



**UNION COUNTY PROSECUTOR'S OFFICE**

**32 RAHWAY AVENUE  
ELIZABETH, NEW JERSEY 07202-2155  
(908) 527-4500  
FAX: (908) 289-1267**

**THEODORE J. ROMANKOW  
Prosecutor of Union County**

**ALBERT CERNADAS, JR.\*  
First Assistant Prosecutor**

**ANNE K. FRAWLEY\*  
Deputy First Assistant Prosecutor**

**\* CERTIFIED CRIMINAL ATTORNEY**

August 23, 2011

Mr. Alfred Faella, Union County Manager  
Union County Administration Building  
10 Elizabethtown Plaza  
Elizabeth, New Jersey 07207

Re: 2010 Union County MusicFest

Dear Mr. Faella:

Each year for the past 14 years, Union County has held MusicFest, a free musical event featuring popular national acts, children's activities, vendors, and showcasing local art and educational programs. In March of 2011, an investigation of the 2010 MusicFest was commenced by this Office. The New Jersey Department of Criminal Justice had declined to pursue the matter. The results of our investigation are as follows:

Between September 8, 2010 and September 12, 2010, Union County held its 2010 MusicFest at Oak Ridge Park, in Clark, New Jersey. In preparation for the MusicFest, Union County entered into contracts with *This Is It! Concept and Event Productions* ("TIIP"), for the production, management, and overall operation of MusicFest; the *Union County Performing Arts Center* ("UCPAC"), for talent procurement and production services; and *Across the River LLC* ("ATR"), as a consultant to aid in 2010 MusicFest.

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**THIS IS IT! CONCEPT AND EVENT PRODUCTIONS:**

**Contract With This Is It! Concept and Event Productions:**

Resolution Number 2009-1220 was passed on December 17, 2009, by the Union County Board of Chosen Freeholders, contracting with TIIP for \$265,000.00 for the production, management, and overall operation of MusicFest (Exhibit 1). After receiving the County Freeholders' authorization, former County Manager George Devanney signed a contract on behalf of Union County with TIIP on March 23, 2010. The contract was "Approved As To Form" by Union County Counsel (Exhibit 2).

Union County contracted with TIIP in the amount of \$265,000.00 for the production and management of MusicFest 2010. The expenses incurred by TIIP were \$342,617.89 as reflected in the following:

<b>Provider/Description</b>	<b>Amount</b>
This is it! Stage Works	\$ 71,932.00
TIIP (pre-planning, linens, posters, etc.)	\$ 49,755.88
Unlimited Productions (stage productions)	\$ 39,068.00
ABC Big Top (tents, tables, chairs)	\$ 27,512.32
RSA (equipment rental for stage)	\$ 26,325.00
Henry's (backstage catering)	\$ 20,100.00
Ultimate Services/Strike Force (parking & security)	\$ 36,211.74
SBP (power generators)	\$ 16,698.00
On Time Elite (dressing rooms)	\$ 11,824.50
SST (instrumental rentals)	\$ 10,090.00
Strike Sound (stage sound)	\$ 6,200.00
PJC (graphic design)	\$ 5,500.00
United Rentals (light towers)	\$ 4,753.76
Jersey St. Furniture (furniture)	\$ 4,625.00
Johnny on the Spot (portable toilets)	\$ 4,155.00
Spoop (clothing, T-shirts)	\$ 3,720.50

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Foley (equipment rental)	\$ 1,905.00
Access Pass/Design (satin passes)	\$ 1,258.77
MedTech (wristbands)	\$ 982.42
<b>Total Expenses</b>	<b>\$ 342,617.89</b>

Therefore, TIIP was over budget for the production of MusicFest 2010 by \$77,617.89.

TIIP reported profits totaling \$77,532.72 from various vendors as reflected in the following:

<b>Provider/Description</b>	<b>Amount</b>
Food Concession	\$ 30,000.00
Parking Revenue	\$ 22,467.00
Amusement Rides	\$ 10,740.72
Sponsors' Donations	\$ 7,375.00
Market Place Vendors	\$ 6,950.00
<b>TIIP's Total Receipts</b>	<b>\$ 77,532.72</b>

Based upon the difference between the over budget (\$77,617.89) and the reported profits (\$77,532.72), George Devanney authorized TIIP to retain the profit reported to offset the over budgeted expenses.

Our investigation revealed the total profit to TIIP was \$101,899.57 as reflected in the following:

<b>Provider/Description</b>	<b>Amount</b>
Food Concession	\$ 30,000.00
Parking Revenue	\$ 46,833.85
Amusement Rides	\$ 10,740.72
Sponsors' Donations	\$ 7,375.00
Market Place Vendors	\$ 6,950.00
<b>TIIP's Total Receipts</b>	<b>\$ 101,899.57</b>

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Utilizing these corrected figures, TIIP received a total of \$366,899.57. Therefore, when the total expenses by TIIP of \$342,617.89 is deducted from the corrected amount that TIIP received of \$366,899.57, an excess of \$24,281.68 remains due to the County of Union.

The contract between TIIP and Union County was vague and inconsistent. In addition the parties failed to comply with the terms of the contract.

Section 10 of the contract states,

*"The County shall pay this Vendor for the work specified by the Contract a sum not to exceed \$265,000.00." (Exhibit 2, Sec. 10).*

Section 25 states,

*"All prices shall be firm and not subject to increase during the period of this contract." (See Id. at Sec. 25).*

However, Section 8 states,

*"The parties may from time to time during the terms of the Agreement make changes, extensions of time or other modifications of the Agreement Such modifications shall only be made in writing and by mutual agreement." (Id. at Sec. 8)*

In addition, Section 8 of the contract references to the authority of the "Director of the applicable department" to make any such changes to the contract (*Id.* at Sec. 8). Due to this vague reference to "Director of the applicable department" it has compounded the confusion as to who had the authority to make any such changes to the contract. Nevertheless, this does not negate the requirement that any such changes and modifications to the contract be in writing.

This Office recommends that:

- (1) All contracts be reviewed as to content, not simply "Approved As To Form";
- (2) All contracts be carefully reviewed, prepared and strictly adhered to;
- (3) Provisions for overruns and reimbursement criteria should be clearly stated with specificity and must identify with clarity the party with authority to modify the terms of the contract;
- (4) Any expenses submitted in excess of the budget limit should be restricted contractually to only those expenses or cost over-runs that could not be reasonably anticipated taking into consideration the contractors' prior experience in servicing the MusicFest; and
- (5) Financial modifications should be compared to market standards if available, to ensure fair and reasonable cost expenditures.

**Parking At 2010 MusicFest:**

As a function of their duties, TIIP contracted with *Strike Force Protective Services* ("SF") to supply security for MusicFest. SF's sister company, *USI Services Group* ("USI"), was contracted to manage the parking areas. The original contracts entered into between these companies and TIIP, including the fees quoted, were subsequently modified by a verbal agreement between TIIP and the two companies when TIIP requested additional parking staff. Pursuant to TIIP's request, SF and USI increased the cost in order to staff the parking area.

The parking area for MusicFest was maintained by USI. Although MusicFest was a five-day event, the parking fee of \$10.00 per car was charged only on the last two days when the main artists or performers were present. USI was to collect the money as each car entered the parking lot. A car counting device, provided by the Union County Department of Parks and Recreation, and utilized by

USI, was anticipated to track and monitor the number of cars entering the lot. However, this system was rendered ineffective for a number of reasons.

First, numerous free parking passes were issued by the County to people attending MusicFest. The County did not maintain records of the number of passes issued. Second, the car counter registered vehicles both entering and exiting the parking area, resulting in a double-count. Third, numerous vehicles entered the lot, realized there was a parking fee, then made a u-turn and exited without ever parking. Fourth, other attendees, who had parking passes for other locations, entered the parking area but were then directed to their appropriate lots.

All of these vehicles were counted as having parked in the paid lot thereby skewing the car counter numbers. Consequently, the car counting device was ineffective in supplying a true number of cars parked in the paid parking area. At a Freeholder's meeting, following the conclusion of the 2010 MusicFest, George Devanney informed the Board that approximately 80,000 people attended the MusicFest. There is no way to determine whether Devanney's estimate of attendance is accurate, nor is it possible to determine the number of vehicles that actually paid to park at the event.

Income generated from parking was \$46,833.85<sup>1</sup>. TIIP paid the parking vendor \$24,366.85 directly with cash proceeds from the parking revenue at the conclusion of MusicFest because SF/USI claimed it was a balance due on their contract with TIIP. As previously stated, this amount was not included in the profits TIIP reported to the County. This resulted in TIIP retaining \$24,281.68 which should be reimbursed over to the County. This error was discovered during the course of this

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<sup>1</sup> We recognize this figure does not equate to a multiplier of ten. However this is the figure that was provided by TIIP during the course of this investigation.

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investigation. Had there been an audit of all funds paid to all parties following this event, the discrepancy would have been discovered.

