

CONTRACT ROUTING SHEETDate Prepared: 07/13/2011Need Date: 07/27/2011**PROCESSING DEPARTMENT:**Department: EMD for AQMDDept. Contact: Michele WeimerPhone #: 5670

Department

Head Signature: Mike Appleyard**CONTRACTOR:**Name: American River MusicAddress: P.O. Box 830Lotus, CA 95651Phone: 530-622-6044**CONTRACTING DEPARTMENT: AQMD - charge 433200**Service Requested: AB2766 - motor vehicle emission reduction projectContract Term: 1 yearContract/Amendment Value: \$6,082.00

Compliance with Human Resources requirements?

Yes: ☐No: ☐Compliance verified by: NA**COUNTY COUNSEL: (Must approve all contracts and MOU's)**Approved: ☒Disapproved: ☐Date: 7/28/11By: [Signature]Approved: ☐Disapproved: ☐

Date: _____

By: _____

Conditional ① Correct project description on page 2 paragraph 1. Scope of Project it should be American River Music Festival Shuttle.

② Need a copy of the Certificate of Insurance for the Auto policy not just general liability.

EL DORADO COUNTY COUNSEL
2011 JUL 27 AM 9:48

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)Approved: ☐Disapproved: ☐

Date: _____

By: _____

Approved: ☐Disapproved: ☐

Date: _____

By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments:

Approved: ☐Disapproved: ☐

Date: _____

By: _____

Approved: ☐Disapproved: ☐

Date: _____

By: _____



**Funding Agreement 002A-DMV-11/12-BOS
Between
El Dorado County Air Quality Management District
And
American River Music, Inc.**

This Agreement No. 002A-DMV-11/12-BOS made and entered by and between the **EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT**, a county air pollution control district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and **American River Music, Inc.** (hereinafter referred to as "CONTRACTOR");

WITNESSETH:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, AB 2766, codified in California Health and Safety Code section 44220, et seq., authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within the AQMD, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, said legislation requires the AQMD to use said funds for activities related to reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, CONTRACTOR has proposed a Project that meets the eligibility criteria of the AQMD and that has been approved by AQMD for funding; and

WHEREAS, CONTRACTOR represents that it is willing and able to perform the activities set forth herein.

NOW, THEREFORE, AQMD and CONTRACTOR mutually agree as follows:

1. SCOPE OF WORK

CONTRACTOR shall perform all activities and work necessary to complete the American River Music Festival Shuttle (hereinafter referred to as "Project") set forth in the fully described "Project Description" attached hereto as Exhibit A (hereinafter referred to as "Proposal") and incorporated herein by this reference. CONTRACTOR agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. CONTRACTOR represents that CONTRACTOR has the expertise necessary to adequately perform the Project specified in said Proposal.

In the event of any conflict between or among the terms and conditions of this Agreement, the Proposal incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:

1. The text of this Agreement;
2. Proposal to this Agreement; and
3. The "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) released to Interested Parties by the AQMD and dated 2011-2012.

2. PERIOD OF PERFORMANCE/TIMETABLE

CONTRACTOR shall commence performance of work and produce all work products in accordance with the and deadlines for performance identified in the Proposal of this Agreement, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

If requested by the AQMD, CONTRACTOR shall submit regular progress reports, at intervals determined by the AQMD, detailing the work performed during the current reporting period; work planned for the next reporting period; problems identified, solved, and/or unresolved; and the percentage of each task completed. CONTRACTOR shall provide AQMD with a comprehensive final written report prior to the end of Agreement term. Said final report shall be complete and shall document the work performed under this Agreement.

3. TERM

The term of this Agreement shall be effective upon final execution by all parties and shall expire on June 30, 2012 unless terminated earlier in accordance with Article 7, Termination.

4. COMPENSATION

AQMD will pay the CONTRACTOR the sum of **Six Thousand Eighty Two Dollars and 00/100 (\$6,082)** as follows:

CONTRACTOR shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by CONTRACTOR, AQMD reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, CONTRACTOR agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to CONTRACTOR. The AQMD is not obligated to pay CONTRACTOR for administrative costs exceeding five percent of the actual total cost of the Project.

The total obligation of the AQMD under this Agreement SHALL NOT EXCEED **Six Thousand Eighty Two Dollars and 00/100 (\$6,082)**.

- A. Payments:** Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. The AQMD shall reimburse CONTRACTOR quarterly, in arrears, after receipt and verification submitted to El Dorado County Air Quality Management District, Attention: Mike Applegarth. Payment shall be made to CONTRACTOR by the AQMD upon submission and evaluation of the CONTRACTOR'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

Upon receipt of proper documentation, and verification that CONTRACTOR has satisfactorily completed the work for which compensation is sought, AQMD will issue payment to CONTRACTOR within thirty (45) calendar days of verification.

The amount to be paid to CONTRACTOR under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the CONTRACTOR. The CONTRACTOR shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, CONTRACTOR shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne exclusively by CONTRACTOR.

In no event shall compensation paid by the AQMD to the CONTRACTOR for the performance of all services and activities under this Agreement exceed the amount set forth in Article 4, Compensation.

