

**GUIDELINES AND PROCEDURES  
FOR THE ADMINISTRATION OF THE NORTH CAROLINA  
MAJOR EVENTS, GAMES, AND ATTRACTIONS FUND**

**1.0 GENERAL ADMINISTRATION**

**1.1 Authority**

The guidelines, criteria, and procedures, including Exhibit A attached hereto, ( the “Guidelines”) set forth herein are established pursuant to [N.C. Gen. Stat. § 143B-437.114](#).

**1.2 Scope and Purpose of Guidelines**

These Guidelines apply to funds appropriated or otherwise deposited, granted, or allocated to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the attraction of Major Events to the State that spur economic activity by attracting out-of-state visitors to the State and thereby promoting the travel and tourism industries within the State., as set forth in [N.C. Gen. Stat. § 143B-437.110](#). There is established the North Carolina Major Events, Games and Attractions Fund (the “Program”) to be administered by the North Carolina Department of Commerce (the “Department”) in accordance with N.C. Gen. Stat. Ch. 143B Art. 10 Part 2l (the “Authorizing Legislation).

These Guidelines are designed to provide guidance to State officials responsible for administering the Program, establish the criteria under which projects will be selected to receive Program funds, and establish procedures for the disbursement of funds.

Any term used in these Guidelines shall have the same definition as set forth in [N.C. Gen. Stat. § 143B-437.111](#).

In the event of any conflict between these Guidelines and the Authorizing Legislation, the language of [Authorizing Legislation](#) shall supersede the language found in these Guidelines. Additionally, where these guidelines are more restrictive than the express terms of [N.C. Gen. Stat. § 143B-437.11.0-.114](#), the Secretary of Commerce or her designee (the “Secretary”) has the authority to waive any of the requirements of these Guidelines.

The general procedures outlined in these Guidelines are intended to be applied consistently to all projects. Significant deviations in procedure should occur only when, in the exercise of discretion and

considering the particular and unusual circumstances, the Secretary concludes that the best interests of the State and the purposes of the Program will be advanced. Such deviations should be noted when they occur.

**1.3 Amendments**

The Department, in conjunction with the Office of the Governor, may amend these Guidelines from time to time as the size and nature of the Program or the economic circumstances and condition of the State may warrant.

At least 20 days before the effective date of any nontechnical amendments to the Guidelines, the Department will publish the proposed Guidelines on the Department's website and provide notice to persons who have requested notice of proposed Guidelines.

The Department will accept oral and written comments on the proposed Guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

- 1) An amendment that corrects a spelling or grammatical error;
- 2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment; or
- 3) An amendment to conform with a change to the Authorizing Legislation or otherwise necessitated by an act of the N.C. General Assembly.

**1.4 Administration**

The Secretary administers the Program. Administrative support for the Program will be provided by the Commerce Finance Center (“CFC”), or such other division as the Secretary may designate, or any successor division performing a comparable function.

**1.5 Definitions**

- 1) “Local Entity” - As defined by § 143B-437.111(2), a city, county, or Local Organizing Committee.
- 2) “Local Organizing Committee” - As defined by § 143B-437.111(3), a nonprofit corporation or its successor in interest that either (i) has been authorized by a city, county, or more than one city or county acting collectively to pursue an Application and bid on the local government(s)’ behalf to a Site Selection Organization for selection as the site of a Major Event, or (ii) with the authorization of a city, county, or more than one city or county acting collectively, has executed an agreement with a Site Selection Organization regarding a bid to host a Major Event.
- 3) “Major Event” As defined by § 143B-437.111(4), an entertainment, musical, political, sporting, or theatrical event that satisfies the following conditions: (i) the event must not be held more often than annually, (ii) the location of the event must be determined by a Site Selection Organization through a competitive process, (iii) the Site Selection Organization must have considered multiple sites located outside of the State and select a site within this State as the sole location for the event, and (iv) the event must be either of the following:
  1. held at (i) a Sports Facility or (ii) an indoor venue that is not a Sports Facility but that hosts sporting events and is designed to host 22,000 or more live spectators, or
  2. sponsored by the National Association for Stock Car Racing, the Ladies Professional Golf Association, the Professional Golfers' Association of America, the PGA Tour, or the United States Golf Association.
- 4) “Site Selection Organization” - As defined by § 143B-437.111(5), the organization responsible for determining the site of a Major Event.
- 5) “Sports Facility” - As defined in G.S. 18C-901(17), is any of the following: (i) a motorsports racetrack in this State that either annually hosts more than one National Association for Stock Car Auto Racing national touring race or has hosted at least one National Association for Stock Car Auto Racing All-Star Race occurring after January 1, 2022, (ii) a

