

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE
CITY OF TWIN OAKS AND CIRCUS KAPUT, LLC
FOR ENTERTAINMENT SERVICES**

WHEREAS, the City of Twin Oaks is in need of face painting, balloon art and other entertainment services for Family Fun Day (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 Circus Kaput, LLC, 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 2nd 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 ____, 2017, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Circus Kaput, LLC**, hereinafter referred to as "CONTRACTOR," with a business mailing address of **818 Kehrs Mill Road, Ballwin, MO 63011; _____**.

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain services for the Twin Oaks Family Fun Day on September 16, 2017 (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: *Family Fun Day entertainment.*

Except as expressly specified herein, Contractor hereby agrees to provide all of the talent, 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 services which are generally described as face painting and balloon art for the Twin Oaks Family Fun Day and as more particularly described in the Proposal attached **Exhibit A**, incorporated herein (the "Services"). The Services will be provided on Saturday, September 16, 2017 from 3:30 p.m. to 6:00 p.m. at the Twin Oaks Park.

The Services shall be provided by the Contractor in accordance with all the provisions of this Contract and the attached **City of Twin Oaks General Conditions** which are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment including the Proposal attached hereto as **Exhibit A**. If there is any conflict between the City's General Conditions (attached hereto and incorporated herein by reference) and the Proposal, this Agreement and its General Conditions shall prevail.

II. COMPENSATION

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

such amount as is set forth on the Proposal.

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 of \$637.50 for the Services. Payment shall be made by City in two (2) equal payments of \$318.75; the first of which shall be paid upon full execution of this Agreement and the second upon completion of the Services on the day the event.

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.

CIRCUS KAPUT, LLC

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 **Exhibit A**, 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 stated on attached **Exhibit A**. 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.

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.

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

EXHIBIT A
Proposal

CONTRACT/INVOICE

As of 07/18/17 Circus Kaput is certifying the following services can be provided as outlined below:

Client/Purchaser: Village of Twin Oaks

Primary Contact Name and Cell: Connie Fortune (Park Committee Member) 314-606-6666

Secondary Contact Name and Cell: Cindy Slama (Park Committee Chairman) 314-740-6435

Circus Kaput Point Of Contact For Event(s): Josh Routh 314-803-2503

Event: Twin Oaks Family Fun Day

Audience: All ages

Location: #1 Twin Oaks Ct., Twin Oaks Missouri 63088

Location Notes: Twin Oaks Park

Service(s): 2 face painters and 1 balloon artist

Service Day and Date: Saturday September 16, 2017

Service Time*: 3:30pm-6:00pm--- (Talent will arrive at least 15 minutes before performance)

Service Time Breakdown: Two face painters from 3:30 – 6:00 pm (2 ½ hours each), One balloon artist from 3:30 – 6:00 pm (2 ½ hours)

Event Notes:

Inside or Outside: Outside

Parking Info: lot

Miscellaneous: Balloon artist and face painters to stick to limited designs

PAYMENT DETAILS - The signed contract must be received by Circus Kaput to guarantee service.

Total Fee: \$637.50 (Make all checks payable to "Circus Kaput") Must be paid in full prior 14 days before event date for services under \$500.00 or if event will be occurring in less than 14 days from contract date.

Deposit: \$318.75 (due with signed contract)

Balance: \$318.75 (due at event)

PLEASE NOTE: Circus Kaput accepts credit cards on all transactions. Contract reflects CASH PRICE. For credit card purchases above \$1,000 actual total may be 3% more to reflect credit price.

DEFINITIONS

"Talent" refers to any independent contractor retained by Circus Kaput for the benefit of Client.

"Client" refers to the principals, agents, directors, shareholders, officers and affiliated entities of the individual or entity listed herein as Client.

"Circus Kaput" refers only to Circus Kaput, LLC and expressly excludes its past, current and future owners, partners, officers, directors, shareholders, affiliated entities, talent, and lenders.

PERFORMANCE TIMES

Starting Late: If Client asks Talent to start later than the contracted time - they are authorized to accommodate the request. However, they may, at their sole discretion, still need to be finished at the same time contracted. Such a truncated performance may affect the quality of the performance.

Ending Late: At the sole discretion of Talent, when requested by Client, Talent may end their performance after the contracted end time with an additional prorated fee (rounded up in increments of 15-minutes, based on total performance fee before any discounts or credits) paid in advance of the request and before any additional performance begins. Talent may not perform after the contracted end time without payment in full for their additional time. All payments must be made payable to Circus Kaput and Circus Kaput must be informed of this additional payment immediately. In this occurrence, please call 314-803-2503 to make a credit card payment.

Talent MAY need access to the performance area at least 30-minutes prior to performance time & 20-minutes after performance time. In the case of a large set up, that time increases. If another group is in the performance area prior to Talent's performance, the other group's ending time may affect Talent's starting time but not their ending time

VIDEO/PHOTOGRAPHY

Feel free to videotape / photograph the performance. However, before any public use (including on YouTube and other online video services) of the video, please obtain the written consent of Circus Kaput. Feel free to take as many still photos as you wish and share them with Circus Kaput.