This Office recommends that:

- (1) TIIP be notified about the discrepancy and the resulting \$24,281.68 in excess which it presently holds;
- (2) The County immediately request a refund of the \$24,281.68; and
- (3) Standard business practices for large-scale parking be adopted by the County to ensure accurate recordation of vehicles entering the paid parking area and fees collected in connection with the parking.

**Verification Of Expenditures:**

Our initial investigation was hampered by the lack of records relating to the arrangement between TIIP, UCPAC and Union County. Our Office requested the receipts, invoices and expenditures provided to the County from TIIP and UCPAC. It was discovered that the County never requested these records from either entity. Had the County requested and reviewed the invoices and expenditures at least relating to TIIP, the miscalculation resulting in the receivable now owed to the County of \$24,281.68 would have been discovered and resolved.

This Office recommends that:

- (1) All vendors, including UCPAC, doing business with the County provide the County with complete accounting of all expenses and receipts incurred and realized by the vendors;
- (2) Any invoices submitted in excess of the agreed or budgeted amount be scrutinized carefully by the County; and
- (3) Proof by the vendor that the expense contained in those invoices were reasonably anticipated to be included in the original budgeted amount.

**Concessions And Amusement Rides:**

Our investigation revealed that the food concessionaire was required to pay TIIP a \$30,000 non-refundable guarantee. The food concessionaire would pay TIIP a percentage of the gross sales above the minimum guarantee based on a sliding scale. "Gross sales" was defined as the total sales minus any applicable sales tax. The food concessionaire did not provide receipts. Instead, TIIP accepted the oral representation as to the total sales from the concessionaire.

Similarly, for the amusement rides, our investigation revealed that the contract was based on the total number of tickets sold. The amusement ride representatives agreed to pay TIIP 20 percent of the gross sales on all rides receipts. Again, in calculating the "gross sales," sales tax was deducted. Amusement ride representatives provided TIIP with a Word document containing the number of tickets sold as their form of receipt.

It is recommended that:

- (1) Both the food concessionaire and the amusement ride company should be required to turn over its sales records to a designated, responsible County employee familiar with the contractual terms to assess the reasonableness of the current year's sales; and
- (2) That TIIP be required to provide the County a more comprehensive accounting of tickets sold from the amusement ride representatives rather than a mere Word document.

**UNION COUNTY PERFORMING ARTS CENTER:**

**Contract With The Union County Performing Arts Center:**

The contract between UCPAC and Union County was vague and similar to the contract the County entered into with TIIP. On December 17, 2009, the Union County Board of Chosen



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Freeholders passed Resolution Number 2009-1218 for the *Union County Performing Arts Center* ("UCPAC")<sup>2</sup> for talent procurement and production services for the 2010 MusicFest and 2010 Rhythm & Blues by the Brook (Exhibit 3). The contract was signed on March 12, 2010 by George Devanney, on behalf of the County, and was "Approved As To Form," by Union County Counsel (Exhibit 4).

Union County contracted with UCPAC in the amount of \$240,000 to procure musical acts. UCPAC also received \$232,900.00 in sponsorship donations, and an additional \$75,000.00 from the County as a benefit from a weather insurance claim filed in connection with the 2008 MusicFest despite no resolution being passed for such expenditure. Further, UCPAC sold V.I.P. tickets under the label "Friends of MusicFest," which included access to restricted areas of MusicFest, food, and alcoholic beverages. The V.I.P. tickets generated an additional \$7,228.00 in ticket sales. Thus, UCPAC received a total of \$555,128.00 for its involvement in MusicFest.

<b>Provider/Description</b>	<b>Amount</b>
Contract With County	\$ 240,000.00
Sponsors' Donations	\$ 232,900.00
Payout From Weather Insurance	\$ 75,000.00
"Friends of MusicFest" (Sale of VIP tickets)	\$ 7,228.00
<b>UCPAC's Total Receipts</b>	<b>\$ 555,128.00</b>

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<sup>2</sup> The Union County Performing Arts Center, a non-profit 501(c)(3) corporation, originally opened on October 16, 1928, as the Rahway Theater. After falling into disrepair, the theater underwent a \$6.2 million renovation and expansion project, completed in 2007. As part of the expansion, the facility was purchased by the County of Union for \$1.3 million and leased back for \$1 a year. After the Union County Board of Chosen Freeholders passed a resolution in October 1985, it was officially renamed as the Union County Performing Arts Center.

The expenses incurred by UCPAC totaled \$439,675.86 as reflected in the following:

<b>Provider/Description</b>	<b>Amount</b>
Fees Paid for Musical Agencies	\$ 384,069.40
TIIP	
Video wall	\$ 8,500.00
Catering	\$ 18,169.00
Stage Works (for Summer Arts Festival)	\$ 17,100.00
Donation to LHS	\$ 1,500.00
Crown Plaza Hotel (lodging)	\$ 9,245.50
Other	\$ 1,091.96
<b>UCPAC's Total Expenses</b>	<b>\$ 439,675.86</b>
<b>Balance Remaining</b>	<b>\$ 115,452.14</b>

The \$115,452.14 balance was retained in the UCPAC account for expenses to be incurred by the 2011 MusicFest. UCPAC maintained an interest bearing account strictly for deposits and expenses relating to MusicFest. Our investigation revealed that invoices were paid from that account for other events. In particular, a \$17,100.00 check was issued to *This is It! Stage Works*, a sister company of TIIP, for the production of the Summer Arts Festival held on June 30, 2010, in Echo Lake Park and Oak Ridge Park. When questioned about this expenditure, employees at the UCPAC could not adequately explain the reason for paying this invoice from the MusicFest account.

This Office recommends that:

- (1) The UCPAC establish separate accounts for MusicFest and sub-accounts for other events and that invoices be paid only from the specific account created;
- (2) In any County sponsored events, UCPAC should be required to enter into written agreements with all vendors and artists; and
- (3) A designated responsible County official review all invoices to ensure that no redundant services are being billed, and that the services conform to the budget agreement before the invoice is approved for payment.

**Sponsorship Donations:**

Sponsorship donations for the benefit of MusicFest are solicited by the County. These donations however are deposited directly into the account of UCPAC. They are then used by the UCPAC for the procurement of entertainment. Consequently, the County has no control over the distribution of these funds, which are collected using the County name and on the County's behalf.

This Office recommends that:

- (1) All donations be deposited in County accounts and distributed to the various vendors from those accounts; and
- (2) All sponsors' names and donations in cash or check should be made available to the public. The names of County officials soliciting the aforementioned gifts or contributions should be made available to the public.

**ACROSS THE RIVER, LLC**

On December 17, 2009, the Union County Freeholder Board passed Resolution Number 2009-1222, allotting \$27,500.00 to *Across the River, LLC* ("ATR") (Exhibit 5). According to the contract signed on June 11, 2010, ATR was hired for "consulting services for the 2010 MusicFest." (Exhibit 6). In addition to the \$27,500.00 from Union County to ATR for their consulting services, UCPAC also paid ATR \$45,000.00. Consequently, ATR was paid by both the County and UCPAC. In discussing this arrangement with George Devanney, we ascertained that although UCPAC was contracted to procure the talent, certain artists would only agree to perform if contracted through ATR.

**LOVE, HOPE, AND STRENGTH CHARITY**

The Union County Board of Freeholders also passed Resolution Number 2009-1217, supporting the *Love, Hope, Strength Foundation* ("LHS") and the Valerie Fund and thereby permitted both to

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engage in fundraising activities at the site of the 2010 MusicFest (Exhibit 7). LHS is a national charity based in Denver, Colorado with a local chapter in Union County. The charity *Love, Hope, Strength Foundation* has undertaken a global initiative to raise funds and awareness through music related events and promotions. The Valerie Fund is a non-profit organization dedicated to providing support for the comprehensive healthcare of children with cancer and blood disorders. The President, Treasurer, Secretary, and several Board members of LHS's Union County Chapter are employed in various positions by Union County.

During the 2010 MusicFest, LHS engaged in fundraising activities, such as: a raffle and a walk-a-thon for the benefit of the Valerie Fund, and the sale of alcoholic beverages in a "Beer Garden" tent for LHS. The appropriate permit was obtained from the New Jersey Alcoholic Beverage Control Board by LHS to sell alcoholic beverages, which it purchased from High Grade Beverage Company at a cost of \$15,194.94. The sale of alcoholic beverages generated proceeds of \$37,507.00. In addition, LHS conducted a 50/50 raffle which produced a profit of \$4,618.50, and a Walk-a-Thon, which generated income; however there are no records to verify the amount.

The LHS "Beer Garden" generated a significant amount of cash through the sale of alcoholic beverages. This money was collected by County employees. The money was then ultimately transported to the Union County Administration Building where it was placed in a safe at the Union County Finance Department. The total amount placed in the safe was \$37,507.00. This money was then deposited in the Union County Chapter of LHS's bank account. These deposits were made incrementally by George Devanney. When questioned as to the reason behind this method of

deposit, Devanney informed our investigators that he did this as a safety precaution because he was not comfortable carrying large amounts of cash at one time.

