

**AGREEMENT  
 BETWEEN THE CITY OF COLUMBIA, MISSOURI,  
 AND  
 ADVENTURE TREE, LLC  
 FOR THE ADVENTURE TREE ACTIVITY  
 AT THE ROOTS N BLUES N BBQ FESTIVAL ON SEPTEMBER 26-OCTOBER 2, 2017**

This agreement is entered into on the date of the last signatory noted below (the "Effective Date"), between the City of Columbia, Missouri ("City") and Adventure Tree, LLC ("Adventure Tree"), a limited liability company organized in the State of Missouri.

NOW, THEREFORE, the parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows for the operation of the Adventure Tree Activity at the 2017 Roots N Blues N BBQ Festival.

1. This agreement is contingent upon the execution of an amendment to the agreement between the City of Columbia, Missouri, and Thumper Productions, L.L.C. for the 2017 Roots N Blues N BBQ Festival to allow Thumper Productions and Adventure Tree to conduct a tree climbing activity.
2. Subject to the restrictions and conditions set forth in this agreement, approval is given to Thumper Productions, L.L.C. and Adventure Tree to utilize Stephens Lake Park for the Adventure Tree activity (hereafter "Tree Activity") during the 2017 Roots N Blues N BBQ Festival September 26, 2017 through October 2, 2017, subject to the restrictions and conditions set forth in this agreement.
3. Thumper Productions, L.L.C. and Adventure Tree, LLC shall work with the Parks and Recreation Department to identify a tree for this activity and this tree shall be marked on the approved Technical Map provided by Thumper Productions, L.L.C. to the City of Columbia.
4. The perimeter of the Tree Activity shall be secured with high visibility cord with one (1) access point, allowing access to only persons wearing helmets.
5. The Tree Activity will be free to the public.
6. Each Tree Activity participant must sign a valid waiver and release of liability before being allowed to participate in the Tree Activity. If participant is under the age of 18, a parent or guardian must sign the waiver and release of liability. The waiver and release of liability shall release the City of Columbia, its elected officials and employees from any liability with respect to injury, property damage, or death from participation in the Tree Activity.
7. **HOLD HARMLESS.** To the fullest extent not prohibited by law, Adventure Tree, LLC, shall indemnify and hold harmless the City of Columbia, its officers, agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising by reason of any act or failure to act, negligent or otherwise, of Thumper Productions, L.L.C. or Adventure Tree, LLC, of anyone directly or indirectly employed by or otherwise working for Thumper Productions, L.L.C. or Adventure Tree, LLC, or of anyone for whose acts

**Thumper Productions, L.L.C. or Adventure Tree, LLC may be liable, in connection with the Roots N Blues N BBQ Festival or the Tree Activity. This provision does not, however, require Adventure Tree, LLC to indemnify, hold harmless, or defend the City of Columbia from the City's own negligence.** The indemnification set forth herein is a continuing obligation and survives the expiration or termination of the agreement. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

8. Insurance. Adventure Tree shall maintain, on a primary basis and at its sole expense, at all times during the life of the agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Adventure Tree is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Adventure Tree under the agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.
  - a. Commercial General Liability. Adventure Tree shall maintain Commercial General Liability at a limit of not less than \$1,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
  - b. Business Auto Liability. Adventure Tree shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Adventure Tree does not own automobiles, Adventure Tree agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
  - c. Adventure Tree may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Adventure Tree shall endorse the City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
  - d. The City of Columbia, its elected officials and employees are to be additional insured with respect to the event to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the agreement between Adventure Tree and City. Adventure Tree is required to maintain coverages as stated and required to notify City of a carrier change or cancellation within two (2) business days. City reserves the right to request a copy of the policy.
  - e. The Parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this agreement, any monetary limitations or any other rights, immunities, and protections provided by the State

of Missouri, as from time to time amended, or otherwise available to City, or its elected officials or employees.

- f. Failure to maintain the required insurance in force may be cause for termination of the agreement. In the event Adventure Tree fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, City shall have the right to cancel and terminate the agreement without notice.
  - g. The insurance required by the provisions of this article is required in the public interest and City does not assume any liability for acts of Adventure Tree and/or their employees and/or their subcontractors in the performance of this agreement.
- 9. Compliance with Laws. Adventure Tree shall comply with all federal, state, and local laws, codes, rules, and regulations in the operation of the Tree Activity.
  - 10. No Waiver of Immunities. In no event shall the language of this agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
  - 11. Except as provided in Section 7, the term of this agreement shall commence on the Effective Date and shall terminate on October 3, 2017.
  - 12. Termination by Convenience. City may terminate this agreement for its convenience.
  - 13. Termination by Default. Should Adventure Tree be in default of any provision of this agreement, City may immediately terminate this agreement.
  - 14. No Third-Party Beneficiary. No provision of the agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third Party, so as to constitute any such person a third-party beneficiary under the agreement.
  - 15. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
  - 16. Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this agreement on the dates written below.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
Mike Matthes, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor

**ADVENTURE TREE, LLC**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_