

**A RESOLUTION APPROVING AND AUTHORIZING THE
MAYOR TO EXECUTE AN AGREEMENT WITH
GERSTNER ELECTRIC, INC. FOR WORK ON THE 2019
BIG BEND LIGHTING PROJECT.**

WHEREAS, the City sought formal proposals in response to its invitation for bids for the work will consist of installing period style streetlights, footings, conduit, wiring, etc. for a certain portion of Big Bend Road as specified in Project Plans and Project Specifications (referred to as the “2019 Big Bend Road Lighting Project”); and,

WHEREAS the City received three bid proposals and has reviewed and considered the proposals; and,

WHEREAS, the Board of Aldermen now wishes to select the proposal of Gerstner Electric, Inc., as the Board believes it to meet the interests and requirements of the City and, as a result, is determined to be the lowest and best bid for the 2019 Big Bend Road Lighting Project.

NOW, THEREFORE, 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 authorizes the Mayor to execute, the City-Contractor Agreement with Gerstner Electric, Inc., for work on the 2019 Big Bend Lighting Project (the “Agreement”) substantially in the form of the Agreement attached hereto as Exhibit A and incorporated herein by reference.

Section 2. The Board of Aldermen incorporates by reference all findings and determinations set forth in the Recitals above.

Section 3. The requirements of Section 292.675 RSMo., and the OSHA requirements and obligations in the Agreement, are hereby incorporated herein by reference and made a part of this Resolution for all purposes.

Section 4. As applicable, the requirements of Section 290.210 RSMo., and the prevailing wage requirements and obligations in the Agreement, including without limitation the specific prevailing wages (including the rate for holiday and overtime work) and the Missouri Department of Labor and Industrial Relations’ determination of the prevailing wages, are hereby incorporated herein by reference and made a part of this Resolution for all purposes.

Section 5. As a condition for the award of this contract, Gerstner Electric, Inc., shall, by affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. Gerstner Electric, Inc., shall also provide an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. All words in this paragraph that are defined in Section 285.525 R.S.Mo., shall have the meanings set forth therein.

Section 6. The Mayor, City Administrator and City Attorney are hereby authorized to take or cause to be taken such further actions and deliver or cause to be delivered such further instruments as may be necessary or convenient to execute the Agreement and to obtain the benefits of the Big Bend Lighting Project for the residents of the City. Furthermore, all actions taken, and all instruments delivered by the Mayor, City Administrator and City Attorney to secure the benefits of the Project are hereby ratified and approved as authorized actions and instruments of the City and its Board of Aldermen.

Section 7. The Board of Aldermen further authorizes the Mayor to approve and execute necessary change orders for the Project in compliance with Article 11 of the General Conditions to the City-Contractor Agreement. The authority granted herein shall be subject to the following conditions and parameters:

- The amount of any individual change order shall not exceed 10% of the original contract amount of \$104,613.00 (i.e., \$10,461.00);
- The Mayor shall have received a recommendation of approval of a change order from the City's engineering consultant, BFA; and
- The Mayor shall report all approved change orders to the Board at the next Board of Aldermen meeting.


Section 8. This Resolution shall be effective upon its passage by the Board of Aldermen and execution by the Mayor.

THIS RESOLUTION WAS PASSED AND APPROVED THE 20th DAY OF MARCH 2019, BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



Russ Fortune, Mayor

Attest:



Kathy A. Runge, City Administrator/Clerk

Exhibit A

CITY-CONTRACTOR AGREEMENT

THIS CITY CONTRACTOR AGREEMENT (this "Agreement" or "City-Contractor Agreement"), is made and entered into as of this _____ day of _____, 2019, by and between **Gerstner Electric, Inc.**, a Missouri corporation having a principal office at 2400 Cassens Drive, Fenton, Missouri 63026 (the "Contractor"), and the **City of Twin Oaks**, a Missouri municipal corporation located in St. Louis County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

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

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

AGREEMENT

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

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

1. Notice to Contractors
2. Instructions to Bidders
3. Available Project Information
4. Unit Price Form
5. Alternate Form
6. Proposed Contractors Form
7. City-Contractor Agreement
8. General Conditions
9. Supplemental Conditions
10. Summary
11. Price & Payment Procedures
12. Unit Prices
13. Alternates
14. Administrative Requirements
15. Quality Requirements
16. Temporary Facilities & Controls
17. Temporary Erosion & Sediment Control
18. Product Requirements
19. Closeout Submittals
20. Applicable Missouri Annual Wage Order
21. Bid Bond (if submitted, executed by Contractor and surety)
22. Performance and Maintenance Bond (executed by Contractor and surety)
23. Payment Bond (executed by Contractor and surety)

24. Affidavit of Non-Collusion (executed by Contractor)
25. Notice of Award (issued by City and receipt acknowledged by Contractor)
26. Notice to Proceed (issued by City and receipt acknowledged by Contractor)

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

2. **The Work/Contract Sum.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is \$37,572.00, which includes all compensation to Contractor due for the Work, which shall include all such work within the Base Bid *and additionally all such work within the Alternates 1 and 2 that may be accepted by the City in the amount of \$36,843.75 and 30,197.25, respectively.* Any additional Work not within the Base Bid or Alternates that is hereinafter approved by the City in writing pursuant to a Change Order shall be completed for the unit prices set forth in the Contract Documents, if applicable.

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

4. **Guaranty.** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

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

including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

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

7. **Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City-Contractor Agreement the insurance coverages at least equal to the coverages set forth in this paragraph 7, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$ 415,000 per occurrence \$2,763,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$ 415,000 per occurrence \$2,763,000 aggregate
Employer's Liability	\$2,763,000 bodily injury by accident (each accident) \$2,763,000 bodily injury by disease (each employee) \$2,763,000 bodily injury policy limit

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 7. 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.

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

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

8. **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 suit, 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 money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors 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 to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

9. **Attorney Fees' and Costs.** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

10. **Liquidated Damages.** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, a one-time sum in the amount of \$3,200.00 plus \$475.00 per day thereafter for delay damages is hereby agreed upon, not as a penalty, but as liquidated damages for loss to the City and the public, after the expiration of the time stipulated in the Contract. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension shall in no way operate as a waiver of the City of any of rights under this Agreement.

11. **Compliance with Federal, State and Local Law.** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

12. **Prevailing Wage.** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.

13. **Required OSHA Training.** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health

approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

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

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

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

18. **Choice of Law; Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws. Venue shall exclusively be in the Circuit Court of St. Louis County or the United States District Court for the Eastern District of Missouri.

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

20. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

21. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

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

GERSTNER ELECTRIC, INC.

CITY OF TWIN OAKS, MISSOURI

Name

Mayor

Address

Attested

City, State, Zip

Date