This Office recommends that:

- (1) County employees should not personally handle the funds raised by a charitable organization;
- (2) Proceeds collected by a charity should not be placed in a County safe;
- (3) A charity should be responsible for collecting the funds, transporting the funds, accounting for the funds, and depositing the funds into its own account;
- (4) All County officials with authority to select contractors, vendors, concessionaires, or any other party with a commercial interest in the event should be required to disclose their commercial or personal interest with that party to the Board of Freeholders; and
- (5) Other charities should be afforded the opportunity to engage in fundraising in connection with the event, or the alternative, the County should reconsider the policy of contributing to a charity to the exclusion of others.

**KIDS KINGDOM AND MERCHANDISE SALES:**

Additionally, Union County operated independent, income-generating events at the MusicFest, including the sale of artist merchandise, county merchandise, and a children's play area called *Kids Kingdom*. These events produced profits of \$17,345.10.

County Merchandise Sales	\$	13,327.00
Artist Merchandise Sales	\$	2,144.10
<i>Kids Kingdom</i>	\$	1,874.00
<b>Total</b>	\$	<b>17,345.10</b>

The *Kids Kingdom* profits were deposited in the County's account promptly after the conclusion of MusicFest. The \$15,471.10 generated from the sale of County merchandise and artist's merchandise was placed in a safe at the Finance Department of Union County. The \$15,471.10

remained there until the initiation of this investigation when our investigative staff discovered this oversight. This money is now being held in the vault at the Union County Prosecutor's Office and will be turned over to the Union County Finance Department at the conclusion of this investigation.

This Office recommends that:

- (1) Reconciliation of cash at the end of each day with all individuals involved in the handling of cash by comparing to control totals. This will ensure proper accountability;
- (2) Adequate protocols be implemented and adhered to for the counting, transporting, and depositing of all funds, especially cash, related to MusicFest; and
- (3) A policy be implemented to deposit any cash held in the County safe into a County bank account the next business day following the event.

**UNION COUNTY:**

The total out-of-pocket expense to Union County for this event was \$844,279.67<sup>3</sup>.

Recipient	Amount
TIIP	\$ 265,000.00
UCPAC	\$ 315,000.00
Across The River, LLC	\$ 27,500.00
Weather Insurance	\$ 19,200.00
Union County Educational Services (Transportation)	\$ 7,250.00
Mailing List/Database	\$ 8,247.00
Ice	\$ 270.00
Promotional Signs	\$ 840.63
Soda and Water	\$ 887.75
Overtime for Police and County Employees	\$ 200,084.29
Total	\$ 844,279.67

<sup>3</sup> All expenses and revenue for the 2010 MusicFest were verified by an independent accounting firm.

The total adjusted cost to Union County was \$826,934.57 as reflected below:

Description	Amount
Total County Spent	\$ 844,279.67
Income from sale of Artist & County Merchandise	\$ -15,471.10
Income from Kids Kingdom	\$ - 1,874.00
<b>Adjusted Cost to Union County</b>	<b>\$ 826,934.57</b>

The overtime expense for police and county employees totaling \$200,084.29 was billed directly to the County. The following is a break-down of the overtime paid:

Agency	Amount
Union County Sheriff's Office	\$ 10,359.82
Union County Police Department	\$ 81,216.99
Clark Police Department	\$ 6,987.50
Edison Police Department	\$ 8,892.00
Union County Employees	\$ 92,627.98
<b>Total</b>	<b>\$ 200,084.29</b>

Thus, the total cost for the 2010 MusicFest was \$1,121,573.42 as reflected below:

Recipient	Amount
Hale Insurance	\$ 19,200.00
Union County Educational Services	\$ 7,250.00
A&E Mailing Services	\$ 8,247.00
Cross & Oberlie	\$ 840.63
Arctic Glacier	\$ 270.00
G.S. Beverages, LLC	\$ 887.75
Across The River, LLC	\$ 27,500.00
TIIP	\$ 342,617.89
UCPAC	\$ 439,675.86
Rain Insurance From 2008	\$ 75,000.00
Overtime/Comp Time for Police & County Employees	\$ 200,084.29
<b>Total</b>	<b>\$ 1,121,573.42</b>

**Compensation Time:**

The \$92,627.98 attributed as overtime to Union County employees was actually in the form of compensation time for their service. Compensation time is a benefit afforded to County employees in lieu of cash overtime payment. It is time accrued in the employee's personnel records and can be taken as time off at a future date. Our investigation disclosed that in addition to working MusicFest activities, a number of County employees performed duties for LHS. These duties included conducting the 50/50 raffle, the Walk-a-Thon, and serving and selling alcoholic beverages in the LHS "Beer Tent." The County incurred the expense for these employees, even though they were performing duties unrelated to the County.

This Office recommends that:

- (1) The County discontinue supplying employees, or any other services for, or conducting business on behalf of, any charitable organizations; and
- (2) The comingling of services between a non-profit organization and a government sponsored event should be discontinued.

**CONCLUSION:**

The Union County Prosecutor's Office engaged in the investigation of 2010 MusicFest in order to determine whether there was any criminal conduct by Union County employee(s).

Following an investigation, spanning over five (5) months, including interviews of numerous witnesses, and a review of a multitude of documents, I have concluded that there is insufficient evidence which warrants the filing of criminal charges in this matter.

It became evident during the investigation that while the intent to entertain the public was admirable as was the permission to permit certain charities to pursue fundraising, the management of

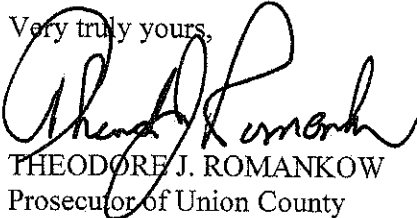


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the event from the drafting of the contracts to the accounting of monies was poorly executed by the County of Union. An event of this nature requires constant oversight and personal involvement by those in County government who endorse it. It received neither. The use of public monies demands much more than it received.

The aforementioned recommendations should assist you as the County Manager and the Board of Freeholders in promoting events of this nature to be more transparent, resolve issues of mismanagement and ensure accountability for the use of public monies, while avoiding any appearance of misappropriation.

Very truly yours,



THEODORE J. ROMANKOW  
Prosecutor of Union County

- c Deborah P. Scanlon, Chairman of the Union County Board of Chosen Freeholders
- Bibi Taylor, Union County Director of Finance
- Robert E. Barry, Esq., Union County Counsel

## **Table of Exhibits**

1. Resolution 2009-1220
2. Contract between County of Union and *This is it! Concept & Event Productions*
3. Resolution 2009-1218
4. Contract between County of Union and *Union County Performing Arts Center*
5. Resolution 2009-1222
6. Contract between County of Union and *Across the River, LLC*
7. Resolution 2009-1217



12/17/2009

UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

RESOLUTION NUMBER: 2009-1220

WHEREAS, there exists a need for professional planning, production, promotion and management services for the 2010 MusicFest at Oak Ridge Park, Clark, on Saturday, September 11, 2010 and Sunday, September 12, 2010; and

WHEREAS, pursuant to N.J.S.A. 19:44A-20 et. seq., the County Treasurer has determined and certified in writing that the anticipated value of the contract will exceed \$17,500.00; and

WHEREAS, This Is It! Concept and Event Production, 720 Monroe Street, Studio E303, Hoboken, NJ 07030, has agreed to provide the necessary supplies and services as outlined above in the sum not to exceed \$265,000.00; and

WHEREAS, pursuant to N.J.S.A. 19:44A-20.4, This is It! Concept and Event Productions is prohibited from making reportable contributions through the term of the contract to any political or candidate committee prohibited in the Business Entity Disclosure Certification; and

WHEREAS, N.J.S.A. 40A:11-5(1)(a)(ii) authorizes the Board of Chosen Freeholders to award a contract without competitive public bidding if the subject matter consists of an "extraordinary, unspecifiable service"; and

WHEREAS, the above described service has been identified as an "extraordinary, unspecifiable service" and meets all the requirements as set forth by the Local Public Contracts Law and as detailed in the attached Certification.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Union that This Is It! Concept and Event Production of Hoboken, NJ, is hereby awarded a contract to provide the necessary services as outlined above for an amount not to exceed \$265,000.00 which shall be charged to Account Number 10-01-20-703-040-310; and

BE IT FURTHER RESOLVED that the County Manager is hereby authorized to execute said contract upon the approval by the County Counsel's Office for the aforementioned project and the County is in possession of the completed Business Entity Disclosure Certification as required by N.J.S.A. 19:44A-20.8; and

BE IT FURTHER RESOLVED that, the Business Disclosure Entity Certification and the Determination of Value be placed on file with this Resolution; and

BE IT FURTHER RESOLVED that notice of this Resolution be published according to law.

SUBJECT TO INCLUSION AND ADOPTION OF THE 2010 BUDGET

Handwritten signature and date 12-17-09

Table with columns: FREEHOLDER, Aye, Nay, Abs, Pass, Res., Mot, Sec, NP. Rows include Estrada, Holmes, Kowalski, Proctor, Scanlon, Van Blake, Ward, Sullivan, Mirabella.

