

City of Scottsbluff, Nebraska

Monday, September 15, 2014

Regular Meeting

Item Reports⁷

Council to consider approval of a contract with Extreme Event Productions, LLC for a Zip Line for the annual Harvest Night event.

Staff Contact: Perry Mader, Park and Rec Director

Agenda Statement

Item No.

For meeting of: September 15th, 2014

AGENDA TITLE: Council to consider approve contract with Extreme Event Productions, LLC for a Zip Line for annual Harvest Night event.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Parks and Recreation

PRESENTATION BY: City Manager Rick Kuckkahn

SUMMARY EXPLANATION: The Parks and Recreation Department is asking Council approval to contract with Extreme Event Productions, LLC to provide a Zip Line for this years' Harvest Night Event. As the event has grown, we are looking for ways to expand and enhance the event. We would like to contract with this company to provide the zip line. The City will provide staff to collect fees and make sure anyone under 18 signs a waiver.

The amount for this service is \$3000

This amount will be taken from the Special Events line item.

BOARD/COMMISSION RECOMMENDATION: N/A

Staff Recommendation:

EXHIBITS				
Resolution x	Ordinance <input type="checkbox"/>	Contract <input type="checkbox"/>	Minutes <input type="checkbox"/>	Plan/Map <input type="checkbox"/>
Other (specify) _____				

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev 3/1/99CClerk



A Div. Of EXTREME EVENT PRODUCTIONS, LLC.

Phone: (970) 613-4343

Fax: (970) 613-1856

P.O. Box 273008 - Fort Collins, CO 80527-3008

Email: info@ColoradoEventProductions.com

Web: ColoradoEventProductions.com

AIRBOUND EVENT SERVICES CONTRACTInvoice ID # 236041 | Salesperson: Jimmy Stofa | Contract Date: 8/28/2014

CLIENT INFO: Name: Perry Mader Organization: City of Scottsbluff Phone: 308-632-0057 Email: pmader@scottsbuff.org Address: 2525 Circle Dr Scottsbluff, 69631		Primary Event Contact: Primary Contact Phone: Primary Contact Email:						
EVENT INFO: Event Date: Friday, October 10, 2014 Event Times: 5:00 PM - 9:00 PM Event Location: South Beltline and Avenue I Event Address: Scottsbluff, NE Client Notes:	Payment Terms: 50% deposit, final balance due event day (prior to start)	PACKAGE LIST DETAILS: Mobile Zip Line <table border="1"> <tr> <td>Package Total:</td> <td>\$3,000.00</td> </tr> <tr> <td>Paid:</td> <td>\$0.00</td> </tr> <tr> <td>Remaining:</td> <td>\$3,000.00</td> </tr> </table>	Package Total:	\$3,000.00	Paid:	\$0.00	Remaining:	\$3,000.00
Package Total:	\$3,000.00							
Paid:	\$0.00							
Remaining:	\$3,000.00							

EVENT DETAIL NOTES:

When confirming our Event Production Services (Professional Tech Delivery, Set & Strike and on site operation if applicable) for your event, you agree that you have fully read, understand, acknowledge and agree to the following terms & conditions set forth:

This agreement is entered into on the date specified, by and between "Client", hereinafter the "Client" and Colorado Event Productions hereinafter the "Contractor".

SERVICES TO BE PROVIDED BY CONTRACTOR: a) Contractor agrees to provide the Items and services, on the dates and times stated in this agreement. b) Contractor agrees to provide all equipment and staff necessary to carry out the terms of the agreement unless otherwise noted and shall retain the right to determine if weather conditions permit the safe operation of the attraction(s) stated. c) Contractor agrees to comply with all ordinances, rules and regulations of the Client and all statutes of State of Colorado and other applicable laws.

SERVICES TO BE PROVIDED BY CLIENT: a) Client agrees to provide a venue for the Event, all necessary permits and licenses to lawfully conduct the event, including all required equipment for the operation of the Event and the necessary accommodations for Contractor, as stated in the contract notes. b) Client shall provide a flat surface area (preferably grass for the inflatables) for items stated in this agreement.

COMPENSATION OF CONTRACTOR: a) Performance fee is agreed upon by Client & Contractor. b) A deposit (terms stated above) is required to reserve the above mentioned pieces and must be received with an electronically signed copy of this contract, no later than 72 hours after the contract date. The balance of the rental fee, will be made by check and due the 1st day of the event, made payable to AirBound, unless otherwise agreed to in writing prior to event.

CANCELLATION: a) In the event that within 6 months of the Event, as detailed hereunder, the Client cancels the Event or if the Event fails to happen for any reason, the 50% deposit will be applied to another rescheduled event, within 1 year of the date of this agreement. If the event is cancelled more than 6 months from the date of the scheduled event a full refund will be provided. b) Cancellation of event by Client for any reason, on scheduled day of event, will require **PAYMENT IN FULL** and that payment will be credited to rescheduled event within 6 months of the original date, subject to availability. c) If the event is cancelled on scheduled day of the event, the event may be rescheduled only one time within the 6 month time frame. d) If the event is cancelled on the day of the scheduled event, Colorado Event Productions reserves the right to assess a 10% service charge based on the total amount of the contract in addition to requiring payment in full, regardless if event is rescheduled within the 6 month time frame.

WEATHER: a) In the case of inclement weather or unsafe conditions, the Client must call the Contractor prior to the setup of the event if the Client chooses to avoid cancellation fee of \$250.00 on the day of the event. All weather cancellation will fall under Colorado Event Productions cancellation policy.

