

RESOLUTION NO. 2023-31

**A RESOLUTION OF THE TWIN OAKS BOARD OF ALDERMEN APPROVING
AN AGREEMENT WITH DEKA SERVICE FOR PLANNED HVAC
MAINTENANCE SERVICES AT THE 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 for services relating to quarterly preventative maintenance for the HVAC system at the Twin Oaks Town Hall for the sum of \$1,157.00 per year, 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 6th DAY OF DECEMBER 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 _____, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **DEKA Service**, a Missouri corporation, hereinafter referred to as "Contractor," with a business mailing address of 1802 Larkin Williams Road, Fenton, MO 63026.

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain services relating to HVAC maintenance 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: *HVAC Planned Service Agreement*.

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 Services listed above and which are particularly described as quarterly preventative maintenance for the HVAC system at the Twin Oaks Town Hall in the attached **Exhibit A** incorporated herein.

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. COMPENSATION

A. Basic 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 a sum of \$1,157.00 billed quarterly at \$289.25 as is more particularly set forth on the attached proposal (Exhibit A).

B. Additional Compensation. Any cost not specifically allowed the Contractor pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Contractor shall be paid as follows:

As approved in writing by the City Administrator per the terms set forth in the Proposal.

III. 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.

IV. CONTRACT SCHEDULE

Time is of the essence. The work to be performed under this Contract shall be performed quarterly as set forth in the Proposal.

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

V. TERM; OPTION TO EXTEND; AMENDMENT

The initial term of the Agreement shall be from January 1, 2024, to December 31, 2024, ("Initial Term") and will automatically renew on a year-to-year basis after the Initial Term ends, unless either party provides written notice of termination at least thirty (30) days prior to the end of the Initial Term, or of any subsequent renewal period, to prevent automatic renewal. The cost of services charged by Contractor for the Initial Term shall be as provided in the Proposal. At the expiration of the Initial Term or any subsequent renewal term, the cost of services charged by Consultant shall be as set forth in the Proposal unless otherwise mutually agreed by the parties in writing. The Contract may be amended by the parties in writing.

DEKA SERVICE

By _____

Title _____

DATED: _____

CITY OF TWIN OAKS

By *Ron Justice*

Title *Mayor*

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 - Proposal

MAINTENANCE AGREEMENT

11/16/2023

City of Twin Oaks
1381 Big Bend Road
Ballwin, MO 63021

Attn: Frank Johnson, 314.917.2425, fjohnson@cityoftwinoaks.com



1802 Larkin Williams Rd., Fenton, MO 63026
636.600.1466 www.dekaservice.net



This DEKA Maintenance Agreement has been exclusively tailored for the following location(s):

- 1) City of Twin Oaks, 1381 Big Bend Road, Ballwin, MO 63021

WHAT'S INCLUDED

Under this Agreement, DEKA Service shall provide the following:

- Annual preventative maintenance visits: Quarterly service visits in Spring, Fall, Summer and Winter.
- Tooling and supplies needed to perform the maintenance listed.
- Equipment Service Reports for each maintenance visit.
- Discounted material pricing and labor rates for additional work, if any.
- Priority status for Emergency Service, if needed.

EQUIPMENT COVERED

Customer equipment specifically covered under this Agreement is as follows:

Tag	Description	Manufacturer	Model
	Rooftop Unit Rooftop Unit	Trane Trane	YHC092F3RLA0LCEC1A1B700 YHC092F3RLA0LCOC1A1B7B00..

MAINTENANCE TO BE PERFORMED

Each type of equipment has its own unique maintenance requirements. Maintenance to be performed shall be in accordance with respective manufacturers recommended seasonal maintenance for each type of equipment. If needed due to environmental conditions, DEKA Service may recommend additional or supplementary maintenance.

At a minimum, maintenance visits shall include inspection or service of the following: air filters, belts, bearings, refrigerant pressures, motor & compressor amperages, visual indication of leaks, heat exchanger inspections and audible indication of excess noises. Condenser coil cleaning is also provided.

