

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE
CITY OF TWIN OAKS AND SWITCH
FOR SERVICES RELATING TO THE ECLIPSE EVENTS**

WHEREAS, the City of Twin Oaks is in need of audio, video and other technical services for the eclipse events in the Twin Oaks Park (the "Services"); and

WHEREAS, the Board of Aldermen desires to enter into an agreement for the Services;

NOW, THEREFORE, BE IT ORDAINED 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 on behalf of the City of Twin Oaks with the Spark Agency, Inc., d/b/a Switch for the Services. Such contract shall be in substantially the form of the contract, marked "Exhibit 1" attached hereto and incorporated herein by reference.

Section 2. This Ordinance shall be in full force and effect on and after its passage and approval by the Mayor.

PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 16th DAY OF AUGUST 2017.



Russ Fortune, Mayor

Attest:



Kathy A. Runge, City Administrator/Clerk

Exhibit 1

City of Twin Oaks, Missouri
SERVICES CONTRACT

THIS AGREEMENT, made and effective as of August 16, 2017, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and the Spark Agency, Inc., d/b/a **Switch**, a Missouri corporation, hereinafter referred to as "Contractor";

WHEREAS, the City wishes to engage the Contractor as provider of technical 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 event of the City: *Twin Oaks Eclipse Events*, consisting of a concert in the Park on August 19 and an eclipse experience on August 21 (the "Events").

Except as expressly specified herein, Contractor hereby agrees to provide all of the personnel, 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 which are generally described as technical and operational support for audio/visual equipment for the Events as more fully described in Exhibit A attached hereto and incorporated herein (the "Services").

The Services shall be provided by the Contractor in accordance with all the provisions of the Contract and the attached **City of Twin Oaks General Conditions** which are incorporated herein by reference.

II. COMPENSATION

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

such amount as is set forth in Exhibit A to this Agreement.

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:

[inapplicable if left blank]

III. TIME AND MANNER OF PAYMENTS

The City shall pay a fee not to exceed the amount set forth in the Proposal (attached as Exhibit A) for the Services. Payment shall be made by City upon completion of the Services.

IV. CONTRACT SCHEDULE

Time is of the essence.

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

The Spark Agency, Inc, d/b/a Switch

City of Twin Oaks

By _____

By _____

Title _____

Title _____

DATED: _____

ATTEST: _____

**GENERAL CONDITIONS
CITY OF TWIN OAKS
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. 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 acceptable to the City, 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.

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 acceptable to the City. 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.

Changes. No change in this Contract shall be made except in writing prior to the change in 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. 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 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 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.

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

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 Contractor/Professional Services Contract shall control and supercede unless a change thereto is specifically stated in this Contract.

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.

Other Special Provisions. The special provisions set forth on Exhibit A are incorporated herein by reference, and made a part hereof.

EXHIBIT A
Proposal



6600 Manchester Ave.
 Saint Louis, MO 63139
 Phone: 314.206.7700
 Fax: 314.206.4570
 www.switch.us

Quote

Quote Number: 17-0619
 Twin Oaks Eclipse Gathering

| |
|--|
| Client |
| Lisa Perry Eisenhauer City of Twin Oaks Office 1393 Big Bend Road Suite F Twin Oaks, MO 63021 |

| |
|---------------------|
| Venue / Site |
| Twin Oaks Park |

| | | | |
|--------------------|--------------------|-------------------|------------------------|
| Salesperson | Customer PO | Job Number | Shipping Method |
| Ann Slayton | | | N/A |

| | | | | |
|--------------|-----------------------|-----------------------------------|-----------------|-----------------|
| Terms | Payment Method | Authorization returned Y/N | Tax Rule | Discount |
| | | | Tax Exempt | |

| | | | |
|-------------------|--------------------|--------------------|--------------------|
| Ship Date | Load In | Load Out | Return Date |
| 8/18/2017 9:00 AM | 8/18/2017 12:00 AM | 8/22/2017 12:00 AM | 8/22/2017 9:00 AM |

| Type | Qty. | Description | Note | Time | Rate | Price | Price Ext. |
|------------------|------|--|------|------|----------|--------|------------|
| equipment | | | | | | | |
| Rental | 3 | 60" Smart TV Package | | 1 | Day Rate | 300.00 | 900.00 |
| Rental | 3 | 60" TV Stands | | 1 | Day Rate | 100.00 | 300.00 |
| Rental | 4 | Edison Power Cable 50ft. | | 1 | Day Rate | 1.00 | 4.00 |
| Rental | 4 | Edison Power Cable 100ft. | | 1 | Day Rate | 2.00 | 8.00 |
| Rental | 1 | 2 speaker powered sound system (K12) | | 1 | Day Rate | 450.00 | 450.00 |
| Rental | 1 | Honda Generator eu3000i 3000 watt portable | | 1 | Day Rate | 65.00 | 65.00 |
| Rental | 1 | 30 amp male twist to 2 fem edison | | 1 | Day Rate | 0.00 | 0.00 |
| Rental | 1 | Sandbag Case | | 1 | Day Rate | 100.00 | 100.00 |
| Rental | 24 | 25lb. Sandbag (steel shot) | | 1 | | 0.00 | 0.00 |
| Rental | 1 | sandbag case | | 1 | | 0.00 | 0.00 |

equipment Total Before Discount: \$1,827.00
100% Discount: \$1,827.00
equipment: \$0.00

| | | | | | | | |
|--------------|---|-----------------------------|--|---|----------|---------------|-----------------|
| Labor | | | | | | | |
| Rental | 1 | Equipment Rental Technician | | 1 | Day Rate | 350.00 | 350.00 |
| Rental | 1 | Equipment Rental Technician | | 1 | Day Rate | 350.00 | 350.00 |
| | | | | | | Labor: | \$700.00 |

