



PRODUCTION AGREEMENT / SCOPE OF WORK AGREEMENT

This Agreement ("AGREEMENT") is entered into as of **May 1st, 2020** by and between **Inception Films** ("PRODUCER"), and **Davis Joint Unified School District**, ("CLIENT"). Client and Producer may also thereafter be referred to as "Party" or the "Parties", as applicable.

WHEREAS, Producer confirms it has the know-how and professional expertise to film and edit the video ("Video"); and

WHEREAS, Client agrees to pay for the services to be performed by Producer; and

WHEREAS, the parties desire to enter into a business relationship to be governed by the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- **SUBJECT OF THE AGREEMENT.** Client has provided Producer with instructions for a video ("Video") to be filmed and edited by the Producer. The Parties have agreed that Producer will film and edit the Video. The "Video" includes **2** deliverables in total, which are listed in Exhibit A. This is a material condition for the Client to enter into this Agreement.
- **SCHEDULE AND SERVICES TO BE PROVIDED BY PRODUCER.** Producer will film the Videos on **May 13th - 15th 2020**; and deliver its first cut of the Videos on **May 25th 2020**. The Videos are between **60** and **90** minutes in length. Client is entitled to two revisions in accordance with the Post-Production Schedule determined by Producer. Any delay in delivery of revisionary notes will delay Final Delivery. Producer will deliver the second cut of the Videos by **May 29th 2020**. If Client changes the final delivery date for any reason, additional costs will be incurred that are to be determined by Producer. The Producer will deliver final files by **June 8th 2020**. Final files supplied by Producer are strictly the final exports of the video and high-resolution frames (Amount TBD) pulled from the video as requested by Client. The Producer grants Client Global usage rights with no limitations for perpetuity as it related to the final files supplied. Final Files do not include project raw footage, project files, project assets, software, hardware, etc. as those files are proprietary property that belong to Producer.
- **FEES AND PAYMENT TERMS.** The total estimated cost of Video is **\$4000**. The estimate is based on the instructions provided by Client to Producer. The estimate includes, but is not limited to, expenses for the following items: all production and post-production costs, equipment, contractors, transportation, location, as well as usage as defined in Article 4 below.

- In accepting the estimate, and in consideration of Producer's services in connection with the Video, Client is hereby agreeing to pay Producer **\$0** upon receipt of the respective invoice(s) and according to the terms therein. The remaining payment of **\$4000** is payable immediately upon delivery of Final Files.
- Notwithstanding the foregoing, Producer will be paid for any additional production expenses incurred, including but not limited to costs relating to insurance, equipment, contractors, transportation, location etc. if Client delays the production. If client chooses to defer paying any amount beyond the date on which it is due, Client may be charged at Producer's discretion, as additional consideration, an amount equal to the current prime rate +2% (as charged by Producer's bank from time to time) on unpaid amounts until paid, compounded monthly. Ownership of the Final Files does not transfer until full payment is made to Producer.
- Producer will be paid for any additional production expenses incurred as it relates to Overtime including but not limited to costs relating to location, contractors, equipment, transportation, insurance etc. Overtime is based on a 10-hour day including but not limited to work performed on and off set and during the post-production process in addition to work performed on weekends and holidays. Overtime costs will be presented by Producer to Client before those specific costs are incurred for Client approval. In the event that Producer cannot obtain permission from Client in an extenuating and time sensitive situation, Client grants Producer the authority to use their best judgement as it relates to Overtime costs.
- If Client cancels the production of the Video according to Article 6 below, Client shall pay to Producer any costs reasonably incurred by Producer prior to the cancellation of the Video within five (5) days after invoice, provided Producer provides Client proof of such costs (e.g. invoices, etc.). In addition, a non-refundable cancellation fee of 25% of the total agreed upon project budget reflected in this agreement is to be paid to the Producer immediately upon official cancellation of the project. If notice of cancellation/postponement is given more than halfway through the production schedule of the job, that is between the award or start date and the final delivery date, whichever comes first, the Client will be liable to the Producer for the full cost of the job as a bid. If the job is canceled or postponed within the guideline time frame, it is unlikely that this time can be re-booked. It should be understood that this time represents the Production Company's only source of income.
- If at any time, Client desires to make any changes or variations from the script(s) or storyboard(s) in the Specified Media(s) or from any material or work in progress, and such changes result in additional costs to Producer, Producer agrees to notify the Client of the amount before any such additional costs are incurred and Producer shall proceed only after receiving approval (written or oral) from Authorized Representative, approval by Client shall be binding and incorporated into the terms of this Agreement. Reimbursement for such additional costs shall be payable in accordance with the terms of this Agreement for final payment.
- Any additional costs incurred by the Producer due to adverse weather conditions or other similarly unforeseen and uncontrollable factors, shall be paid by Client, provided that (i) both Parties agreed to postpone the edit and (ii) the Producer provided proof of any such additional costs incurred (e.g. invoices, etc.).

