

Recreation Services Contract
City of Waukesha – Treetop Explorer, LLC

This Contract is entered into by and between the City of Waukesha and its Parks, Recreation and Forestry Department, 1900 Aviation Drive, Waukesha, Wisconsin 53188, referred to herein as the City; and Treetop Explorer, LLC, Post Office Box 2001, Waukesha, WI 53187 referred to herein as Provider. City and Provider together are referred to herein as the Parties.

Recitals

Provider wishes to provide certain recreation services that are directed at, and adapted to, individuals that are within the scope of the mission of their organization. These services also fall within the general goal of the City to provide recreational activities to all citizens of the City.

The City is willing to provide facilities for Provider to carry out its recreation service activities, and Provider is willing to use those facilities for such services.

Therefore, the Parties agree and contract as follows:

1. **General Terms.** The City will make a Location available to Provider for Provider to carry out its recreation service activities, referred to herein as the Services, subject to all of the terms and conditions of this Contract. The City will have no obligations other than those specifically assumed by the City in this Contract. Provider is an independent contractor, and is solely responsible, at its sole expense, for the conduct of the Services.
2. **Premises.** The City shall designate the Location at which the Provider will provide its Services. All services to be performed by Provider shall take place at the designated Location. Provider acknowledges that it has inspected the Location and the trees there, is aware of the condition of the Location and the trees there, has found the Location and trees there to be suitable for the conduct of the Services, and accepts the Location as-is. The Location is specifically identified on Schedule 1, attached and incorporated into this Contract.
3. **Permitted Uses of Premises.** Provider shall use the Location exclusively to provide the Services described in section 5. No other activities may be conducted by Provider at the Location without the City's prior, express, written approval.
4. **Term.** The term of this Contract commences April 15, 2016 and terminates December 15, 2018, unless terminated earlier as provided herein. The Parties may mutually agree in writing to an extension of this Contract, provided a written contract for such extension is agreed upon no later than December 1, 2018.
5. **Services.** Provider shall provide the Services according to the following terms:
 - a. Provider shall conduct Recreational Tree Climbing (RTC) classes and special events as coordinated with the City.
 - b. Provider shall create and deliver to the City an outline of its Recreational Tree Climbing activities and specific dates for each season, no later than three months before the first event is to be held in that program season (winter/spring, summer, fall). Any RTC Special Event dates will be determined with the City and Provided prior to the program season.
 - c. Provider shall be solely responsible for providing all equipment, staffing, volunteers and instruction for RTC.
 - d. RTC program shall, at a minimum, address the following goals and objectives:

- i. Providing a safe environment for climbers to ascend into trees for recreation, exploration, education, discovery, research, exercise and fun.
 - ii. Providing climbers to ascend into trees utilizing ropes, saddles and climbing techniques proven safe for both the climber and the tree.
 - iii. Providing environmental education related to trees and the urban forest.
- e. Provider shall determine specific trees to be utilized for climbing, subject to the approval of the City Forester. Designated trees will be inspected by both the City and the Provider prior to RTC usage of the trees.
 - f. Provider shall determine that all climbers are prepared to climb, following required criteria of seven years of age or older, long pants, sturdy shoes and a basic level of fitness. A ratio of 1:6; 1 RTC facilitator to 6 climbing lines will be maintained during all climbs.
 - g. Provider will ensure that all climbers are registered and have signed waivers of liability provided by the City.
 - h. Provider shall be responsible for the safety of participants and the security of the climbing area.
 - i. Provider shall ensure that the Location is kept clean, and returned to a clean condition when services are complete. Provider shall be responsible for the collection of all trash and waste generated during the Services, and placing it in containers designated by the City.
 - j. Provider shall be responsible for any damage to the Location or City property or equipment caused by its employees, volunteers, participants in its events, or invitees to its events, occurring during its events. Provider shall replace or repair all damaged items, at its sole expense.
 - k. Provider shall ensure that all set-up of equipment for the Services shall not disrupt other scheduled activities in the designated parks.
 - l. Provider shall invoice the City within one week of an RTC event, for the agreed-upon fee per climber as identified in Schedule 1.
 - m. In general, Provider shall be responsible, at its sole expense, for the operation of the Services, and the City shall be responsible only for the specific obligations listed in this Contract.
6. **City Control of Location.** The City shall at all times retain the authority to relocate Provider's activities in the Location or to close the Location entirely and direct Provider and all participants in the Services to vacate the Location, if reasonably necessary for the protection and security of persons or property at the Location, or for the protection or security of any City property.
7. **City Obligations.**
- a. The City shall designate the Location within the designated City Park, having sufficient area for Provider's conduct of the Services, and shall give Provider complete access to the Location at all times reasonably necessary for conducting the Services.
 - b. The City will provide a program description in the Parks, Recreation and Forestry Winter/Spring, Summer and/or Fall program activity guide, to advertise RTC.