facility that hosts a professional golf tournament, or (iii) a facility that is the home location of a professional sports team.

- 6) “Qualifying Expenses” – funds spent in this State by the Applicants in connection with a Major Event as defined by Section A.4 of Exhibit A to these Guidelines.

## **2.0 PROGRAM PURPOSE**

### **2.1 Purpose of Program**

The purposes of the Program as set out in [N.C. Gen. Stat. § 143B-437.110](#), includes the encouragement of major events, games, and attractions to be held within the State for the purpose of spurring economic activity and creating new jobs within the State.

### **2.2 Recipients of Money Allocated Under the Program**

Moneys from the Program will be allocated to Local Entities in conjunction with Site Selection Organizations that meet eligibility criteria set forth in [N.C. Gen. Stat. § 143B-437.111](#) and these Guidelines, for use in connection with efforts to secure commitments for the location of major events, attractions, and games in the State.

### **2.3 Entities in Default Barred from Receiving Funds**

The Department will not make an award of grant funds (“Grant Award”) to any individual, organization, or governmental unit that is currently in default on any loan or grant previously made by the Department.

### **2.4 Form of Financial Assistance Provided from the Program**

Financial assistance provided by the Program will take the form of Grant Awards to Site Selection Organizations and Local Entities for Qualifying Expenses incurred in connection with a Major Event.

### **2.5 Provisions to Ensure Performance and Recapture Funds**

It is the intent of this Program to ensure accountability for funds disbursed under it. To that end, grantees are to allow the State of North Carolina and the Department, or their agents, access to all records

necessary to confirm compliance with the Guidelines and with terms of agreements negotiated and executed under them. As further addressed in Sections 3.5a and 5.0 below, such agreements are to include provisions adequate to protect the State's interests in the funds.

## **2.6 Overdue Tax Debts**

Persons or entities with overdue tax debts to the State of North Carolina, as defined in [N.C. Gen. Stat. § 105-243.1](#), shall not receive payment or other benefit under the Grant Award until the debt is satisfied or otherwise resolved.

## **2.7 Tax Events**

The State of North Carolina, including the Department, assumes no liability or responsibility for any tax implications of a project or a grant from the Program. Any tax liability arising out of a project shall be borne fully by the applicable taxpayer. A Grant Award under the program shall not be construed to constitute a guarantee or assumption by the State of any debt of any party or to authorize the taxing power or the full faith and credit of the State to be pledged.

## **2.8 Specific Legislative Direction**

To the extent the General Assembly's allocation of money to the Program directs a use or process different than those set out in these Guidelines, the General Assembly's direction controls and supersedes these Guidelines.

## **3.0 PROCEDURE FOR COMMITMENT AND AWARD OF GRANT FUNDS**

### **3.1 Confidentiality of Information Submitted**

All documents submitted to the Department, including Applications, Compliance Audits, and Audit Reports (both addressed below), are public records governed by Chapter 132 of the General Statutes and applicable provisions of the General Statutes protecting confidential information. When specific information in an Application is regarded by the Applicant and by law as confidential and not subject to disclosure under the North Carolina Public Records Act, the Applicant should specifically and clearly designate it as such in writing on that portion of the Application in which the information appears at the time of initial disclosure to the Department.

An Applicant should provide an explanation for why particular information is regarded as confidential. Applications should not be indiscriminately marked as confidential. However, the final determination of whether a document constitutes confidential information, whether or not it is so marked by the Applicant, shall be made by the Department, in accordance with applicable law.

