implied, that all Work shall be, of good quality, free from faults or defects, and in conformance with the Plans and Specifications, it being understood that this warranty and guarantee shall remain in effect only for a period of ninety (90) days from and after the date of Completion of the Work. Contractor agrees to repair or replace, at its expense, any defects in the Work which appear within said period of ninety (90) days. Notwithstanding the foregoing, the Contractor shall not be responsible for, and the foregoing guarantee is exclusive of, the following:

- (i) Contractor shall not be held liable for future defects caused by; subgrade settlement, failure of the subgrade, inadequate design, hydrostatic pressure, overloading, abuse, or misuse of the paving by others, temperature and reflective cracking and/or subgrade shrinkage;
- (ii) accumulation of water if Plans, and/or existing job specifications call for less than one percent (1%) per foot fall;
- (iii) reflective cracks due to concrete overlays;
- (iv) damages or defects resulting from Owner's failure to backfill all exposed edges of paving;
- (v) damages or defects resulting from crack-filling with unknown or improper substances;
- (vi) damages or defects resulting from gasoline, oil, or other spillages that dissolve asphalt;
- (vii) damages or defects that result from settling of utility ditches or backfills of any kind;
- (viii) damages or defects that result from snow removal, or from spikes or chains used for gripping snow;
- (ix) damages or defects which result from power steering scuffing or hard usage; and
- (x) damages or defects resulting from any unknown or unforeseen causes or conditions such as unknown underground utilities, underground caverns, underground waterways, tree roots, etc.

**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.