B. Surplus Funds: Any compensation under this agreement, which is not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement by the Project completion date shall automatically revert to the AQMD. Only expenditures incurred by the CONTRACTOR in the direct performance of this Agreement will be reimbursed by the AQMD. Allowable expenditures under this Agreement are specifically established and included in the Proposal.

C. Closeout Period: All final claims shall be submitted by CONTRACTOR within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by AQMD on claims submitted beyond the 60-day closeout period.

5. NON-ALLOCATION OF FUNDS

The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving the CONTRACTOR thirty (30) days prior written notice.

6. INDEPENDENT CONTRACTOR LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of CONTRACTOR'S employees, associates, and subcontractors, in connection with the installation, operation, use and maintenance of the Project.

7. TERMINATION

A. Breach of Agreement: AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the AQMD there is:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to the AQMD; or
4. Improperly performed services.

In no event shall any payment by the AQMD constitute a waiver by the AQMD of any breach of this Agreement or any default, which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the AQMD with respect to the breach or default. The AQMD shall have the right to demand of the CONTRACTOR the repayment to the AQMD of any funds disbursed to the CONTRACTOR under this Agreement which in the judgment of the AQMD were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

B. Without Cause: Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, the AQMD shall, subject to paragraph 4, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, all the work product produced by CONTRACTOR shall be promptly delivered to the AQMD.

8. CHANGES TO AGREEMENT

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

9. INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold the AQMD harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR'S activities and work necessary to complete the Project unless such claim, loss, damage, injury or death is the result of the sole or active negligence of the AQMD. This duty of CONTRACTOR to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code, Section 2778.

AQMD shall indemnify CONTRACTOR against and hold it harmless from any loss, damage, and liability for damages, including attorney fees and other costs of defense incurred by CONTRACTOR, whether for damage to or loss of property, or injury to or death of CONTRACTOR'S officer's, agents, or employees which shall in any way arise out of or be connected with AQMD's performance of its obligations hereunder, unless such damage, loss, injury, or death shall be caused by the sole or active by negligence of the CONTRACTOR.

10. INSURANCE

THIS CONTRACT/AGREEMENT SHALL NOT BE EXECUTED BY AQMD and the CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the AQMD.

Without limiting Contractor's indemnification provided herein, Contractor shall and shall require any of its subcontractors to procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. The following policies of insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII. Coverage shall be at least as broad as:

A. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

1. The AQMD, its officers, officials, employees, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
2. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
3. For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects AQMD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to AQMD, its officers, employees, and agents.

B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation as required by the State of California, with Statutory Limits, and

Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

- D. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.
- E. Any deductibles or self-insured retentions must be declared to and approved by the AQMD. AQMD may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- F. Contractor shall furnish AQMD with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the AQMD before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. AQMD reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- G. If Contractor does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and Contractor agrees to pay the cost of said insurance.

11. AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of CONTRACTOR'S records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. CONTRACTOR shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution as provided in AB 2766 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, AQMD makes a determination that funds provided CONTRACTOR pursuant to this Agreement were not spent in conformance with this

Agreement, or AB 2766 or any other applicable provisions of law, CONTRACTOR agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

CONTRACTOR shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

12. NOTICES TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to AQMD shall be in duplicate and addressed as follows:

CONTRACTOR

American River Music, Inc.
PO Box 830
Lotus, CA 95651
Attn: Matt Semonsen
Executive Director

AQMD

El Dorado County
Air Quality Management District
2850 Fairlane Court
Placerville, CA 95667
Attn: Mike Applegarth,
Interim Air Pollution Control Officer

13. TIME IS OF THE ESSENCE

It is understood that for CONTRACTOR'S performance under this Agreement, time is of the essence. The parties reasonably anticipate that CONTRACTOR will, to the reasonable satisfaction of the AQMD, complete all activities provided herein within the time schedule outlined in the Proposals to this Agreement.

14. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by the CONTRACTOR including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

15. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

16. VENUE

Any dispute resolution action arising out of this Agreement, including but not limited to litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. CONTRACTOR waives any removal rights it might have under Code of Civil Procedure section 394.

17. ENTIRE AGREEMENT

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

18. AGREEMENT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Mike Applegarth, Interim Air Pollution Control Officer or his successor. The CONTRACTOR Officer or employee with responsibility for administration of this Agreement is Matt Semonsen, Executive Director or his successor.

19. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

20. PARTIAL INVALIDITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

REQUESTING DEPARTMENT CONCURRENCE:

By: Mike Applegate Date: 8/22/11

Air Pollution Control Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first herein above written.

CONTRACTOR

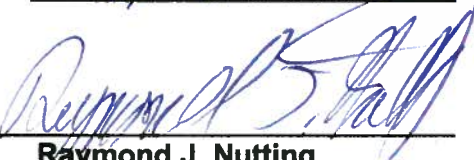
**AQMD
EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT**

Date: 8-18-11

By: 

**Matt Semonsen
Executive Director**

Date: 6/21/11

By: 

**Raymond J. Nutting,
Chair**

**Attest:
Clerk of the Board**

Date: 6/21/11

By: 