

**AN ORDINANCE APPROVING AN AGREEMENT WITH UPPER LIMITS 3 INC. TO PROVIDE ROCK CLIMBING ACTIVITIES AT TWIN OAKS FAMILY FUN DAY**

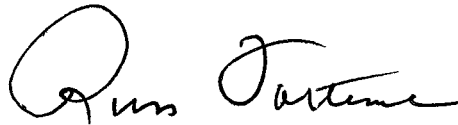
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**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby approves, and the Mayor is hereby authorized to execute, a contract substantially in the form of "Exhibit 1" attached hereto and incorporated herein, on behalf of Twin Oaks with Upper Limits 3 Inc. for the rental and operation of the Upper Limits Climbing Spire, which includes equipment, use, supervision and related services, to be provided for a three hour period on October 6, 2018 at the Twin Oaks Family Fun Day event in Twin Oaks Park under the terms set forth in Exhibit 1.

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

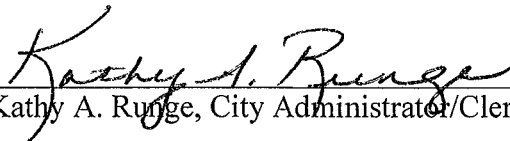
PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 7TH DAY OF FEBRUARY 2018.



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Russ Fortune, Mayor

Attest:



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Kathy A. Runge, City Administrator/Clerk

**Exhibit 1**  
**City of Twin Oaks, Missouri**  
**SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of February \_\_\_\_, 2018, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Upper Limits 3 Inc.**, a Missouri corporation, hereinafter referred to as "Contractor," with a business mailing address of 1874 Lackland Hill Parkway, St. Louis, MO 63146;

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for services regarding the provision and operation of The Upper Limits Climbing Spire ("Climbing Spire"), on Saturday, October 6, 2018 from 3:30 P.M. until 6:30 P.M. in Twin Oaks Park (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 Family Fun Day*.

Except as expressly specified herein, Contractor hereby agrees to supply the expertise, equipment, operation, supervision, labor, skill, materials, and apparatus to provide all the services and do all the things necessary for use and operation of the Climbing Spire (listed above) at Family Fun Day in Twin Oaks Park, as discussed further in the attached **Exhibit A**. Contractor further agrees that as part of the services provided hereunder it will provide at least two staff members to set up and operate the climbing wall.

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

**II. COMPENSATION**

A. *Basic Compensation.* The City hereby agrees to pay the Contractor a total of \$650.00 as full compensation for the complete and satisfactory performance of the Services, including all expenses and costs related thereto, as follows:

\$325.00	City's deposit due upon after execution of the Agreement
\$325.00	Due upon satisfactory completion of the Services by the Contractor

**III. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted to the City and payment will be made by City within thirty (30) days of receipt of an invoice received after satisfactory performance of the Services for the fees, prices, rates, or schedule of values set forth below.

**IV. CONTRACT SCHEDULE**

Time is of the essence. The set-up of the Climbing Spire under this Contract shall be commenced at 3:30 p.m. on October 6, 2018 and removed at 6:30 p.m. on October 6, 2018.

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

**UPPER LIMITS 3 INC.**

**CITY OF TWIN OAKS**

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

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 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 requirement:

- *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 as acceptable to the City. 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 Services, 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 Services.

**Nondisclosure.** The Contractor agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the City.

**Changes.** No change in this Contract shall be made except in writing prior to the change in the Services or terms being performed. The Contractor shall make any and all changes in the Services without invalidating this Contract when specifically ordered to do so in writing by the City. The Contractor, prior to the commencement of such changed or revised Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. If the City and Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and Contractor shall be compensated the reasonable value of such Services. **No Services or change shall be undertaken or compensated for without prior written authorization from the City.**

**Termination.** The City shall have the right to terminate the Contract at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under the Contract an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all

amounts previously paid to the Contractor on account of the Contract Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**Accounting.** During the period of this Contract, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

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

**Proposals.** If the City issued a written request for proposals in connection with the Services 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.** The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Contract. Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Contractor for the purpose of performing studies, tests and evaluations in connection with the Services.

**Personnel.** The Services shall be performed exclusively by the personnel of the Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Services without the express written approval of the City.

**Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

**Governing/Choice of Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

**Other Special Provisions.** There are no additional special provisions set forth Contractor Services Agreement.

**EXHIBIT A  
Proposal**



Upper Limits Rock Gym 1874 Lackland Hill Parkway -St. Louis-MO 63146-www.upperlimits.com-314-991-2516

**SPIRE CONTRACT**

Upper Limits 3 Inc. proposes to supply the following on Saturday, October 6, 2018 to the City of Twin Oaks. The Upper Limits Climbing Spire will be set up by 3:30pm and taken down immediately following the event at 6:30pm for a total of 3 hours. We will also provide two staff members to operate the climbing wall. Upper Limits carries a one million dollar insurance policy for all events, to which The City of Twin Oaks will be added as additionally insured at no charge.

MEASUREMENTS=20' wide x 60' long/ Vertical Clearance=25'/ Indoor Building Entrance=12' tall x 9' wide

**Rental Costs**

**Option A: DAILY RENTAL**

1. The rental cost of the wall will be **\$650 per day**. (\$650 x 1 day = **\$650**)
2. Outside of a 30 mile radius from Upper Limits, a travel fee of \$65 will be added for each additional 30 miles traveled. (\$65 x 0 additional 30 miles = \$0)
3. Applicable sales tax will be \$0

**A non-refundable deposit of half the total rental cost must be paid in order to reserve your date. The remainder must be paid in full before the event.**

**Total cost will be \$650      Deposit due upon acceptance of contract will be \$325**

**Cancellation Policy:**

- If the renter cancels the appearance of the wall prior to the event due to reasons other than weather conditions, the deposit will be retained.
- Should unforeseeable inclement weather prevent use of the Spire on the day scheduled, you may reschedule your rental of the wall for an alternate day agreeable to both parties. In this case, your deposit and any fees collected by Upper Limits, Inc. for rental will be applied toward the new date. All other terms of the original contract apply as previously agreed upon. Should you decide not to reschedule your rental that was canceled due to weather; Upper Limits will keep one-half of the total deposit.
- If you do not reschedule/cancel your rental (and contact Upper Limits to confirm) prior to the portable wall's departure (from Upper Limits) for your event, Upper Limits will keep the entire deposit as well as any travel fees incurred.
- If the wall operates a minimum of one half the total hours rented, the deposit will be retained as well as any travel fees incurred.

**Collection Fees for Past Due:**

In the event that collection efforts become necessary, the renter agrees to pay all collection costs, attorney fees, and court costs. **ACCEPTANCE OF CONTRACT- the above prices, specifications and conditions are satisfactory and are hereby accepted.** Please sign the contract and return to Upper Limits with your deposit.

**Each participating child under 18 is required to have a parent's signature accompany their own on our liability waiver.**

Signature _____	Date of Acceptance _____
Print Name _____	Group/Business Name _____
Address _____	Phone # _____
_____	Fax # _____
Address of Event: _____	Contact Name and Phone on Day of Event: _____

Upper Limits Authorized Signature _____	Date _____
Office use:	
Deposit received on ____/____/____	Amount received \$ _____ Check # _____
Paid in full on ____/____/____	Amount \$ _____ Check # _____