

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF TWIN OAKS AND OREO & BOTTA CONCRETE CO. FOR CERTAIN CONCRETE FLATWORK.**

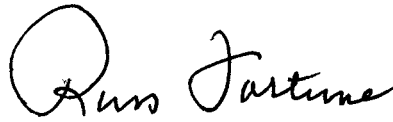
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**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby approves, and the Mayor is hereby authorized to enter into, a contract on behalf of the City of Twin Oaks with Milne and Sons, LLC, a Missouri limited liability company doing business as Oreo & Botta Concrete Company, for the installation of a concrete driveway at the City's property located at 50 Crescent Avenue in the amount of \$14,750.00. Such contract shall be in substantially the form of "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 18th DAY OF OCTOBER 2017.



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Russ Fortune, Mayor

Attest:



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Kathy A. Runge, City Administrator/Clerk

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## Exhibit 1

### Twin Oaks, Missouri CONTRACTOR SERVICES CONTRACT

THIS AGREEMENT, made and effective as of October \_\_\_\_, 2017, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Milne and Sons, LLC**, a Missouri limited liability company, doing business as **Oreo & Botta Concrete Company**, hereinafter referred to as "Contractor," with a business mailing address of 8526 Delport, St. Louis, MO, 63114;

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain services relating to services relating to the installation of a concrete driveway running from the curb on Crescent Avenue to the garage entrance at the rear of the home at 50 Crescent Avenue (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: *Twin Oaks—Installation of Driveway at 50 Crescent Ave.*

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 which are particularly described in the Proposal attached as **Exhibit A** and incorporated herein.

The above-referenced services (hereinafter referred to as the "Work") shall be provided by the Contractor in accordance with all the Proposal and the attached **Twin Oaks General Conditions** which are incorporated herein by reference, and the terms of the General Conditions (attached hereto and incorporated herein by reference) shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment, including the Proposal.

#### II. SCHEDULING OF WORK AND INTERFERENCE WITH TRAFFIC

The City and the Contractor understand that in the course of the Work, the Contractor may be briefly required to close a lane of traffic at or near the intersection of the driveway and the Crescent Avenue. The Contractor's Work must be scheduled and such that thru traffic is maintained during construction. It shall be the Contractor's responsibility to provide a traffic way that is usable in all weather conditions.

During work in the City's right-of-way, the Contractor shall provide and maintain such necessary traffic control and safety barriers, signage, lane markers, and all other equipment necessary to assure safe and least restrictive lane closure and provide watchmen and flaggers as may be necessary to properly protect the Work and provide for safe and convenient public travel. No additional payment shall be made for all necessary traffic control and safety barriers, signage, lane markers, and all other equipment that may be necessary to assure safe and least restrictive lane closure necessary to maintain traffic and to protect the Work and the public and all labor, equipment, and material necessary to accomplish this task shall be considered incidental. All work in the right-of-way shall be in accordance with the City's specifications.

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

**III. COMPENSATION**

**A. Basic Compensation.** The City hereby agrees to pay the Contractor up to \$14,750.00, as full compensation upon the complete and satisfactory performance of the Work (in the City's sole determination), including all expenses and costs related thereto, as follows:

Due at the City's final acceptance of the Work: \$14,750.00

**IV. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted in person or electronically to Twin Oaks Town Hall to City Administrator Kathy Runge (krunge@villageoftwinoaks.org) with payment made by City within thirty (30) days of receipt of an invoice received after the City's acceptance of the Work.

**V. CONTRACT SCHEDULE**

Time is of the essence. The work to be performed under this Contract shall be commenced on October \_\_\_\_\_, 2017, and shall be completed in a reasonable manner no later than October \_\_\_\_, 2017. 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.

**MILNE AND SONS, LLC**

**CITY OF TWIN OAKS**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

City Clerk

**GENERAL CONDITIONS  
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:

- *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.
- Contractor further agrees to pay not less than the prevailing hourly wage of wages set out on the wage order attached hereto as **Exhibit C** and made part of the specification for Work under this Agreement, to all workers performing any work under this Contract. The Contractor will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any Work done under the contract by the Contractor.

**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 D**, 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 D**, 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.

**Other Contractors.** The City reserves the right to employ other Contractors in connection with the Work.

**Proposals.** If the City issued a written request for proposals in connection with the Work or orally asked for a proposal, 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 terms of the Contractor's proposal and the executed Contractor/Services Contract (including these General Conditions) or the City's request for proposal, the requirements of the City's request for proposal and this executed Contractor/Professional Services Contract shall control and supersede the Contractor's proposal unless a change thereto is specifically stated in this Contract.

**Project Records and Work Product.** 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 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 Contractor identified in 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.

**Warranty.** Contractor hereby expressly guarantees the 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 or nonconformity with the City's specifications. Whenever notified by the City that said repairs or replacements are required, Contractor shall at once make the same as directed at its own expense. If Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and Contractor agrees and consents to such use) any Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work.

**EXHIBIT A  
Proposal**

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**Proposal  
Ones & Botta Concrete Co.**

8526 DELPORT  
ST. LOUIS, MO 63114  
(314) 427-3800 FAX (314) 427-4106

ATTN: John Williams		PHONE	DATE
PROPOSAL SUBMITTED TO <b>Village of Twin Oaks</b>		<b>314-574-7152</b>	<b>April 22, 2016</b>
STREET <b>1393 Bid Bend Rd. Suite F</b>		JOB NAME <b>Concrete Flatwork</b>	
CITY, STATE AND ZIP CODE <b>Twin Oaks, MO 63021</b>		JOB LOCATION <b>50 Crescent Ave.</b>	
ARCHITECT	DATE OF PLANS	<b>Twin Oaks, MO</b>	

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR:

**BASE BID:**

- A) Remove Asphalt, Grass, & Dirt for New Concrete Driveway that Leads from Street all the Way to Garage Door @ Rear of House: 2106 s.f.  
We include removal as required; Replace with rock leveling fill, grade, mesh, concrete, finish, expansion joint, and cure.

**NOTE:** Some Dirt Will be Left on Site from Excavation. It Can be Used for Backfill of Driveway by Twin Oaks Staff Once the Job is Complete.

\* This Proposal is based on using AIA #401 SubContract.

**We Propose** hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of: **FOURTEEN THOUSAND SEVEN HUNDRED FIFTY & 00/100** Dollars (**\$14,750.00**)

Payment to be Made as follows

**As work is completed, upon receipt of statement!**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado and other necessary insurances. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature

*Chris Milne*

Note: This proposal may be Withdrawn by us if not accepted within **30** days.

Signature

**Acceptance of Proposal** - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outline above.

Date of Acceptance

Signature



**EXHIBIT C**

**[INSERT APPLICABLE PREVAILING WAGE ORDER FROM MoDOL]**



**Exhibit D  
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 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 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)	\$414,418 - any one person in a single accident or occurrence \$2,762,789 - aggregate
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Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$414,418 - any one person in a single accident or occurrence \$2,762,789 - aggregate
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Employer's Liability	\$2,762,789 - bodily injury by accident (each accident) \$2,762,789 - bodily injury by disease (each employee) \$2,762,789 - bodily injury policy limit
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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.

**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.** 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 or decrease any insurance coverages or amounts required by this Exhibit (except Worker's Compensation Insurance) when the City deems it to be in the best interest of the public health, safety, and general welfare.