Subtotal: \$700.00
 Sales Tax: \$0.00
 Discount: \$0.00
 Delivery and Pickup: \$100.00
 Total: \$800.00
 Total Applied Payments: \$0.00
 Balance Due: \$800.00



Saint Louis
 6600 Manchester Ave.
 Saint Louis, MO 63139
 Phone: 314.206.7700
 Fax: 314.206.4570
 www.switch.us

| | |
|------------------------|-----------------------------|
| Quote Number | 17-0619 |
| Name | Twin Oaks Eclipse Gathering |
| Account Manager | Ann Slayton |
| Quote Date | 8/10/2017 |

| |
|--|
| Client |
| Lisa Perry Eisenhauer City of Twin Oaks Office 1393 Big Bend Road Suite F Twin Oaks, MO 63021 |

| |
|---------------------|
| Venue / Site |
| Twin Oaks Park |

| Ship Date | Return Date | Status | Terms | Total |
|-------------------|-------------------|-----------|-------|----------|
| 8/18/2017 9:00 AM | 8/22/2017 9:00 AM | Confirmed | | \$800.00 |

Terms & Conditions Agreement for Lease Transactions between Customer and Switch

All equipment transactions between the parties shall be subject to the following terms and conditions:

Payment: A 50% deposit is due at time of signing contract. The remaining 50% will be due on the day of the first production, or upon receipt.

Rental Conditions: Customer agrees to all following conditions. Customer is leasing equipment and accessories (herein collectively referred to as Equipment). No sale, conditional or otherwise, applies. The equipment is described on the reverse side, or in future transactions upon other order documents. Customer agrees that taking delivery of Equipment in this transaction and in future transactions is an acceptance of all terms in this Agreement in addition to all other price, time, equipment and related lease terms for each and every transaction between the parties.

Term: For each and every transaction, the term of the provision of the Agreement begins on the date of shipment of equipment and shall continue until the equipment is received back to Switch in the condition in which it was accepted.

Acceptance: Customer acknowledges that he has fully inspected and accepted said equipment in good condition and repair.

Future Transactions: The terms of this Agreement shall apply to all future transactions between the parties absent provision of a written notice of termination of this Agreement by either party to the other party.

Agency: Both the person executing this Agreement and Customer warrant that the person executing this Agreement holds the authority to bind Customer to this Agreement for this transaction and future transactions and is an authorized agent for the Customer pursuant to all applicable laws.

Labor: Labor is quoted as an estimate. Actual labor charges will be calculated and included with the final invoice. At the point which an overage is about to occur, Switch will notify client to allow a decision to be made with regard to any overages.

Additional Charges: Customer is responsible for any additional union and trade labor required by the venue such as, riggers, stagehands, electricians, carpenters, etc. Any loading, drayage or related fees shall be arranged with the show venue and are the responsibility of the Customer. Customer is responsible for providing any and all equipment needed for installation or dismantle, such as, forklifts and genie lifts, and for providing all necessary electrical service. Switch maintains no liability for the cost or negligent provision of any and all of the above referenced services.

Alterations: Customer shall not make any alterations, additions or improvement to the equipment without the prior written consent of Switch. Switch property labels shall not be removed from equipment.

Loss & Damage: Customer hereby assigns and shall bear the entire responsibility and liability to Switch for the actual cost to repair or replace any equipment which during the period between delivery to the Customer and return to Switch has been lost, stolen or damaged from any cause whatsoever, including but not limited to damage due to water corrosion, unauthorized internal adjustments, unauthorized repairs, rain, humidity, fog machines, burned in images on display devices, willful or neglectful misuse, or fraudulent and dishonest acts. ~~Customer shall indemnify and hold Switch harmless from any and all claims, liabilities, losses, costs and expenses arising from the use, possession, operation or renting of the equipment.~~ Acceptance by Switch of the return of any equipment shall not be deemed a waiver by Switch of any claims which Switch may have against the Customer under this paragraph, including any damages for which the Customer is liable hereunder which is discovered later.

Insurance: Upon request by Switch, Customer agrees to provide a certificate of insurance naming Switch as an additional named Loss Payee. The amount of such coverage shall not be less than the amount necessary to cover the replacement cost of any and all equipment rented, and shall include liability coverage of not less than \$1,000,000.

Warranty: Customer acknowledges and agrees that Switch makes no warranty, express or implied, regarding equipment, including without limitation any warranty of merchantability or fitness for any purpose. Switch's obligation to the Customer shall be limited to the repair or replacement of equipment which is defective when delivered to Customer and Customer agrees that this shall be its sole and exclusive remedy.

Expenses: Customer shall pay Switch all costs and expenses including attorney's fees and court costs incurred by Switch in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

Cancellation: In the event an order is cancelled after the date of shipment, Customer agrees to pay a minimum cancellation fee of 50% of the Agreement price.

Miscellaneous: This Agreement shall be governed by the internal laws of the State of Missouri, and the rights and obligations of the parties hereunder shall be determined according to such laws. This Agreement shall constitute the entire Agreement between Switch and the Customer with respect to the rental of equipment and may not be modified without a writing signed by both the Customer and an authorized representative of Switch. The person signing this Agreement warrants that such individual has been duly authorized to execute this Agreement and to bind the Customer to Switch's terms and conditions for this and all future transactions.

Date: _____

Date: _____

Company _____

Client _____

Signature: _____

Signature: _____

Name/Title: _____

Name/Title: _____

