



STANDARD FILM INCENTIVE TERMS AND CONDITIONS FOR BROWARD COUNTY FILM COMMISSION INCENTIVE AGREEMENTS

These Standard Film Incentive Terms and Conditions (“Incentive Terms”) govern all Broward County Film Commission Incentive Agreements entered into by Broward County (“County”) through its agency, the Broward County Film Commission (“Film Commission”).

RECITALS

A. The Broward County Board of County Commissioners (“Board”) has a core value of cultivating community culture, arts, recreation, and life-long learning. The Board’s goals include providing diverse artistic, cultural, educational, and historical amenities; and programs that contribute to a vibrant, multi-cultural, and economically viable community.

B. The Board, through the Film Commission, offers various incentive programs (each an “Incentive Program”) to provide funding to film, television, and entertainment production companies that bring their activities to Broward County and/or the South Florida region.

C. The Board has determined that use of incentive funding by approved recipients (each a “Recipient”) under the Incentive Programs towards qualifying expenditures serves a public purpose.

D. County desires to offer to Recipient, and Recipient desires to accept from County, certain monetary incentives (an “Incentive”), subject to the terms and conditions stated in the Incentive Agreement and subject to these Incentive Terms and other documents referenced and incorporated into the Incentive Agreement and these Incentive Terms.

TERMS AND CONDITIONS

1. Defined Terms. All capitalized and defined terms stated in: (a) the Incentive Agreement; (b) these Incentive Terms; (c) the Incentive Guidelines posted online at <https://www.broward.org/Film/Pages/FilmOverview-Application.aspx>; (d) Recipient’s Application; or (e) other documents incorporated or referenced in any of the foregoing (the documents identified in (a) through (e) are collectively referred to as the “Incentive Documents”) shall have the same meaning when used in any of the other Incentive Documents.

2. Incentive. As consideration for Recipient engaging in a Production and complying with all requirements as stated in the Incentive Documents, County shall provide Recipient the Incentive to assist Recipient in connection with the Production.

3. Remittance of Incentive. In order to qualify for and receive any portion of the Incentive, Recipient must submit a completed, executed compliance certificate in the form provided by the Film Commission (“Compliance Certificate”) and the required supporting documentation no later than three hundred (300) calendar days after the completion of the Production (“Production Completion Date”). County will pay Recipient the Incentive within three

hundred (300) calendar day after the Production Completion Date, provided that Recipient provides County with the completed Compliance Certificate and satisfies all other terms and conditions stated in the Incentive Documents.

4. Authorized Use of Incentive. Recipient shall only use the Incentive for reimbursement of Qualifying Expenses (as defined in the Incentive Guidelines) and as otherwise described in the Incentive Documents.

5. Tax Withholding. If any federal, state, or local taxes, tariffs, or governmental charges may be due or imposed in connection with the Incentive, if and to the extent deemed necessary by the Film Commissioner or required under applicable law, County may withhold any such amount from the Incentive otherwise due Recipient and remit only the remainder to Recipient. Upon request by the Film Commissioner, Recipient must provide any tax-related forms or documentation as a condition precedent to providing any portion of the Incentive to Recipient. County makes no representation regarding the taxability of any other tax implications regarding the Incentive, and Recipient is solely responsible for obtaining appropriate advice and guidance on these issues. All tax-related forms or documentations must in the name of the payee of the Incentive. Any deviation may result in a delay in payment of the Incentive or inability of County to provide the Incentive.

6. Accuracy of Representations. Recipient represents and warrants that all statements and representations made in connection with Recipient's Application, proposal, or other supporting documents submitted to County in connection with this Incentive were true and correct when made and are true and correct as of the date Recipient executes the Incentive Agreement, unless otherwise expressly disclosed in writing by Recipient.

7. Public Entity Crime Act. Recipient represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into the Incentive Agreement will not violate that Act. Recipient further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Recipient has been placed on the convicted vendor list.

8. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Recipient represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Recipient represents and certifies that it is not, and for the duration of the Incentive Agreement will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Recipient represents that it is, and for the duration of the Incentive Agreement will remain, in compliance with Section 286.101, Florida Statutes.