SERVICES & MATERIALS PROVIDED

DEKA Service will provide the following services and materials under this Agreement: (check all that apply)

SERVICES

- Washing Condenser Coils (Spring Service)
- Change Air Filters – Each Visit
- Other: _____

MATERIALS

- Air Filters (Customer supplied if unchecked)
- Fan Belts
- Other: _____

WHAT'S NOT INCLUDED

- Maintenance services and/or equipment not specifically listed in this Agreement. Additional work, if requested, will be billed at the contract service rates.
- Any materials needed to repair defective equipment including refrigerants. Repair materials, if needed, will be billed separately.

DISCOUNT RATES

Under this agreement, the following rates will apply for any mechanical work needed on covered and non-covered equipment. This includes maintenance, repairs, installation or emergency service work.

Description	Service Rates
Normal Scheduled Maintenance & Service Rate – Monday through Friday, 8:00am to 4:30pm	\$ 112
After-Hours Service Rate – Monday through Friday - 4:31pm to 7:59am Weekends - Saturday & Sunday – 12:01am to 12:00am	\$ 157
Holiday Service Rate – New Year’s Eve, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Day after, Christmas Eve, Christmas Day – 12:01am to 12:00am on any of these days	\$ 202
Minimum Billing Hours per Visit (Normal Scheduled / Emergency / After Hours & Holidays)	1 / 2 / 2
Service Call Trip Charge (1 Time per Service Call or Parts Run or Delivery of Parts to Jobsite)	\$ 95
After-Hours & Holiday Call Trip Charge (1 Time per Service Call)	\$ 125
Material Discounts (from MSRP)	20%

INVOICES AND PAYMENTS

Maintenance work will be performed per the scope of work listed above for **Annual NET Price of: \$ 1,157.00**

Work performed under this Agreement will be invoiced as follows: (Select One)

- Invoices: Spring: \$ 503.00, Summer: \$ 174.00, Fall: \$ 324.00, and Winter: \$ 156.00 .
 Equal installments on a Monthly OR Quarterly basis.

All unplanned repairs and emergency work will be invoiced at completion of the work. All payments are due NET 30 days from date of invoice.

TERM / AUTOMATIC RENEWAL

This Agreement takes effect on **1/1/2024** and will continue through **12/30/2024** ("Initial Term"). The Initial Term and any automatic renewal periods are collectively referred to in this Agreement as the "Term". This Agreement will automatically renew on a year-to-year basis after the Initial Term ends, unless either party provides a written notice of termination at least thirty (30) days prior to the end of the Initial Term, or of any subsequent renewal period, to prevent the automatic renewal. DEKA Service will provide Customer with notice of any adjustments to price, terms any portion of this Agreement applicable to a renewal period no later than thirty (30) days prior to the commencement of the renewal period. Unless the Customer provides written notice to terminate this Agreement, the adjusted price and terms shall be the price and terms for the renewal period. If this Agreement is terminated for cause, Customer shall make payment to DEKA Service for all undisputed amounts owed within ten (10) days of the termination effective date. A Party's termination of this Agreement for cause shall be without prejudice to any other right or remedy.

DEKA Corporations’ Standard Terms and Conditions of Sale apply to this Agreement.

ACCEPTANCE

By signature below I accept the terms of this Agreement and attest I have full rights, responsibility and authority to sign the Agreement on behalf of the organization for which the Agreement was prepared. My signature indicates all of the necessary corporate actions have previously occurred giving me the authority to act on behalf of and to fully bind said organization to this Agreement.

Proposed by: _____
 (Signature) Date

Accepted by: _____
 (Signature) Date

Print Name/Title: Dean Bowlin

Print Name/Title: _____

DEKA Service
1802 Larkin Williams Rd.
Fenton, MO 63026

City of Twin Oaks
1381 Big Bend Road
Ballwin, MO 63021



**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)	\$488,755 per occurrence \$3,258,368 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$488,755 per occurrence \$3,258,368 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.

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.