APPROVED AS TO FORM COUNTY ATTORNEY

I hereby certify this is an original resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date. Clerk signature.

I hereby certify this is a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date. Clerk signature.

**A G R E E M E N T**

**Exhibit 2**

THIS AGREEMENT made and entered into this **23<sup>RD</sup>** day of **March**, 2010,

by and between the COUNTY OF UNION, a Body Politic of the State of New Jersey, having its principal place of business at Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207, hereinafter referred to as **County** and This Is It! Concept and Event Production having its principal place of business at 720 Monroe St., Studio E303, Hoboken, NJ 07030, hereinafter referred to as **Vendor**.

**W I T N E S S E T H** that the **County** and the **Vendor**, for the consideration hereinafter mentioned, mutually covenant and agree as follows:

1. SPECIFICATIONS

The County shall enter into a contract with Vendor for the sum not to exceed \$265,000.00 and Vendor shall furnish all of the services and where applicable, all material, equipment and supplies and perform all of the labor, in a good and workmanlike manner, in accordance with the contract, further provide professional planning, production, promotion and management services for the 2010 MusicFest at Oak Ridge Park, in Clark, NJ on September 11, 2010 and September 12, 2010. The Proposal submitted by Vendor on December 8, 2009 attached hereto and incorporated herein by reference, together with this Agreement, shall be referred to collectively as the "Contract Documents". Vendor shall provide all services so as to complete such work as set forth in the Contract Documents.

2. DATES OF CONTRACT.

This contract shall commence on January 1, 2010 and terminate on December 31, 2010.

### 3. CONFIDENTIALITY OF DOCUMENTS

All data and documentation arising out of the performance of this contract are the property of the County of Union. Any data or documentation whose premature disclosure would be detrimental to the County shall remain confidential and shall only be released to authorized personnel, in accordance with the Open Public Meetings Act.

### 4. INSURANCE

On or before commencing the work the Vendor shall file with the County evidence of insurance coverage. The policy shall state all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions is to be considered as arising out of one occurrence. Coverage shall be effective and continuous for the entire term of the Agreement. The County shall be named as additional insured on the policy.

The County of Union requires all vendors to be able to comply with the following insurance requirements. The Vendor must accept the applicable insurance requirements, as set forth below, as part of any contract awarded to it by the County of Union.

#### INSURANCE REQUIREMENTS APPLICABLE TO ALL VENDORS:

A Certificate of Insurance shall be filed with the County prior to commencement of the work. This Certificate shall contain a provision that insurance afforded under the policies will not be canceled without at least 30 days prior written notice being given to the County and name the County as additional insured.

- 1 Automobile Liability Insurance in an amount of not less than \$1,000,000.00 combined single limit for bodily injury and property damage liability. A

certificate of such current insurance shall be provided to the **County** and shall reflect the provision of at least 30 days notice to the **County** before any major cancellation or major change may be made in the policy.

2. Workers Compensation Insurance insuring the obligation of the Contractors and all subcontractors under the New Jersey Workers Compensation and Occupational Disease Laws as respects work performed under this Contract. Insurance shall be extended to include any obligations under the United States Longshoremen's and Harbor Workers Act or any maritime Act, when applicable.
  
3. General Liability Insurance shall be provided on a Comprehensive General Liability Form with a Combined Single Limit of \$1,000,000.00 per Occurrence for Bodily Injury Liability and Property Damage Liability and shall include the interest of the **County** with Respect to work emanating from the Contract with the **County**. This instance shall include the following:
  - (a) Personal Injury Liability,
  - (b) Blanket Contractual Liability applying to assumption of liability under any written Contract,
  - (c) Products and/or Completed Operations Liability

#### 5. INDEPENDENT VENDOR STATUS

The **Vendor** and its employees, vendors, subcontractors, agents and

representatives are, for all purposes arising out of the Agreement, independent contractors and not employees of the Union County. It is expressly understood and agreed that the **Vendor** and its employees, vendors, subcontractors, agents and representatives shall in no event, as a result of the Agreement, be entitled to any benefit to which Union County employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits and injury leave or other leave benefits.

#### 6. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the successful **Vendor** fails to fulfill in timely and proper manner its contractual obligations in this project, or if the **Vendor** violates any of the warranties or stipulations of its contract, the **County** will thereupon have the right to terminate such contract by giving ten (10) days written notice to the **Vendor** of the deficiency and right to cure same, termination and cause therefore, and specifying the effective date of such termination. In the event, the contract is terminated, all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled to reimbursement for any satisfactory work completed.

#### 7. TERMINATION OF CONTRACT WITHOUT CAUSE

This agreement may be terminated by thirty (30) days prior written notice from Union County at any time. In the event the contract is terminated all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled to reimbursement for any satisfactory work completed.

#### 8. CHANGES AND MODIFICATIONS

The parties may from time to time during the term of the Agreement make changes, extensions of time or other modifications to the Agreement. Such modifications shall only be made in writing and by mutual agreement. Any such changes shall be agreed to by the Director of the applicable department.

Change Orders shall comply with N.J.A.C. 5:34-4.1 titled Change Orders and Open End Contracts and subsequent articles of the New Jersey Administrative Code.

#### 9. SEVERABILITY

If any of the provisions of the contract are invalid or unenforceable, such invalidity will not void the entire contract, but rather the entire contract shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the parties shall be construed and enforced accordingly.

Notwithstanding the above, the Vendor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract.

#### 10. PAYMENT

The County shall pay this Vendor for the work specified by the Contract a sum not to exceed \$265,000.00. In the event that payment is not by lump sum requests for payment may be submitted on a monthly basis. If applicable, such requests shall represent an amount equal to the percentage of the project completed to date.

Payment to the Vendor is to be made within forty-five (45) days after the receipt of Vendor's invoice and after approval from the Director's Office. The Vendor shall prepare invoices and shall submit them to the Director's Office.

#### 11. PROHIBITION OF POLITICAL CONTRIBUTION

This contract was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. As such, the undersigned does hereby attest that this



Vendor, its subsidiaries, assigns or principals controlling in excess of 10% of the company has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would pursuant to P.L. 2004, c. 19 (N.B. contributions prior the law's effective date of January 1, 2006 are not violative of this representation) affect its eligibility to perform this contract nor will it make a reportable contribution during the term of the contract to any county committee, candidate committees or joint candidates representing any of the elected officials of the County of Union, including the Board of Chosen Freeholders, County Clerk, County Sheriff and County Surrogate, as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r).

#### 12. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes or other industrial disturbances, accidents, war, riot, insurrection or other causes beyond the control of the parties.

#### 13. DISCRIMINATION

This Vendor acknowledges that he has a copy of the New Jersey Law Against Discrimination and of the Rules and Regulations thereon issued by the Division of Civil Rights, and shall fully comply therewith as applicable.

#### 14. AFFIRMATIVE ACTION

### EXHIBIT A

#### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

(REVISED 10/08)

#### GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

#### 15. BUSINESS REGISTRATION CERTIFICATE

In accordance with P.L. 2004, Chapter 2004, no contract shall be entered into by the COUNTY unless the Vendor provides a copy of its business registration in accordance with the following schedule:

(1) In response to a request for bids or a request for proposals, at the time a bid or proposal is submitted; or

(2) For all other transactions, before the issuance of a purchase order or other contracting document. In its sole discretion, the contracting unit may waive this requirement if a business registration has been previously provided to the contracting agency.

Further, a subcontractor shall provide a copy of its business registration to the Vendor who shall forward it to the contracting agency. No contract with a subcontractor shall be entered into by any contractor under any contract with a contracting agency unless the subcontractor first provides proof of valid business registration. The contracting agency shall file all business registrations received by the contracting agency with other procurement documents related to the contract.

The Vendor shall maintain and submit to the COUNTY a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. A complete and accurate list shall be submitted before final payment is made for goods provided or services rendered or for construction of a construction project under the contract.

#### 16. COMPLIANCE WITH STATUTE

It is understood and agreed that should N.J.S.A. 10:2-1 et seq; N.J.S.A 24:10-57.1 and N.J.S.A 57.2; 34:11-56.25; N.J.S.A 40A:11-18 or N.J.S.A 52:33-1, together with any amendment or supplement thereto, be applicable to this contract and should said statute not be complied with, then this contract shall be voidable at the option of the County.

17. INDEMNIFICATION

The **Vendor** shall indemnify and hold harmless the **County** and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work which is attributable to personal injury, including bodily injury, property damage, including the work itself, and the loss of use resulting there from, or the loss of use of tangible property, which has not been physically injured or destroyed, and is caused in whole or in part by an act or omission of the **Vendor**, any subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

18. CLAIMS

The **Vendor** agrees to furnish the **County** with evidence that all claims, either for damages, material furnished or labor supplied, have been satisfied and paid in full.

19. GENERAL NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. Notices as provided herein do not waive service of summons or process.