- c. The City will conduct registration and collection of fees for participation in RTC. Registration will identify the criteria of seven year of age or older. Persons under the age of 18 will require parental/guardian approval.
 - d. The City will, upon receipt of invoice, pay the Provider for the agreed upon fee per climber as identified in Schedule 1.
8. **Criteria for Participation, Prohibited Bases of Discrimination.** Provider shall apply its criteria for participation strictly as those criteria were represented to the City, and Provider shall not discriminate against any persons for participation in the Services on the basis of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.
9. **Sex Offender Prohibition.** Provider shall not, in the performance of its Services under this Contract, employ, or use the volunteer services of, any persons who have been convicted of child molestation or sexual assault against a minor.
10. **Compliance with Laws; Permits and Licenses.** Provider shall be solely responsible for compliance with all laws applicable to the Services. Provider shall be responsible, at its sole expense, for obtaining all licenses and permits required for the Services.
11. **Assumption of Risk, Disclaimer by City.** The Provider acknowledges that tree-climbing is a dangerous activity, and that the determination of suitability of individual trees for climbing is subject to uncertainty due to the inherent variable nature of trees and the action of factors such as weather and animals. The participation of the City Forester or any other agents of the City in determining trees suitable for climbing does not constitute a determination that the trees are safe for climbing or an assumption of risk by the City, only that the City does not object to the use of particular trees. Provider assumes the entire risk of determination of suitability of trees for climbing, of the safety of participants in the RTC events, and of all liability for damages arising out of RTC events, including personal injury and death. The City expressly disclaims any and all warranties of condition or safety of any Location or the trees there.
12. **Indemnification.** Provider shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind, including court costs and actual attorney fees, arising out of, or connected in any way with:
- a. Provider's conduct of the Services, including, but not limited to, damages for personal injury, death, or casualty loss to personal property.
 - b. Provider's breach of any provision of this Contract.
 - c. Provider's violations of any laws.
13. **Insurance.** Provider shall maintain insurance of the following kinds and for not less than the following limits, at Provider's sole expense, at all times during the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Provider shall obtain an endorsement making the City an additional insured and loss payee, and Provider's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Provider shall deliver a certificate of insurance to City showing that all requirements of this section are met.
- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

14. **Record Keeping.** Provider shall keep all documents and records generated in its conduct of the Services for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Provider acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
15. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
16. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
17. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
18. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by Gina L. Kozlik, City Clerk
 Date: _____

To certify that funds are provided for payment:

 Richard L. Abbott, Director of Finance
 Date: _____

Treetop Explorer, LLC

 By Curtis Andrews, Owner
 Date: _____

Schedule 1

Description of Premises

Specific tree(s) and area around the tree(s) will be identified for each RTC.

[include drawing of map, if appropriate]

Program Dates/Times:

Winter/Spring Program Season (January – mid-April) – One date may be identified in winter/spring.

Summer Program Season (mid-April – August): One date identified per month in summer program season.

Fall Program Season (September – December): One-two dates identified in fall program season.

All specific dates will be agreeable between the City and the Provider.

2016 Summer Dates: May 14, June 11, July 16, August 13

2016 Fall Dates: September 10

Times: 10:00 am – 12:00 noon

Fees:

Class Rate per resident participant - \$35.00

75% (\$26.25) of fee to Provider.

25% (\$8.75) of fee to City.

Minimum participants per class: 4

Maximum participants per class: 12

Special Event Rate – to be determined by Provider based on length of the event, number of climbing lines requested, number of staff needed.