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**CONTRACT  
BETWEEN  
THE COUNTY OF GLOUCESTER  
AND  
SWANK MOTION PICTURES, INC.**

**THIS CONTRACT** is made effective the 8<sup>th</sup> day of April, 2022, by and between **THE COUNTY OF GLOUCESTER**, a body politic and corporate, with principal offices in Woodbury, New Jersey, (hereinafter referred to as "County"), and **SWANK MOTION PICTURES, INC.**, with offices at 10795 Watson Road, St. Louis, MO 63127-1012, (hereinafter referred to as "Vendor").

**RECITALS**

**WHEREAS**, there exists a need for the County of Gloucester, New Jersey, to contract for the provision of family-oriented movies to be shown throughout various County municipal venues, Parks and other County owned sites during the term of this Contract; and

**WHEREAS**, Vendor represents that it is suitably licensed and qualified to perform said services and desires to so perform pursuant to the terms and provisions of this Contract.

**NOW THEREFORE**, in consideration of the mutual promises, agreements and other considerations made by and between the parties, County and Vendor do hereby agree as follows:

**TERMS OF AGREEMENT**

**1. TERM.** This Contract shall be effective for the period from April 8, 2022 to September 31, 2022.

**2. COMPENSATION.** Vendor shall be compensated in an amount not to exceed \$11,370.00 pursuant to the fee schedule set forth in Vendor's Proposal dated February 22, 2022, attached hereto as Exhibit A, and as more particularly set forth in County Requisition Order No. R2-01992, attached hereto as Exhibit B and made part of this Contract.

Vendor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Vendor shall be considered a release in full of all claims against County arising out of, or by reason of, the work done and materials furnished under this Contract.

**3. DUTIES OF VENDOR.** The specific duties of Vendor shall be as set forth in Vendor's Proposal, (Exhibit A) and County Purchase Order (Exhibit B).

Vendor agrees that it has or will comply with, and where applicable shall continue throughout the period of this Contract to comply with, all of the requirements of the Contract documents.

**4. FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, Vendor agrees as follows:

Vendor 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, sex, veteran status or military service. Vendor 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, sex, veteran status or military service. 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. Vendor 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.

Vendor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, 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, sex, veteran status or military service.

Vendor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Vendor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Vendor 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.

Vendor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

**5. LICENSING AND PERMITTING.** If Vendor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract,

then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Vendor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Vendor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor or its agents.

**6. TERMINATION.** This Contract may be terminated as follows:

A. If Vendor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have Vendor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

B. If, through any cause, Vendor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, County shall thereupon have the right to terminate this Contract by giving written notice to Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by Vendor under this Contract, shall be forthwith delivered to County.

C. County may terminate this Contract for public convenience at any time by a notice in writing from County to Vendor. If the Contract is terminated by County as provided herein, Vendor will be paid for the services rendered to the time of termination.

D. Notwithstanding the above, Vendor or subcontractor, where applicable, shall not be relieved of liability to County for damages sustained by County by virtue of any breach of the Contract by Vendor, and County may withhold any payments to Vendor for the purpose of set-off until such time as the exact amount of damages due County from Vendor is determined.

E. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, not to prevent County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

**7. PROPERTY OF COUNTY.** All materials developed, prepared, completed, or acquired by Vendor during the performance of the services specified by this Contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of County, except as may otherwise be stipulated in a written statement by County.

**8. NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to County and no obligation on County's part to the assignee shall arise, unless County shall elect to accept and to consent to such assignment or subcontract.

**9. INDEMNIFICATION.** Vendor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of Vendor's services or to any other persons, or from any damage to any property sustained in connection with this Contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from Vendor's failure to provide for the safety and protection of its employees, or from Vendor's performance or failure to perform pursuant to the terms and provisions of this Contract. Vendor's liability under this Agreement shall continue after the termination of this Agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

**10. INSURANCE.** Vendor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Vendor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Vendor is a member of a profession that is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to County. Vendor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Vendor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide County with copies of certificates of insurance as the certificates may be renewed during that period of time.

**11. SET-OFF.** Should Vendor either refuse or neglect to perform the services that Vendor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Vendor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Vendor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

12. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by County to Vendor shall be suspended without liability for the period during which County is so prevented.

13. **METHODS OF WORK.** Vendor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

14. **NON-WAIVER.** The failure by County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by Vendor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

15. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

16. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the Contract sum shall be adjusted accordingly. This Contract and the Contract terms may be changed only by change order. The cost or credit to County from change in this Contract shall be determined by mutual agreement before executing the change involved.

17. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

18. **APPLICABLE LAW.** The terms and provisions of this Contract shall be construed pursuant to the laws of the State of New Jersey and, where applicable, the laws of the United States of America.

19. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Vendor is an independent contractor and is not an agent of County.

20. **CONFLICT OF INTEREST.** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. Vendor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

21. **CONFIDENTIALITY.** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of County.

22. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

23. **CONTRACT PARTS.** This Contract consists of this Contract document and Vendor's Proposal identified as Exhibit A, and County Requisition Order No. R2-01992, identified as Exhibit B. Should there occur a conflict between this form of Contract and Exhibits A and B, then this Contract shall prevail.

24. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

THIS CONTRACT is dated this 8<sup>th</sup> day of April, 2022.

IN WITNESS WHEREOF, the Gloucester County Purchasing Agent, pursuant to authority granted to him and set forth in County Administrative Code has executed this Agreement and Vendor's authorized representative has executed this Agreement on the date indicated herein.

ATTEST:

  
\_\_\_\_\_  
KIMBERLY LARTER,  
Qualified Purchasing Agent

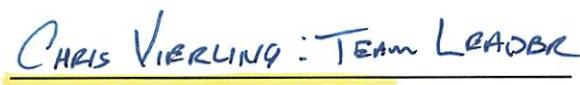
COUNTY OF GLOUCESTER

  
\_\_\_\_\_  
TRACEY N. GIORDANO, CFO

ATTEST:

  
\_\_\_\_\_  
C. Vierling

SWANK MOTION PICTURES, INC.

  
\_\_\_\_\_  
CHRIS VIERLING : TEAM LEADER  
(Please Print Name and Title)