**COUNTY OF UNION:**

County of Union  
Union County Administration Building  
Elizabethtown Plaza  
Elizabeth, NJ 07207

**VENDOR:**

This Is It! Concept and Event Production  
720 Monroe St., Studio E303  
Hoboken, NJ 07030

## 20. MISCELLANEOUS

This agreement shall be governed by and construed under the laws of the State of New Jersey. The **Vendor** irrevocably agrees that, subject to Union County's sole and absolute election, any action or proceeding in any way, manner or respect arising out of the Agreement, or arising from any dispute or controversy arising in connection with or related to the Agreement, shall be litigated only in the courts having status within the State of New Jersey, and the **Vendor** consents and submits to the jurisdiction of any local, state or federal court located within such City, County and State.

## 21. WAIVER

No term or provision of the Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall not be a waiver of the provision itself nor a waiver or consent to any subsequent breach. The headings of articles, paragraphs and sections in the Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement.

## 22. ENTIRE AGREEMENT

It is expressly agreed that the provisions set forth in the specifications and this Agreement constitute all the understandings and agreements between the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth here or in the specifications are of no force and effect.

### 23. ASSIGNMENT

The successful **Vendor** is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of its agreement or its rights, title, obligation or interest therein to any other person, company or corporation without prior written consent and approval of the **County**. If such a transfer without consent occurs, the **County** may refuse to carry out its contract with either the Assignor or Assignee, and reserves all rights of action for breach of the contract.

### 24. SUBCONTRACTING

The subcontracting of this project will not be permitted without the expressed written consent of the County of Union.

### 25. PRICE CHANGES

All prices shall be firm and not subject to increase during the period of this contract.

### 26. COOPERATION WITH OTHER VENDORS

The **Vendor** shall fully cooperate with other **Vendors** of the County of Union, the County of Union's employees, or the employees of others as may be required by circumstances or directed by the County of Union.

### 27. LICENSES AND PERMITS

**Vendor** shall be responsible to apply for and obtain all necessary permits and licenses unless the specifications require the **County** to obtain such permits and licenses.

IN WITNESS WHEREOF, the parties hereto have, either individually or by their duly authorized representative, set their hands and seals the day and year first above written.

ATTEST:

N Dirado  
NICOLE DIRADO, CLERK  
Board of Chosen Freeholders

COUNTY OF UNION

BY George Devanney  
GEORGE W. DEVANNEY  
County Manager

APPROVED AS TO FORM

[Signature]  
ROBERT E. BARRY, ESQ.  
County Counsel

ATTEST:

\_\_\_\_\_  
Corporate Secretary/Notary Public

~~This Is It! Concept and Event Production~~

[Signature]  
Authorized Signatory

Deanna M. Hunt  
Print Name

CEO  
Print Title





December 8, 2009

Ms. Carolyn M. Sullivan  
Coordinator, Community Relations & Special Events  
Office of the County Manager  
County of Union Administration Bldg.  
10 Elizabethtown Plaza  
Elizabeth, NJ 07207

Dear Carolyn:

We are pleased to have the opportunity to provide a proposal to act as the production logistics consultant and the event management company for the Union County Board of Chosen Freeholders (UC) "MusicFest" (MUSIC) at Oak Ridge Park on Thursday, September 9<sup>th</sup>, Friday, September 10<sup>th</sup>, Saturday, September 11<sup>th</sup>, and Sunday, September 12<sup>th</sup>, 2010. The following outlines our proposal and fees for event logistics planning and management services for MUSIC.

This Is It! Productions (TIIP) will provide the following services to UC:

**I. Pre-Production of Event**

Under the direction of UC, TIIP will have the responsibility of planning and implementing the event theme, event talent, logistics and layout. This will involve the following items:

- site survey and layout development,
- secure stage, sound and lighting,
- fulfill talent riders,
- secure tents, tables, chairs, portable toilets, generators, etc.,
- develop food vendor and marketplace application, forwarding application to perspective vendors, coordinating health and fire permits with the township of Clark,
- coordinate hospitality area for backstage and VIP/Sponsor Areas,
- coordinate beer garden, and fireworks,
- coordinate amusement rides
- coordinate parking and security with UC officials,
- develop and distribute itineraries & credentials to talent, sponsors and vendors,
- assistance will be provided in development and placement of advertising, flyers, posters, the event program and signage, public relations, and the Festival budget, and
- Monthly status reports will be presented at scheduled Festival meetings.

**II. On-Site Management**

TIIP will coordinate all on-site logistics of the event including the following items: sponsors, talent & stage schedule, hospitality area, merchandising, staging, sound, lighting, food vendors, signage, and security. TIIP will work with the UC Police in coordinating traffic flow, parking and shuttle buses.

### III. Sponsorship Solicitation and Management

TIIP shall work in conjunction with UC, using its best efforts to represent the Event to potential corporate sponsors and shall prepare marketing materials for use in presenting the Event to sponsors. Sponsorship packets shall be produced and mailed to prospective sponsors. TIIP will have the responsibility for a) researching appropriate sponsors, b) selling to sponsors, c) negotiating and acting as a liaison between the sponsors and UC, and d) executing the sponsorship agreement pre, during and post the event.

In the event that a sponsor approaches the UC and UC is successful in obtaining any such sponsors, the sponsors shall execute the usual form of agreement between the parties provided, however, that TIIP shall receive a 10% commission or compensation fee for any servicing requested by these sponsors which are procured by the UC and further provided that in the event that the nature of such sponsorship requires extensive work on the part of TIIP then, in that event, TIIP may make a request to the UC for approval of compensation up to 25% of such total sponsor dollars.

#### Commission/Fee Structure:

Cash Sponsors:	30% of total gross dollars of new sponsors
	25% of total gross dollars of returning sponsors

### IV. 2010 Fees & Budget

TIIP proposes an event budget of \$265,000 for Musicfest. The top line costs are outlined below:  
Instrument rental and backstage costs: \$44,000.00, Stage Production (stage, sound, lights, labor): \$90,000.00, On-site equipment rental and Security: \$70,000.00, Advertising, Promotion, PR: \$17,000.00, Miscellaneous Costs: \$7,200.00, Fireworks, \$7,000.00, TIIP production & management fees: \$29,800.00 plus 10% of all food and marketplace vendor fees and sponsor fees as outlined above.

Carolyn, we thank you for providing us with the opportunity to present a proposal. If there are any questions, please do not hesitate to call Scott Harrison or me at 201.653.2699.

Sincerely,



Deanna M. Hunt



UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

12/17/2009

RESOLUTION NUMBER: 2009-1218

WHEREAS, there exists the need for talent procurement and production services for the 2010 MusicFest at Oak Ridge Park, Clark, and the 2010 Rhythm & Blues by the Brook at the Cedar Brook Park; and

WHEREAS, Union County Arts Center is a non-profit entity registered with the State of New Jersey, as such pursuant to P.L. 2007, c.51, is exempt from N.J.S.A. 19:44A-20.4 et seq.; and

WHEREAS, Union County Arts Center has provided the County with the appropriate documentation to affirm their non-profit corporate status; and

WHEREAS, the Union County Arts Center, 1801 Irving Street, Rahway, NJ 07065 has agreed to provide the necessary supplies and services as outlined above in the sum not to exceed \$240,000.00; and

WHEREAS, N.J.S.A. 40A:11-5(1)(a)(ii) authorizes the Board of Chosen Freeholders to award a contract without competitive public bidding if the subject matter consists of an "extraordinary, unspecifiable service"; and

WHEREAS, the above described service has been identified as an "extraordinary, unspecifiable service" and meets all the requirements as set forth by the Local Public Contracts Law and as detailed in the attached Certification; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Union, that it hereby retains the Union County Arts Center of Rahway, NJ for the purpose of providing talent procurement and production services for the 2010 MusicFest at Oak Ridge Park, Clark and the Rhythm and Blues by the Brook at Cedar Brook Park as stated above for a sum not to exceed \$240,000.00; and

BE IT FURTHER RESOLVED that the County Manager is hereby authorized to execute said contract upon the approval by the County Counsel's Office for the aforementioned project; and

BE IT FURTHER RESOLVED the said amount of \$240,000.00 shall be charged to Account Nos.: 10-01-20-703-040-310 (\$90,000.00) and T-03-56-850-000-549 (\$150,000.00); and

BE IT FURTHER RESOLVED that notice of this Resolution be published according to law.

SUBJECT TO INCLUSION AND ADOPTION OF THE 2010 BUDGET

SUFFICIENCY OF FUNDS

12-17-09 RECORD OF VOTE										12-17-09							
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP
ESTRADA	X								VAN BLAKE	X							
HOLMES	X								WARD								X
KOWALSKI	X								SULLIVAN VICE-CHAIRMAN	X					X		
PROCTOR	X								MIRABELLA CHAIRMAN	X				X			
SCANLON	X						X										

APPROVED AS TO FORM  
  
COUNTY ATTORNEY

I hereby certify this is an original resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
  
CLERK

I hereby certify this is a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
\_\_\_\_\_  
CLERK

**A G R E E M E N T**

**THIS AGREEMENT** made and entered into this 12<sup>th</sup> day of March 2010,

by and between the COUNTY OF UNION, a Body Politic of the State of New Jersey, having its principal place of business at Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207, hereinafter referred to as **County** and Union County Arts Center having its principal place of business at 1801 Irving Street, Rahway, NJ 07065, hereinafter referred to as **Vendor**.