9. Termination. The Incentive Agreement may be terminated for convenience by written notice by the Film Commissioner, which termination shall be effective on the date stated in such notice provided the termination date is not less than thirty (30) days after the date of such written notice. The Incentive Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. The Incentive Agreement may also be terminated by County for cause for any breach of the Incentive Agreement by Recipient that is not cured within ten (10) business days after written notice of such breach by the Film Commissioner. Upon termination of the Incentive Agreement by County for any reason, Recipient shall have no right to receive or otherwise direct the receipt of any portion of the Incentive. Recipient hereby waives and releases any and all claims it may have for breach of contract, or otherwise, arising out of County's exercise of its right to terminate the Incentive Agreement pursuant to this section.

10. Audit. County may, at any time, audit the books, records, and accounts of Recipient related to the Production to ensure Recipient has complied with all requirements associated with receipt of the Incentive. Recipient shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Production. Recipient shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to the Production for a minimum period of three (3) years after expiration or termination of the Incentive Agreement or until resolution of any audit findings, whichever is longer.

11. Compliance with Laws. Recipient and the Production, as applicable, must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12. Force Majeure. County's obligations under the Incentive Agreement shall be excused by acts of God, such as fires, storms, lightning, floods, confiscations or restraints of government (civil or military), public health emergency, war, terrorism, strikes or labor disputes, civil disturbances, or any other cause that is not within the reasonable control of County and not otherwise due to any negligence or willful misconduct by County.

13. Indemnification. Recipient shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to the Incentive Agreement, and caused or alleged to be caused, in whole or in part, by any breach of the Incentive Agreement by Recipient, or any intentional, reckless, or negligent act or omission of Recipient, its officers, employees, or agents, arising from, relating to,

or in connection with the Incentive Agreement or the Production (collectively, a “Claim”). If any Claim is brought against an Indemnified Party, Recipient shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County’s option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of the Incentive Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Recipient under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

14. Verification of Employment Eligibility. Recipient represents that Recipient and each subcontractor working with Recipient on the Production have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into the Incentive Agreement will not violate that statute. If Recipient violates this section, County may immediately terminate the Incentive Agreement for cause and Recipient shall be liable for all costs incurred by County due to the termination.

15. Prohibited Telecommunications Equipment. Recipient represents and certifies that Recipient and all subcontractors working with Recipient on the Production do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Recipient represents and certifies that Recipient and all subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term of the Incentive Agreement.

16. Insurance. If the Incentive Agreement requires Recipient to maintain certain insurance as a condition of its receipt of the Incentive, coverage must reflect the following:

Recipient must, at its sole expense, maintain the minimum insurance coverages provided by County in accordance with the requirements stated in the Incentive Agreement and the terms and conditions provided for in this section. Recipient must maintain insurance coverage against claims relating to any act or omission by Recipient, its agents, representatives, employees, or subcontractors in connection with the Production and this Incentive Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required.

Recipient must ensure that “Broward County” is listed and endorsed as an additional insured on all required policies.

No later than fifteen (15) days after execution of the Incentive Agreement, Recipient must provide to County a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the required insurance coverage. If and to the extent requested by County,

Recipient must provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

Recipient must ensure that all required insurance coverages do not cease and remain in full force and effect until the Production is completed and County determines all performance required of Recipient has been satisfied. Recipient or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

If Recipient maintains broader coverage or higher limits than the minimum insurance requirements required by County, County is entitled to any such broader coverage and higher limits maintained by Recipient. All required insurance coverages must provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which are in excess of and will not contribute to the insurance required and provided by Recipient.

Recipient shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed and submit to County for approval at least fifteen (15) days prior to the effective date of the Incentive Agreement or commencement of the Production. Recipient shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Recipient to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Recipient agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Contractor agrees to obtain same in endorsements to the required policies.

Unless prohibited by the applicable policy, Recipient waives any right to subrogation that any of Recipient's insurers may acquire against County, and agrees to obtain same in an endorsement of Recipient's insurance policies.

All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

If any of the policies required provide claims-made coverage: (1) any retroactive date must be prior to the effective date or at least fifteen (15) days prior to commencement of the Production; (2) the required coverage must be maintained after termination or expiration of the Incentive Agreement for at least the duration provided by County; and (3) if coverage is cancelled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date or at least fifteen (15) days prior to commencement of the Production, Recipient must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Incentive Agreement for at least the duration provided by County.

Recipient shall require that any subcontractors performing services in connection with the Production maintain insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Recipient. Recipient must ensure that all such subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies. Recipient shall not permit any subcontractor to provide services unless and until all applicable requirements of this article are satisfied.

17. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into the Incentive Agreement, nothing in the Incentive Agreement is intended to serve as a waiver of sovereign immunity by County nor shall anything included therein be construed as consent by County to be sued by third parties.