Contingency and Weather Days:

A contingency day is any day where a scheduled media/film shooting has been prevented from occurring due to circumstances beyond the control of the production company. These circumstances may include but should not be limited to: Weather conditions (rain, fog, sleet, hail, or any adverse condition that is not consistent with the prescribed shooting conditions desired by Client). Injury, illness, or absence of client-supplied elements (e.g. key talent, color correct products etc). "Force majeure" (meaning but not limited to, earthquake, riot, fire, flood, volcanic eruption, acts of war, strikes, labor unrests, civil authority, terrorism, and acts of God). "Client Insured Re-Shoot" (any additional days for a job insured by the Client, who is therefore authorizing the expenditure). The Client should be provided with a contingency day cost which should be approved prior to proceeding with that shoot day. The Production Company recognizes its obligation to minimize contingency day liabilities and will apply accepted industry cancellation practices. The Production Company will quote the maximum exposure figure (a "not to exceed" figure) as a contingency day cost. This will be a cost per day figure. However, this figure does not include the cost of premiums for crew or suppliers (i.e., should the contingency day fall on weekends, holidays, or premium days based on consecutive employment).

- **INTELLECTUAL PROPERTY RIGHTS.** Client shall own the final Video. Client shall ensure all proper likeness rights are obtained from anyone in the Video. Producer retains the right to use the Video for promotional purposes. Except as otherwise provided herein, Client owns all rights, title and interest in and to the media(s) which are the subject of this Agreement, including all copyrights therein. Client grants Producer an exclusive, worldwide, sublicenseable, transferable, royalty free license to all media clips produced during the course of the contracted work as it relates to Producer's promotional use.
- **INDEPENDENT CONTRACTOR.** It is understood that Producer's status under this Agreement is that of an independent contractor and that all persons engaged by Producer in performing its obligations shall not be deemed employees of Client.
- **LIABILITY.** Producer shall ensure that Video and all footage produced by Producer complies with the laws of **California** and does not infringe any intellectual property rights (including copyright) or any other rights of third parties.
- Producer understands that some information for said media(s) may be of a confidential and/or sensitive nature. Producer agrees, at Client's written request, to require, within reason, those engaged for the production to sign appropriate agreements not to discuss or disclose information about the product or the Specified Media(s) except as such disclosure may be necessary for Producer to produce media(s) in the usual and customary manner under this Agreement.
- **TERMINATION OF AGREEMENT.** This Agreement shall be effective from the date first listed above for a period of one year, unless sooner terminated by either party in accordance with the terms and conditions of this Agreement ("Term"). This Agreement is terminable by either party at any time, with or without cause, effective upon notice to the other party. If Producer exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that Producer shall be obligated to compensate Client for work performed up to the time of termination. If Client exercises its right to terminate the Agreement, a non-refundable cancellation fee of 25% of the total agreed upon project budget reflected in this agreement is to be paid to the Producer immediately upon official cancellation of the project. This cancellation fee will be in addition to any production expenses incurred up until the agreed upon cancellation including but not

limited to last minute crew and associated labor and vendor cancellation fees etc. After the cancellation fee and incurred production expenses are paid to Producer in full, any obligation Client may otherwise have under this Agreement shall cease immediately.

- **CONTINUING OBLIGATIONS OF CLIENT.** All provisions of this Agreement relating to the protection of Producer's Confidential Information, Non-Solicitation and Non-Competition, Limitation of Liability, Indemnification, and Dispute resolution, shall survive expiration or termination of this Agreement for any reason.
- **INSURANCE.** Producer agrees that at all times during the filming of the Video it will maintain at least \$1 Million dollars in general liability insurance.

ADDITIONAL PROVISIONS.

- **ARBITRATION.** Any dispute arising out of or relating to this Agreement, or any breach thereof, shall be resolved by binding arbitration in **Davis, California** in accordance with the Arbitration Rules of the American Arbitration Association then in effect, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. All costs and expenses, including attorney's fees, relating to the resolution of any such dispute shall be borne by the party incurring such costs and expenses. Notwithstanding their promise to arbitrate all disputes, the Parties acknowledge that either of them may seek emergency or temporary injunctive relief, but absolutely no other relief, in any court of competent jurisdiction. All other disputes, claims and remedies shall be settled by arbitration.
- **INDEMNITY.** CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD PRODUCER, AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, HARMLESS FROM ANY AND ALL LOSSES, CLAIMS, LIABILITIES, COSTS, JUDGMENTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES), WHETHER IN TORT, CONTRACT, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OF CLIENT'S WORK, WHETHER CAUSED BY PRODUCER'S ALLEGED OR ACTUAL NEGLIGENCE OR OTHERWISE.
- **LIMITATION OF LIABILITY.** In no event shall Producer be liable to client for any indirect, incidental, consequential or punitive damages, or for loss of profits, revenue or data, whether in an action in contract, tort, strict liability, or otherwise, even if Client advises Producer of the possibility of those damages. Producer's liability on any claim for any loss or damage arising out of or in connection with or resulting from this shall in no case exceed the value of the services provided by Client under this Agreement, as defined above. Producer shall not be liable for any penalties of any kind. Any action against Producer for any alleged breach under this Agreement must be filed within one (1) year after such action accrues and all rights of Client to initiate any action arising from this Agreement will terminate one (1) year after accrual.
- **CLIENT'S REMEDY.** Client's remedy, if any, for any breach of this Agreement shall be solely in damages and Client shall look solely to Producer for recovery of such damages. Client waives and relinquishes any right Client may otherwise have to obtain injunctive or equitable relief. Client shall have no remedy for any loss, which may incur by reason of work performed by Client.