~~1801~~ Please correct

**WITNESSETH** that the **County** and the **Vendor**, for the consideration hereinafter mentioned, mutually covenant and agree as follows:

1. SPECIFICATIONS

The **County** shall enter into a contract with **Vendor** for the sum not to exceed \$240,000.00 and **Vendor** shall furnish all of the services and where applicable, all material, equipment and supplies and perform all of the labor, in a good and workmanlike manner, in accordance with the contract, further provide talent procurement and production services for the 2010 MusicFest at Oak Ridge Park and 2010 Rhythm & Blues by the Brook at Cedar Brook Park. **Vendor** shall do everything required by such Contract documents. The **Vendor** agrees to comply with all Federal and State Laws applicable to this Agreement.

2. COUNTY APPROVAL

Prior to entering into any agreements or securing any artists, the **Vendor** shall confer and obtain any and all approvals from the **County** for all talent sought to perform at the 2010 MusicFest at Oak Ridge Park and the 2010 Rhythm & Blues by the Brook at Cedar Brook Park

### 3. DATES OF CONTRACT.

This contract shall commence on January 1, 2010 and terminate on December 31, 2010.

### 4. CONFIDENTIALITY OF DOCUMENTS

All data and documentation arising out of the performance of this contract are the property of the County of Union. Any data or documentation whose premature disclosure would be detrimental to the **County** shall remain confidential and shall only be released to authorized personnel, in accordance with the Open Public Meetings Act.

### 5. INSURANCE.

On or before commencing the work the **Vendor** shall file with the **County** evidence of insurance coverage. The policy shall state all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions is to be considered as arising out of one occurrence. Coverages shall be effective and continuous for the entire term of the Agreement. The **County** shall be named as additional insured on the policy.

The County of Union requires all vendors to be able to comply with the following insurance requirements. The **Vendor** must accept the applicable insurance requirements, as set forth below, as part of any contract awarded to it by the County of Union.

#### INSURANCE REQUIREMENTS APPLICABLE TO ALL VENDORS:

A Certificate of Insurance shall be filed with the **County** prior to commencement of the work. This Certificate shall contain a provision that insurance afforded under the policies will not be canceled without at least 30 days prior written notice being given to the **County** and name the **County** as additional insured.

1. Automobile Liability Insurance in an amount of not less than \$1,000,000.00 combined single limit for bodily injury and property damage liability. A certificate of such current insurance shall be provided to the **County** and shall reflect the provision of at least 30 days notice to the **County** before any major cancellation or major change may be made in the policy.
  
2. Workers Compensation Insurance insuring the obligation of the Contractors and all subcontractors under the New Jersey Workers Compensation and Occupational Disease Laws as respects work performed under this Contract. Insurance shall be extended to include any obligations under the United States Longshoremen's and Harbor Workers Act or any maritime Act, when applicable.
  
3. General Liability Insurance shall be provided on a Comprehensive General Liability Form with a Combined Single Limit of \$1,000,000.00 per Occurrence for Bodily Injury Liability and Property Damage Liability and shall include the interest of the **County** with Respect to work emanating from the Contract with the **County**. This instance shall include the following:
  - (a) Personal Injury Liability,
  - (b) Blanket Contractual Liability applying to assumption of liability under any written Contract,
  - (c) Products and/or Completed Operations Liability

## 6. INDEPENDENT VENDOR STATUS

The **Vendor** and its employees, vendors, subcontractors, agents and representatives are, for all purposes arising out of the Agreement, independent contractors and not employees of the Union County. It is expressly understood and agreed that the **Vendor** and its employees, vendors, subcontractors, agents and representatives shall in no event, as a result of the Agreement, be entitled to any benefit to which Union County employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits and injury leave or other leave benefits.

## 7. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the successful **Vendor** fails to fulfill in timely and proper manner its contractual obligations in this project, or if the **Vendor** violates any of the warranties or stipulations of its contract, the **County** will thereupon have the right to terminate such contract by giving ten (10) days written notice to the **Vendor** of the deficiency and right to cure same, termination and cause therefore, and specifying the effective date of such termination. In the event, the contract is terminated, all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled to reimbursement for any satisfactory work completed.

## 8. TERMINATION OF CONTRACT WITHOUT CAUSE

This agreement may be terminated by thirty (30) days prior written notice from Union County at any time. In the event the contract is terminated all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled

to reimbursement for any satisfactory work completed.

#### 9. CHANGES AND MODIFICATIONS

The parties may from time to time during the term of the Agreement make changes, extensions of time or other modifications to the Agreement. Such modifications shall only be made in writing and by mutual agreement. Any such changes shall be agreed to by the Director of the applicable department.

Change Orders shall comply with N.J.A.C. 5:34-4.1 titled Change Orders and Open End Contracts and subsequent articles of the New Jersey Administrative Code.

#### 10. SEVERABILITY

If any of the provisions of the contract are invalid or unenforceable, such invalidity will not void the entire contract, but rather the entire contract shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the parties shall be construed and enforced accordingly.

Notwithstanding the above, the **Vendor** shall not be relieved of liability to the **County** for damages sustained by the **County** by virtue of any breach of the contract.

#### 11. PAYMENT

The **County** shall pay this **Vendor** for the work specified by the Contract a sum not to exceed \$240,000.00. In the event that payment is not by lump sum requests for payment may be submitted on a monthly basis. If applicable, such requests shall represent an amount equal to the percentage of the project completed to date.

Payment to the **Vendor** is to be made within forty-five (45) days after the receipt of **Vendor's** invoice and after approval from the Director's Office. The **Vendor** shall prepare invoices and shall submit them to the Director's Office.



## 12. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes or other industrial disturbances, accidents, war, riot, insurrection or other causes beyond the control of the parties.

## 13. DISCRIMINATION

This **Vendor** acknowledges that he has a copy of the New Jersey Law Against Discrimination and of the Rules and Regulations thereon issued by the Division of Civil Rights, and shall fully comply therewith as applicable.

## 14. AFFIRMATIVE ACTION

### EXHIBIT A

#### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

#### GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or

advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

15. BUSINESS REGISTRATION CERTIFICATE

In accordance with P.L. 2004, Chapter 2004, no contract shall be entered into by the **County** unless the **Vendor** provides a copy of its business registration in accordance with the following schedule:

- (1) In response to a request for bids or a request for proposals, at the time a bid or proposal is submitted; or
- (2) For all other transactions, before the issuance of a purchase order or other contracting document. In its sole discretion, the contracting unit may waive this requirement if a business registration has been previously provided to the contracting agency.

Further, a subcontractor shall provide a copy of its business registration to the **Vendor** who shall forward it to the contracting agency. No contract with a subcontractor shall be entered into by any contractor under any contract with a contracting agency unless the subcontractor first provides proof of valid business registration. The contracting agency shall file all business registrations received by the contracting agency with other procurement documents related to the contract.

The **Vendor** shall maintain and submit to the **County** a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance. A complete and accurate list shall be submitted before final payment is made for goods provided or services rendered or for construction of a construction project under the contract.

#### 16. COMPLIANCE WITH STATUTE

It is understood and agreed that should N.J.S.A. 10:2-1 et seq; N.J.S.A 24:10-57.1 and N.J.S.A 57.2; 34:11-56.25; N.J.S.A 40A:11-18 or N.J.S.A 52:33-1, together with any amendment or supplement thereto, be applicable to this contract and should said statute not be complied with, then this contract shall be voidable at the option of the **County**.

#### 17. INDEMNIFICATION

The **Vendor** shall indemnify and hold harmless the **County** and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work which is attributable to personal injury, including bodily injury, property damage, including the work itself, and the loss of use resulting therefrom, or the loss of use of tangible property, which has not been physically injured or destroyed, and is caused in whole or in part by an act or omission of the **Vendor**, any subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

#### 18. CLAIMS

The **Vendor** agrees to furnish the **County** with evidence that all claims either for damages, material furnished or labor supplied have been satisfied and paid in full.

## 19. GENERAL NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. Notices as provided herein do not waive service of summons or process.

### **COUNTY OF UNION:**

County of Union  
Union County Administration Building  
Elizabethtown Plaza  
Elizabeth, NJ 07207

### **VENDOR:**

Union County Arts Center  
1801 Irving Street  
Rahway, NJ 07065

## 20. MISCELLANEOUS

This agreement shall be governed by and construed under the laws of the State of New Jersey. The **Vendor** irrevocably agrees that, subject to Union County's sole and absolute election, any action or proceeding in any way, manner or respect arising out of the Agreement, or arising from any dispute or controversy arising in connection with or related to the Agreement, shall be litigated only in the courts having status within the State of New Jersey, and the **Vendor** consents and submits to the jurisdiction of any local, state or federal court located within such City, County and State.