PARTICIPANTS: a) Contractor may require a written release of liability from each participant. If participant is under 18 years of age, than participant's parent or guardian must sign the waiver. b) Client agrees to abide by and enforce any decision by the Contractor in denying participation to individuals that Contractor deems unsuitable to participate in the attraction(s) listed. c) Contractor will not tolerate any physical or verbal abuse towards staff and/or equipment.

MISCELLANEOUS: a) To the extent permitted by law, Client agrees to indemnify and hold Colorado Event Productions, its employees, agents, directors, and representatives, harmless from any and all claims, actions, suits, proceeding costs, expenses, damages and liabilities, including reasonable attorney's fees arising by reason of injury, damage, or death to persons or property, in connection with or resulting from the use of said equipment including, but not limited to the manufacture, selection, delivery, possession, use, operation, or return of the equipment. Client hereby releases and holds harmless Colorado Event Productions, employees, agents, directors, and representatives, from injuries or damages incurred as a result of the use of said equipment unless Colorado Event Productions, employees, agents, directors, and representatives, are operating the equipment and is deemed by a court of law to be held negligent in its actions. Colorado Event Productions, employees,

file:///C:/Users/Cindy/AppData/Local/Microsoft/Windows/Temporary%20I 9/12/2014

agents, directors, and representatives, cannot under any circumstances be held liable for injuries as a result of acts of God, nature, or other conditions beyond its control or knowledge. To the extent permitted by law, Client also agrees to indemnify and hold harmless Colorado Event Productions, its employees, agents, directors, and representatives, from any loss, damage, theft, or destruction of the equipment during the term of this contract and any extension thereof. To the extent permitted by law, Client agrees to indemnify and hold Colorado Event Productions, its employees, agents, directors, and representatives harmless from any all claims arising out of Client's events except claims arising directly as a result of allegedly defective equipment supplied by Colorado Event Productions. Colorado Event Productions agrees to indemnify and hold Client harmless from any claim asserting that Colorado Event Productions equipment was defective and the defective equipment caused an injury. b) Contractor understands that it is an independent contractor not covered by the Client's Workman's Compensation Insurance. Contractor shall indemnify, save and hold harmless and defend the Client and all its officers, agents and employees for, from and against any all claims, causes of actions, and injury or loss to any person(s), including those to whom the Contractor may be liable under any claims or suits, including for wages, merchandise, caused by, arising out of, or in any way connected with Contractor's exercise of this Agreement. c) Contractor agrees to furnish (if needed) a Certificate of Insurance evidencing the following insurance coverage: 1.) Commercial General Liability Insurance with limits of at least \$1,000,000 per occurrence combined single limit for bodily injury and property damage. d) Each party represents and warrants that each has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations described herein. e) Contractor reserves the right to accept or decline overtime hours based upon availability and scheduling and does not guarantee the availability of overtime purchased the day of the event. f) Each party acknowledges that this agreement cannot be assigned or transferred without the written consent of both parties. The Contractor shall have the discretion to utilize a designated affiliate to perform the services as stated herein.

Gratuity is not included and is appreciated!

This contract and all associated services are not valid until contract is digitally signed and submitted no later than 72 HOURS upon receipt.

From: Kent Hadenfeldt [<mailto:KHadenfeldt@simmonsolsen.com>]
Sent: Friday, September 12, 2014 10:59 AM
To: Perry Mader
Subject: Zip Line [IWOV-SOLF1.FID188785]

Perry, I would think any insurance is better than no insurance. I am not sure how the Foundation operates, but I would think it has a board of directors that would approve the purchase of event insurance. It should contain a provision that the City be named as a co-insured. If there is a fee charged then any argument the City would have under the Tort Claim Act, that this is a recreational activity and should be exempt would be gone. In addition, any fees should be paid to the City as this is a City event, but I do not think it is a good idea to charge a fee for that reason. You should talk to Rick about that idea.

In regard to the agreement itself, I think the "Contractor" should be identified as Colorado Event Productions d/b/a Extreme Event Productions, LLC.

In the next paragraph the State of Nebraska should replace "Colorado" as the state whose laws are applicable.

Be aware of the Cancellation policy which requires full payment and rescheduling the event and no refund, as well as a 10% service charge and a \$250.00 cancellation fee. I am sure you will not be in a position to reschedule within 6 months when this is set for October 10.

I think it is a good idea for Contractor to get releases and not leave it discretionary with them.

Under the next paragraph, should eliminate all the sentences of the paragraph relating to indemnifying the Contractor for injuries and damage for the operation of the equipment and damage to their equipment. Seems they are being paid to bring and operate their equipment and they should be responsible for setting it up and operating it. The language that a court of law must find them negligent relating to an obligation of indemnification by the City seems like an excuse to have the City at risk when they are the owners and operators of the equipment.

Finally there is a provision that the agreement cannot be assigned, but the last sentence allows the Contractor to use a "designated affiliate to perform the services..." so may not know who is coming to operate to zip line. I suggest the last sentence be eliminated.

Kent A. Hadenfeldt

Simmons Olsen Law Firm, P.C.

1502 2nd Avenue

Scottsbluff, NE 69361

(308) 632-3811

(308) 635-0907 (Fax)

Email: khadenfeldt@simmonsolsen.com

Website: <http://www.simmonsolsen.com>



PLEASE NOTE: This message including any attachments, may include information which is privileged, confidential and/or attorney work product. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Any tax advice contained in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. Thank you.

Confidentiality Notice | This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply e-mail and destroy all copies of the original message.