



Le Sueur County, MN

Tuesday, November 1, 2016

Board Meeting

Item 5

9:20 a.m. Josh Mankowski (10 min)

RE: AIS CLIMB Theatre contract, Lake Tetonka

Staff Contact:

2016-17 AGREEMENT FOR CLIMB THEATRE SERVICES

THIS AGREEMENT is made and entered into between LeSueur County and CLIMB THEATRE, INC, a Minnesota not-for-profit theater company, 6415 Carmen Avenue East, Inver Grove Heights MN 55076, (hereinafter "CLIMB").

WHEREAS, the LeSueur County desires to provide education on Aquatic Invasive Species in schools located in LeSueur County; and

WHEREAS, CLIMB has developed classes which are directed at children to help them understand Aquatic Invasive Species and how to care for Minnesota's lakes; and

WHEREAS, CLIMB has performed extensively in schools since 1975;

NOW, THEREFORE, in consideration of the mutual promises and benefits stated herein, the parties agree as follows:

1. SERVICES

- a. CLIMB shall plan, schedule and make other preparations necessary to present up to four days of Aquatic Invasive Species classes elementary school students in LeSueur County;
- b. CLIMB shall execute a written agreement between it and each elementary school that schedules the classes. CLIMB shall make a copy of the agreement available to LeSueur County at the time of billing;
- c. CLIMB will indicate that LeSueur County provided funding to help bring the performances to the schools;
- d. CLIMB shall provide LeSueur County the date of the classes, prior to the date CLIMB will visit each school. Performances will take place in 2015-2016 school year.

2. LESUEUR COUNTY OBLIGATIONS

- a. The total payments to CLIMB for classes will not exceed \$2,760.00.
- b. LeSueur County shall pay CLIMB \$600.00 per day of classes and \$90.00 for travel per day of classes.

3. **MANNER OF PAYMENT**

- a. Services performed by CLIMB shall be billed to LeSueur County at the beginning of the month when the performances are scheduled to take place. No claim for services furnished by CLIMB not provided for in this Agreement will be paid by LeSueur County under the terms of this Agreement.
- b. Payment will be made in the manner provided by law for the payment of claims against LeSueur County within forty-five (45) days of receipt of the invoice according to the usual practices and procedures of LeSueur County. CLIMB shall provide LeSueur County with verification of all purchased services provided upon request.
- c. LeSueur County reserves the right to withhold payments without incurring late payment interest pending the receipt of all necessary billing statements and reports requested by LeSueur County to be submitted under this Agreement. In the event LeSueur County decides to withhold payment under this provision, LeSueur County shall furnish written notice to CLIMB prior to the date of the next scheduled payment.
- d. No payment shall be made under this Agreement for any charges incurred in a manner contrary to any provision contained herein or in a manner inconsistent with any federal, state, or local law, rule, or regulation.

4. **TERM**

The term of this Agreement is from the date this Agreement is approved by the LeSueur County to August 31, 2017, the date of the signatures of the parties notwithstanding, unless earlier terminated as provided herein.

5. **TERMINATION**

LeSueur County or CLIMB may terminate this Agreement without cause and for any reason whatsoever upon giving at least thirty (30) days written notice thereof to the other party. In such event, CLIMB shall be entitled to receive compensation for the services provided in a satisfactory manner up to and including the effective date of termination.

6. **CONDITION SUBSEQUENT**

It is understood and agreed that in the event that reimbursement to LeSueur County from state and federal sources is not obtained and continued at a level sufficient to allow for the purchase of the indicated quantity of purchased services, the obligations of each party hereunder shall thereupon be reviewed to determine the necessity of renegotiating all or parts of this Agreement.

7. **NON-ASSIGNABILITY**

CLIMB shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by subcontract, assignment or notation, without the prior written consent of LeSueur County.

8. **INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners or joint ventures with LeSueur County. No tenure or any rights or benefits, including Worker's Compensation, Unemployment Insurance, medical care, sick leave, vacation leave, severance pay, PERA or other benefits available to LeSueur County employees, shall accrue to CLIMB or employees of CLIMB performing services under this Agreement.