## 21. WAIVER

No term or provision of the Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall not be a waiver of the provision itself nor a waiver or consent to any subsequent breach. The headings of articles, paragraphs and sections in the Agreement are included for

convenience only and shall not be considered by either party in construing the meaning of this Agreement.

#### 22. ENTIRE AGREEMENT

It is expressly agreed that the provisions set forth in the specifications and this Agreement constitute all the understandings and agreements between the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth here or in the specifications are of no force and effect.

#### 23. ASSIGNMENT

The successful **Vendor** is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of its agreement or its rights, title, obligation or interest therein to any other person, company or corporation without prior written consent and approval of the **County**. If such a transfer without consent occurs, the **County** may refuse to carry out its contract with either the Assignor or Assignee, and reserves all rights of action for breach of the contract.

#### 24. SUBCONTRACTING

The subcontracting of this project will not be permitted without the expressed written consent of the County of Union.

#### 25. PRICE CHANGES

All prices shall be firm and not subject to increase during the period of this contract.

#### 26. COOPERATION WITH OTHER VENDORS

The **Vendor** shall fully cooperate with other **Vendors** of the County of Union, the County of Union's employees, or the employees of others as may be required by circumstances or directed by the County of Union.

27. LICENSES AND PERMITS

Vendor shall be responsible to apply for and obtain all necessary permits and licenses unless the specifications require the County to obtain such permits and licenses.

IN WITNESS WHEREOF, the parties hereto have, either individually or by their duly authorized representative, set their hands and seals the day and year first above written.

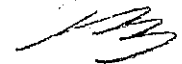
ATTEST:

  
NICOLE DIRADO, CLERK  
Board of Chosen Freeholders


COUNTY OF UNION

BY   
GEORGE W. DEVANNEY  
County Manager

APPROVED AS TO FORM


  
ROBERT E. BARRY, ESQ.  
County Counsel

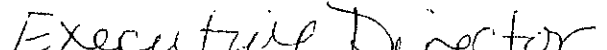
ATTEST:

  
Sondra B. Fishinger  
Corporate Secretary/Notary Public

Union County Arts Center

  
Authorized Signatory

  
Print Name

  
Print Title



12/17/2009

UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

RESOLUTION NUMBER: 2009-1222

WHEREAS, there exists the need for consulting services for the 2010 MusicFest at Oak Ridge Park, Clark, on Saturday, September 11<sup>th</sup> and Sunday, September 12<sup>th</sup>, 2010; and

WHEREAS, pursuant to N.J.S.A. 19:44A-20 et. seq., the County Treasurer has determined and certified in writing that the anticipated value of the contract will exceed \$17,500; and

WHEREAS, Across the River, LLC, P.O. Box 85, Cranford, NJ 07016 has agreed to provide the necessary services as outlined above in the sum not to exceed \$27,500.00; and

WHEREAS, pursuant to N.J.S.A. 19:44A-20.4, Across the River, LLC is prohibited from making reportable contributions through the term of the contract to any political or candidate committee prohibited in the Business Entity Disclosure Certification; and

WHEREAS, N.J.S.A. 40A:11-5(1)(a)(ii) authorizes the Board of Chosen Freeholders to award a contract without competitive public bidding if the subject matter consists of an "extraordinary, unspecifiable service"; and

WHEREAS, the above described service has been identified as an "extraordinary, unspecifiable service" and meets all the requirements as set forth by the Local Public Contracts Law and as detailed in the attached Certification; and

WHEREAS, the services required to be performed falls below the threshold amount necessary to be subject to bidding requirements under the Local Public Contracts Law N.J.S.A. 40A:11-1 et seq.;

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Union, that it hereby retains Across the River of Cranford, NJ for the purpose of providing consulting services for the 2010 MusicFest at Oak Ridge Park as stated above for a sum not to exceed \$27,500.00; and

BE IT FURTHER RESOLVED that the County Manager is hereby authorized to execute said contract upon the approval by the County Counsel's Office for the aforementioned project and the County is in possession of the completed Business Entity Disclosure Certification as required by N.J.S.A. 19:44A-20.8; and

BE IT FURTHER RESOLVED the said amount of \$27,500.00 shall be charged to Account No.: 10-01-20-703-040-310; and

BE IT FURTHER RESOLVED that the Business Disclosure Entry Certification and the Determination of Value be placed on file with this Resolution; and

BE IT FURTHER RESOLVED that notice of this Resolution be published according to law.

SUBJECT TO INCLUSION AND ADOPTION OF THE 2010 BUDGET

Handwritten signature: Frank Woodward

RECORD OF VOTE

RECORD OF VOTE										12-17-09							
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP
ESTRADA	X								VAN BLAKE	X							
HOLMES	X								WARD								X
KOWALSKI	X								SULLIVAN VICE-CHAIRMAN	X							
PROCTOR	X								MIRABELLA CHAIRMAN	X				X			
SCANLON	X						X										

APPROVED AS TO FORM  
[Signature]  
COUNTY ATTORNEY

I hereby certify this is an original resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
[Signature] CLERK

I hereby certify this is a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
\_\_\_\_\_ CLERK



AGREEMENT

THIS AGREEMENT made and entered into this 11<sup>th</sup> day of JUNE 2010, by and between the COUNTY OF UNION, a Body Politic of the State of New Jersey, having its principal place of business at Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207, hereinafter referred to as **County** and Across the River, LLC having its principal place of business at P.O. Box 85, Cranford, NJ 07016, hereinafter referred to as **Vendor**.

*WITNESSETH* that the **County** and the **Vendor**, for the consideration hereinafter mentioned, mutually covenant and agree as follows:

1. SPECIFICATIONS

The **County** shall enter into a contract with **Vendor** for the sum not to exceed \$22,500.00 for services rendered and a sum not to exceed \$5,000.00 costs based upon itemized invoices for a total not to exceed \$27,500.00 and **Vendor** shall furnish all of the services and where applicable, all material, equipment and supplies and perform all of the labor, in a good and workmanlike manner, in accordance with the contract, further provide consulting services for the 2010 MusicFest at Oak Ridge Park, Clark. The **Vendor** shall do everything required by such Contract documents, including the **Vendor's** proposal submitted December 9, 2009 which is incorporated herein by reference. The **Vendor** agrees to comply with all Federal and State Laws applicable to this Agreement.

2. DATES OF CONTRACT.

This contract shall commence on January 1, 2010 and terminate on December 31, 2010.

### 3. CONFIDENTIALITY OF DOCUMENTS

All data and documentation arising out of the performance of this contract are the property of the County of Union. Any data or documentation whose premature disclosure would be detrimental to the County shall remain confidential and shall only be released to authorized personnel, in accordance with the Open Public Meetings Act.

### 4. INSURANCE.

On or before commencing the work the **Vendor** shall file with the **County** evidence of insurance coverage. The policy shall state all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions is to be considered as arising out of one occurrence. Coverage shall be effective and continuous for the entire term of the Agreement. The **County** shall be named as additional insured on the policy.

The County of Union requires all **vendors** to be able to comply with the following insurance requirements. The **Vendor** must accept the applicable insurance requirements, as set forth below, as part of any contract awarded to it by the County of Union.

#### INSURANCE REQUIREMENTS APPLICABLE TO ALL VENDORS:

A Certificate of Insurance shall be filed with the **County** prior to commencement of the work. This Certificate shall contain a provision that insurance afforded under the policies will not be canceled without at least 30 days prior written notice being given to the **County** and name the **County** as additional insured.

1. Automobile Liability Insurance in an amount of not less than \$500,000.00 combined single limit for bodily injury and property damage liability. A

certificate of such current insurance shall be provided to the **County** and shall reflect the provision of at least 30 days notice to the **County** before any major cancellation or major change may be made in the policy.

#### 5. INDEPENDENT VENDOR STATUS

The **Vendor** and its employees, vendors, subcontractors, agents and representatives are, for all purposes arising out of the Agreement, independent contractors and not employees of the Union County. It is expressly understood and agreed that the **Vendor** and its employees, vendors, subcontractors, agents and representatives shall in no event, as a result of the Agreement, be entitled to any benefit to which Union County employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits and injury leave or other leave benefits.

#### 6. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the successful **Vendor** fails to fulfill in timely and proper manner its contractual obligations in this project, or if the **Vendor** violates any of the warranties or stipulations of its contract, the **County** will thereupon have the right to terminate such contract by giving ten (10) days written notice to the **Vendor** of the deficiency and right to cure same, termination and cause therefore, and specifying the effective date of such termination. In the event, the contract is terminated, all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled to reimbursement for any satisfactory work completed.

## 7. TERMINATION OF CONTRACT WITHOUT CAUSE

This agreement may be terminated by thirty (30) days prior written notice from Union County at any time. In the event the contract is terminated all finished and unfinished documents, data, studies and reports prepared by the **Vendor** under its contract shall, at the option of the **County**, become the **County's** property and the **Vendor** shall be entitled to reimbursement for any satisfactory work completed.