- **INTERPRETATION.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law.
- **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto. Client shall have no right to (a) assign this Agreement, by operation of law or otherwise; or (b) subcontract or otherwise delegate the performance of the Services without Producer's prior written consent which may be withheld as Producer determines in its sole discretion. Any such purported assignment shall be void. **NO WAIVER.** Failure of any party to this Agreement to exercise any rights shall not constitute a waiver of those rights. **ENFORCEABILITY.** If one or more of the provisions of this Agreement shall be held unenforceable, it shall not affect the enforceability of the other provisions. **SERVIBILITY.** If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably affect the intent of the parties. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties. **AGENCY.** Client is not Producer's agent or representative and has no authority to bind or commit Producer to any agreements or other obligations.
- **AMENDMENT AND WAIVERS.** Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.
- **TIME.** Contractor agrees that time is of the essence in this Agreement
- **PROFESSIONAL RESPONSIBILITY.** Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of your services in accordance with your independent and professional judgment. You shall perform your services substantially in accordance with generally accepted practices and principles of your trade.
- **NOTICIES.** Any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by personal service, by air courier with receipt of delivery, or mailed, certified mail, return receipt requested, postage prepaid, to the address set forth below. Such communications shall be effective when they are received by the addressee; but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being deposited in the mail. Any party may change its address for such communications by giving notice to the other party in conformity with this section.

CAUTION: THIS AGREEMENT AFFECTS YOUR RIGHTS AND RESTRICTS YOUR RIGHT TO DISCLOSE OR USE PRODUCER'S CONFIDENTIAL INFORMATION DURING OR SUBSEQUENT TO YOUR SERVICES. CLIENT HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS.

Agreed to and Accepted by: CLIENT

Date: 5-8-2020

By: 

Print Name: Bruce Colby, DJUSD Chief Business Officer

Telephone: 530-757-5300 x122

Fax #: 530 757 5319

E-mail: colgae@djUSD.net

Agreed to and Accepted by: PRODUCER

Date: _____

By: _____
(Signature)

Print Name: _____

Production Company: _____

Exhibit A

- Deliverables:
 - 2 Videos
 - 1 graduation video for Martin Luther King High School
 - 1 graduation video for Davis School for Independent Study

- Notes for the project:
 - Subjects will try to memorize speeches (will make the film time quick and will be less stressful for each speaker)
 - ANY videos that need to be recorded on a cell phone (board members, etc) must be filmed **horizontally**.
 - Inception Films will use royalty-free instrumentals so that it is easy for the client to post the product on any social media platform without triggering copyright infringements.
 - Ideal request from client: first photo of graduate displayed at beginning of speech/introduction, cut to speaker reading speech, Second Photo of graduate displayed at end of speech (hopefully a photo of graduate holding up a "senior quote" sign or something to end on), Possibly some

splicing of other external videos if people want to record themselves presenting scholarship awards for particular students

- Video Yearbook: Inception Films can add a video yearbook. Please provide pictures (and if necessary, an order for the pictures)
- Other footage to add in/gather and equipment:
 - Inception Films will bring a drone and get footage of the school and area
 - Inception Films will take videos of extra footage to include (classrooms, student work, etc)
 - Inception Films will bring:
 - Director's chairs (2)
 - 6K Cinema Cameras (2 of them)
 - Lighting
 - Audio equipment
 - Drone
- Estimated Timeline:
 - May 13th: Inception Films will film at DSIS from 10 am - 2 pm (or until all parts are filmed)
 - May 14th - 15th: Inception Films will film at MLK from 10 am - 2pm (or until half are filmed)
 - May 20th: All pictures need to be sent to inceptionfilmscompany@gmail.com
 - May 25th: Inception Films will send first drafts of videos via dropbox
 - May 27th: Client will send first edit requests
 - May 29th: Inception Films will send second drafts of videos via dropbox
 - Jun 1st: Client will send second edit requests (if needed)
 - Jun 8th: Inception Films will send the final product in delivery format requested by client