18. Third-Party Beneficiaries. Neither Recipient nor County intends to directly or substantially benefit a third party by the Incentive Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to the Incentive Agreement and that no third party shall be entitled to assert a right or claim against either of them based thereon.

19. Voluntary Execution; Role of Legal Counsel. The Parties acknowledge that the Incentive Agreement is freely and voluntarily executed after Recipient had an opportunity to review the Incentive Agreement and all Incentive Documents, and that Recipient had adequate opportunity to consult with and receive advice of counsel before entering into the Incentive Agreement.

20. Notices. In order for a notice to a party to be effective under the Incentive Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Notice to Recipient shall be made to the address shown in the Incentive Agreement. Recipient and County may change their address for notice by providing written notice of such change in accordance with the provisions of this section.

Address for Notice to County:

Broward County Film Commission
Attn: Sandy Lighterman
115 South Andrews Avenue, Room A680
Fort Lauderdale, Florida 33301
Email address: SLighterman@Broward.org

21. Public Records. All documents submitted by Recipient to County as part of its Application for the Incentive and otherwise constitute public records under Florida's public records laws, including without limitation Chapter 119, Florida Statutes. Notwithstanding anything else in the Incentive Agreement, any action taken by County in compliance with, or in a

good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of the Incentive Agreement.

22. Construction and Interpretation. The headings contained in the Incentive Agreement and these Incentive Terms are for reference purposes only and shall not in any way affect the meaning or interpretation of the Incentive Agreement. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to the Incentive Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Any reference to “days” means calendar days, unless otherwise expressly stated. Any and all recital clauses in the Incentive Agreement are true and correct and are incorporated in the Incentive Agreement by reference. Any exhibits attached to the Incentive Agreement or the Incentive Terms are incorporated into and made a part of the Incentive Agreement.

23. Assignment. Recipient may not assign all or part of its rights or obligations under the Incentive Agreement without the prior written consent of County, which consent shall be in the Film Commissioner’s sole and absolute discretion. Any assignment, transfer, or encumbrance in violation of this section will be null and ineffective. If Recipient violates this provision, any portion of the Incentive already provided to Recipient shall be immediately refunded to County upon demand, Recipient shall have no entitlement to any portion of the Incentive not yet paid, and, in addition to any other rights and remedies at law or in equity that County may have, County may immediately terminate the Incentive Agreement.

24. Severability. If any part of the Incentive Agreement or Incentive Documents is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from the Incentive Agreement and/or Incentive Documents and the balance shall remain in full force and effect.

25. Law, Jurisdiction, Venue, Waiver of Jury Trial. The Incentive Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with the Incentive Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

26. Fiscal Year. The continuation of any Incentive Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

27. Complete Agreement and Amendments. The Incentive Documents represent the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is

no commitment, agreement, or understanding concerning the subject matter of the Incentive Agreement that is not contained in the Incentive Documents. No modification, amendment, or alteration in the terms or conditions contained in the Incentive Agreement or any of the Incentive Documents shall be effective unless contained in a written document prepared with the same or similar formality as the Incentive Agreement and executed by duly authorized representatives of County and Recipient. Unless expressly prohibited in the Incentive Agreement, the Film Commissioner shall have authority to sign amendments to the Incentive Agreement that do not increase the monetary portion of the Incentive.

28. Representation of Authority. Recipient represents and warrants that the Incentive Agreement constitutes the legal, valid, binding, and enforceable obligation of Recipient, and that neither the execution nor performance of the Incentive Agreement constitutes a breach of any agreement that Recipient has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Recipient. Recipient further represents and warrants that execution of the Incentive Agreement is within Recipient's legal powers, and each individual executing the Incentive Agreement on behalf of Recipient is duly authorized by all necessary and appropriate action to do so on behalf of Recipient and does so with full legal authority.

29. Counterparts and Multiple Originals. The Incentive Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

30. Nondiscrimination. Recipient may not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of the Incentive Agreement. Recipient will include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds must comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

31. Regulatory Capacity. Notwithstanding that County is a political subdivision with certain regulatory authority, County's performance under the Incentive Agreement is as a party to the Incentive Agreement. If County exercises its regulatory authority, the exercise of the authority and the enforcement of any rules, regulation, laws, and ordinances will have occurred in accordance with County's regulatory authority as a governmental body separate and apart from the Incentive Agreement and will not be attributable to County as a party to the Incentive Agreement.