## 8. CHANGES AND MODIFICATIONS

The parties may from time to time during the term of the Agreement make changes, extensions of time or other modifications to the Agreement. Such modifications shall only be made in writing and by mutual agreement. Any such changes shall be agreed to by the Director of the applicable department.

Change Orders shall comply with N.J.A.C. 5:34-4.1 titled Change Orders and Open End Contracts and subsequent articles of the New Jersey Administrative Code.

## 9. SEVERABILITY

If any of the provisions of the contract are invalid or unenforceable, such invalidity will not void the entire contract, but rather the entire contract shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the parties shall be construed and enforced accordingly.

Notwithstanding the above, the **Vendor** shall not be relieved of liability to the **County** for damages sustained by the **County** by virtue of any breach of the contract.

#### 10. PAYMENT

The County shall pay this Vendor for the work specified by the Contract a sum not to exceed \$27,500.00. In the event that payment is not by lump sum requests for payment may be submitted on a monthly basis. If applicable, such requests shall represent an amount equal to the percentage of the project completed to date.

Payment to the Vendor is to be made within forty-five (45) days after the receipt of Vendor's invoice and after approval from the Director's Office. The Vendor shall prepare invoices and shall submit them to the Director's Office.

#### 11. PROHIBITION OF POLITICAL CONTRIBUTION

This contract was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. As such, the undersigned does hereby attest that this Vendor, its subsidiaries, assigns or principals controlling in excess of 10% of the company has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would pursuant to P.L. 2004, c.19 (N.B. contributions prior the law's effective date of January 1, 2006 are not violative of this representation) affect its eligibility to perform this contract nor will it make a reportable contribution during the term of the contract to any county committee, candidate committees or joint candidates representing any of the elected officials of the County of Union, including the Board of Chosen Freeholders, County Clerk, County Sheriff and County Surrogate, as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r).

#### 12. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes or other industrial disturbances, accidents, war, riot, insurrection or other causes beyond the control of the parties.

### 13. DISCRIMINATION

This Vendor acknowledges that he has a copy of the New Jersey Law Against Discrimination and of the Rules and Regulations thereon issued by the Division of Civil Rights, and shall fully comply therewith as applicable.

### 14. AFFIRMATIVE ACTION

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(REVISED 10/08)

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The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other

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The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

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In accordance with P.L. 2004, Chapter 2004, no contract shall be entered into by the **COUNTY** unless the **Vendor** provides a copy of its business registration in accordance with the following schedule:

(1) In response to a request for bids or a request for proposals, at the time a bid or proposal is submitted; or

(2) For all other transactions, before the issuance of a purchase order or other contracting document. In its sole discretion, the contracting unit may waive this requirement if a business registration has been previously provided to the contracting agency.

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It is understood and agreed that should N.J.S.A. 10:2-1 et seq, N.J.S.A 24:10-57.1 and N.J.S.A 57.2; 34:11-56.25; N.J.S.A 40A:11-18 or N.J.S.A 52:33-1, together with any amendment or supplement thereto, be applicable to this contract and should said statute not be complied with, then this contract shall be voidable at the option of the **County**.

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The subcontracting of this project will not be permitted without the expressed written consent of the County of Union.

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Vendor shall be responsible to apply for and obtain all necessary permits and licenses unless the specifications require the County to obtain such permits and licenses.

IN WITNESS WHEREOF, the parties hereto have, either individually or by their duly authorized representative, set their hands and seals the day and year first above written.

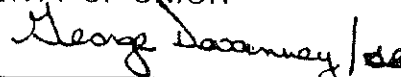
ATTEST:



NICOLE DIRADO, CLERK  
Board of Chosen Freeholders

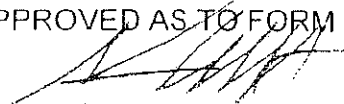
COUNTY OF UNION

BY



GEORGE W. DEVANEY  
County Manager

APPROVED AS TO FORM

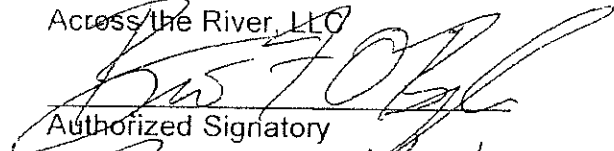


ROBERT E. BARRY, ESQ.  
County Counsel

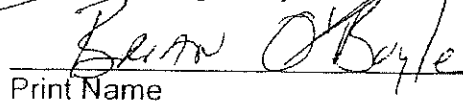
ATTEST:

\_\_\_\_\_  
Corporate Secretary/Notary Public

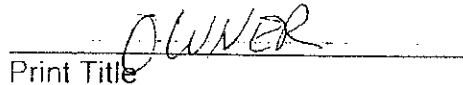
Across the River, LLC



Authorized Signatory



Print Name



Print Title

# across the river productions

To: George Devanney  
County Manager, County Of Union

From: Brian O'Boyle and Barry Jeckell  
d/b/a Across The River, LLC

Re: Union County MusicFest '10

December 9, 2009

This is a formal request of the Union County Board of Chosen Freeholders to once again engage the consulting services Across The River LLC for Union County MusicFest '10.

We are pleased to have been asked to submit a proposal in order to continue this successful partnership, which dates back to the County's 2007 event.

It is always our goal to keep fresh ideas flowing with the goal of always bettering MusicFest for the citizens of Union County. Along with continuing to raise the profile of the event in a way that makes fundraising efforts more fruitful, we feel that our work has gone a long way to attract notable entertainers.

As in the past, these are the areas our services cover:

- Talent recommendations and negotiations with mutually agreed upon acts
- Development of marketing and promotional advertising strategies to maximize sponsor, artist and general public enjoyment of festival
- Pursuit of new promotional partnerships and fundraising opportunities
- Advice regarding various crowd retention elements (lineup, staging, attractions, concessions)
- Advice regarding site plan decisions (location of staging, concessions, VIP areas, etc.)
- Attendance at Union County/MusicFest meetings as necessary

The cost of Across The River's services for MusicFest '09 will be \$22,500. It is also understood that our fee can/will increase should the scope of our services outpace this original plan. We also request a budget of \$5,000 for costs tied to MusicFest-related planning and execution.

Should Across The River secure any event sponsorships, a mutually agreed upon 20% commission will be expected; additionally, any significant growth in sponsorship revenue and relationships is expected to be rewarded commiserate with our involvement.

We are excited to continue our contributions to MusicFest. Feel free to contact us with any questions or concerns you may have regarding this proposal.

Sincerely,

Brian O'Boyle  
908-447-6113

Barry Jeckell  
908-868-2391

po box 85, cranford, nj 07016



12/17/2009

UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

RESOLUTION NUMBER: 2009-1217

WHEREAS, Cancer is one of the world's most powerful killers, knowing no borders, color, race, religion, age or socio-economic demographics taking the lives of more than 7 million people globally each year; and

WHEREAS, there exists a dire need to make the general public aware of the severe impact cancer has upon the fabric of our society; and

WHEREAS, combating cancer requires raising money to fund life saving cancer research, and

WHEREAS, the charity "Love, Hope, Strength Foundation", founded by Mike Peters of the acclaimed band The Alarm, a two time cancer survivor, has undertaken a global initiative to raise funds and awareness through music related events and promotions; and

2010

WHEREAS, the County of Union wishes to recognize the importance of Love, Hope, Strength Foundation's global efforts to find a cure for cancer; and

WHEREAS, the County of Union has joined to support Love, Hope, Strength Foundation by welcoming the global initiative to Nomahegan Park in Union County on September 11<sup>th</sup> and 12<sup>th</sup>, 2010 for Musicfest Walk-a-Thon to benefit Love, Hope, Strength Foundation and a local charity, The Valerie Fund; and

WHEREAS, The Valerie Fund is a not-for-profit organization established in 1976 dedicated to providing support for the comprehensive health care of children with cancer and blood disorders:

NOW THEREFORE BE IT RESOLVED by the Board of Chosen Freeholders of the County of Union that it recognizes the importance of the work that Love, Hope, Strength Foundation is doing and the County is committed to lending its support to help educate the residents of this County; and

BE IT FURTHER RESOLVED, that the Board of Chosen Freeholders joins with Love, Hope, Strength Foundation's global initiative and welcomes them, along with The Valerie Fund, to Union County's MusicFest on September 11<sup>th</sup> and 12<sup>th</sup>, 2010 as a featured leg of the Foundation's global initiative to combat cancer.

NO SUFFICIENCY OF FUNDS REQUIRED

*Handwritten signature*

12-17-09

RECORD OF VOTE																	
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sac	NP
ESTRADA	X								VAN BLAKE	X							
HOLMES	X								WARD								X
KOWALSKI	X								SULLIVAN VICE-CHAIRMAN	X					X		
PROCTOR	X								MIRABELLA CHAIRMAN	X				X			
SCANLON	X						X										

APPROVED AS TO FORM  
*[Signature]*  
COUNTY ATTORNEY

I hereby certify this is an original resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
*[Signature]* CLERK

I hereby certify this is a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  
\_\_\_\_\_ CLERK