9. **INDEMNIFICATION AND INSURANCE**

- a. CLIMB agrees it will defend, indemnify and hold harmless LeSueur County, its officers and employees against any and all liability, loss, costs, damages and expenses which LeSueur County, its officers or employees may hereafter sustain, incur, or be required to pay arising out of CLIMB's performance or failure to adequately perform its obligations pursuant to this Agreement.
- b. CLIMB further agrees that in order to protect itself as well as LeSueur County under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force:
 1. General liability insurance in the amount of \$500,000 for bodily injury or property damage to any one person and \$1,500,000 for total injuries or damages arising from any one incident as required by LeSueur County.
 2. Any policy obtained and maintained under this clause shall provide that it shall not be canceled, materially changed, or not renewed without thirty (30) days prior notice thereof to LeSueur County.
 3. Workers Compensation in the statutory amount, if applicable.

A Certificate of Insurance evidencing this coverage must be provided to LeSueur County before this Agreement is effective.

10. **MERGER AND MODIFICATION**

- a. It is understood and agreed that the entire Agreement between the parties is contained here and that this Agreement supersedes all oral agreement and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- b. Any material alteration, variations, modifications, or waivers or provisions of this Agreement shall be valid only when they have been reduced to in writing as an Amendment and signed by the parties.

11. **NONDISCRIMINATION**

During the performance of this Agreement, CLIMB agrees to the following:

No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable Federal and State Laws against discrimination.

13. **RECORDS AVAILABILITY AND RETENTION**

Pursuant to Minnesota Statute 16C.05, subd. 5, CLIMB agrees that LeSueur County, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc. which are pertinent to the accounting practices and procedures of CLIMB and involve transactions relating to this Agreement.

CLIMB agrees to maintain and make available for auditing purposes, these records, for a period of six years from the date of termination of this Agreement.

14. **COMPLIANCE WITH LAW**

CLIMB agrees to conduct the service in compliance with all applicable provisions of Federal, state and local laws.

15. **OTHER CONDITIONS**

- a. Ownership of Performance Rights. The performance(s) governed by this Agreement are the exclusive property of CLIMB or represent property duly licensed to CLIMB. The Host Organization agrees that it shall not reproduce the performance in any fashion or appropriate the content of the performance(s), or any portion thereof, to its own use; further, the Host Organization shall not photograph, film, videotape or otherwise record or preserve the performance(s), or any portion thereof, without written permission from CLIMB. This does not preclude photographs for yearbook or other in school use of photographs or coverage by local press, which is encouraged. Please notify CLIMB of any media coverage you intend to pursue. CLIMB shall retain all rights to the performance, including the exclusive right to record, photograph, broadcast, film or publicize the performance(s). Host Organization shall not, therefore, photograph, broadcast, film or publicize CLIMB's performance(s) except as may be agreed upon by the parties in writing.
- b. Force Major. As the performance(s) governed by this Agreement may be subject to interruption by sickness, inclement weather, accident, act of God or any legitimate or unavoidable circumstance, it is agreed that neither party shall be entitled to damages from the other in the event the performance(s) are interrupted or canceled by such legitimate or unavoidable circumstance.
- c. Rescheduling. In the event that weather or other conditions beyond either party's control force postponement of this program, the activity shall be rescheduled for a date mutually agreed to by both CLIMB and the Host Organization.

16. **DATA PRACTICES**

All data collected, created, received, maintained, or disseminated for any purposes by the activities of CLIMB because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such Act now in force or as adopted, as well as Federal regulations on data privacy.

17. **FIREARMS PROHIBITED**

No employees, agents, or subcontractors of CLIMB, shall carry or possess a firearm at any time, at any location while acting on behalf of LeSueur County pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to LeSueur County under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

IN WITNESS WHEREOF LeSueur County and CLIMB have respectively caused this Agreement to be duly executed as of the dates written below.

CLIMB

LESUEUR COUNTY

BY _____

BY _____

DATE _____

FEDERAL ID # _____

DATE _____

APPROVED AS TO FORM

BY _____

DATE _____