PAYMENT TERMS

All fees must be made payable to Circus Kaput. Talent should never be listed as a payee (unless the payment is meant exclusively as a tip for Talent).

A 50% deposit is required for ALL bookings over \$500, unless otherwise negotiated. Circus Kaput must receive the deposit 14 days prior to the event. If the deposit is not paid in full by the due date, Circus Kaput reserves the right to cancel all or part of this Agreement, all or some Talent, and open the date and time subject to this Agreement for other events and Clients. Events under \$500 must be paid in full at signing of contract.

The balance of your payment is due immediately upon completion of contracted services. Please present the payment to the Onsite Circus Kaput Point of Contact For Event. Any unpaid balance after the performance date is subject to interest in the amount of 12% per annum and begins accruing the day after the event.

If you enjoy our Talent, please feel free to reward them with gratuity. However, please know that tipping is not required in order to receive the most friendly, timely, & helpful service in the industry & is never "expected" (But always warmly appreciated!).

CANCELLATION POLICY

Client's deposit or prepayment guarantees that Circus Kaput will reserve the contracted Talent for the date and time specified in this Agreement. If Client cancels Talent or event for any reason or no reason, or otherwise breaches this Agreement in any way, Client expressly forfeits the entire deposit. Cancellation of the event is a full breach of this Agreement. If Client cancels or breaches within 48-hours of contracted performance time, Client expressly guarantees full payment of the Agreement within 30-days of the event. Any unpaid balance received after 30-days is subject to interest in the amount of 12% per annum and begins accruing the day after the event.

As a courtesy to Client, if Client cancels or breaches before 48-hours of the contracted start date and time, a credit in the amount already paid to Circus Kaput will be applied to Client's account to be used at an event anytime **within 6-months** of the contracted event date. Credited event must be **within 6-months** of the cancelled event and **specific Talent cannot be guaranteed for rescheduled event**. All credited funds not used within 6-months become the sole property of Circus Kaput. Cancellation or breach within 48-hours is not eligible for a credit.

If Circus Kaput cancels or breaches this contract at any time for any reason or no reason, Client is entitled to a refund in the amount relative to the cancellation or breach. Circus Kaput reserves the right to substitute any performer at any time at its sole discretion without the substitution being considered a breach of this contract in whole or in part.

RELATIONSHIP BETWEEN CIRCUS KAPUT AND TALENT

All Talent subject to this Agreement are independent contractors of Circus Kaput and as such are not employees or agents of Circus Kaput. All Talent are solely responsible for the content and omissions of their performance, paying any applicable taxes, carrying insurance, and solely liable for any injuries, accidents or property damage they or their subcontractors cause or that are caused as a result, directly or indirectly, of their performance. Circus Kaput makes no implied or express promises, guarantees or covenants to be liable for claims, expenses (however characterized and however arising), and other damages including attorneys' fees and legal costs) arising, directly or indirectly, in whole or in part from: (i) the inaccuracy of Talent's, its subcontractors' or third parties' representations and warranties; (ii) failure by Talent, its subcontractors or third parties to comply with applicable laws and regulations; (iii) the failure or refusal by Talent, its subcontractors or third parties to perform the work or any obligations under this Agreement; or (iv) negligence or willful misconduct by Talent, its subcontractors or other third parties.

RELATIONSHIP BETWEEN CIRCUS KAPUT AND CLIENT

Circus Kaput is neither an agent nor employee of Client. Circus Kaput is an independent contractor retained by Client to provide professional entertainment services. Circus Kaput is not responsible to any party for the sickness, accidents, death, natural disaster or other acts of God caused by or afflicted upon Talent, Client or any third parties at event sites. Client agrees to defend, indemnify, reimburse, and hold harmless, Circus Kaput from and against any and all claims, expenses (however characterized and however arising), demands, and other damages including attorneys' fees and legal costs) arising from this Agreement.

ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between Client and Circus Kaput. It supersedes all prior or contemporaneous communications, representations or agreements, either oral or written, relating to the subject matter of this Agreement. This Agreement may be amended only by a written instrument signed by both parties. The captions in this Agreement are for the convenience of the parties in identification of the several provisions and shall not constitute a part of this Agreement nor be considered interpretative thereof.

SEVERABILITY

Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Missouri, such invalidation should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

AUTHORIZATIONS

The undersigned have read this entire Agreement and understand its content. We have had an opportunity to seek the advice of a qualified attorney and with full authority and cognizance, accept and agree to all of the terms set forth herein.

Authorized Agent of Client: _____
(signature/authorization)

_____ Date: _____
(printed name)

Authorized Agent of Circus Kaput: _____ Josh Routh _____
(signature/authorization)

_____ Josh Routh _____ Date: _____
(printed name)

Please sign and date this Agreement and return it to Circus Kaput along with your deposit for the event. Thank you for your business. We look forward to helping you create an event your guests will remember forever. If you have any questions, please do not hesitate to call us.