### **3.2 Formal Application**

A Local Entity, together with a Site Selection Organization, (together the "Applicants" and each individually an "Applicant", as applicable) seeking a grant from the Program are required to jointly submit an application (the "Application") to the CFC in the form prescribed by the Department. The Secretary, in consultation with CFC and Department staff, shall review the Application to reach a decision on whether an award will be made.

The Application is designed to aid the Secretary in making an assessment of whether the economic activity directly or indirectly attributable to the Major Event is sufficient to justify the use of State funds to attract or retain the Major Event in this State.

The Application will solicit information regarding the project, including, among other things, information necessary to address all of the considerations set forth in Section 3.3 below.

Applicants must use the required Application forms available from the CFC and must fully comply with all requirements of these Guidelines within the time period specified by the CFC, in order to be eligible for a Grant Award. Applications that do not include ALL of the documents requested therein, or that contain documents that have not been fully completed, may be considered incomplete and may be returned to the Applicant without further review.

#### **3.2a Information in Application Form**

The information to be collected in the process of Application for grants from the Program may include anything that allows consideration of the factors set forth in Section 3.3 below, or any other criteria considered relevant by the Department or Applicants, including financial statements of the proposed Applicant, as applicable.

The Application shall include at least the following information:

- 1) Name of the Local Entity and Site Selection Organization signing and submitting the Application
- 2) Job Title of Individual signing and submitting Application on behalf of each Applicant
- 3) Name or nature of the Major Event
- 4) Identification of any pre-existing presence the Site Selection Organization has in North Carolina
- 5) Site Selection Organization's Federal Employer Identification Number (FEIN)
- 6) Site Selection Organization's Street/Mailing Address
- 7) Site Selection Organization's Phone Number
- 8) Site Selection Organization's Email Address
- 9) Approximate overall number of Site Selection Organization's team members working in North Carolina
- 10) Approximate Number of Site Selection Organization's team members who are anticipated to be North Carolina residents
- 11) Information concerning other locations, including locations in other states and countries, being considered for the Major Event and the nature of any governmental assistance available to support the Major Event were it to be located in one of those locations
- 12) Approximate number of in-person Major Event attendees
- 13) Approximate number of in-person Major Event attendees expected to travel from out-of-state and explanation of methodology by which this is determined
- 14) Total Major Event budget
- 15) Estimated spending on Qualifying Expenses
- 16) Proposed dates on which the Site Selection Organization plans to hold the Major Event
- 17) Location of the Major Event
- 18) Whether the Major Event will involve permanent improvements
- 19) If the Site Selection Organization is willing to make additional marketing opportunities available to the State (and if so, what those opportunities are)
- 20) Financial Contact Name, Street/Mailing Address, Phone Number and Email Address for both Applicants
- 21) Brief synopsis of the Major Event
- 22) If applicable, on what channel/platform will broadcast of Major Event be available for viewing
- 23) State of North Carolina Substitute W9 Form
- 24) State of North Carolina Electronic Funds Transfer form
- 25) Selection Letter from the Site Selection Organization
- 26) Information regarding other State and local assistance for the Major Event the local the Local Entity or Site Selectin Organization reasonably expects to receive
- 27) In the event the Local Entity is a Local Organizing Committee, a copy of the local government resolution(s) authorizing the entity to act on behalf of the local government(s)
- 28) A description of the efforts to be taken by the Applicants to prevent human trafficking in connection with the Major Event. Note that in the discretion of the Department, certain events will be required to submit a comprehensive anti-trafficking plan for review and approval by the North Carolina Department of Justice and/or the North Carolina Human Trafficking Commission prior to the Grant award.

### **3.2b Ability to Request Additional Information**

The CFC may require additional information to be provided from either or both Applicants beyond that which may be contained in the Application forms or specified in these Guidelines.

### **3.2c Failure to Provide Information**

The CFC may request supplemental materials from the Applicant, and such materials must be received within 15 days of the date of the request.

Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an Application.

### **3.3 Consideration and Award**

Upon receipt of a final version of the Application, satisfactory compliance with all requirements stated in the Authorizing Legislation and these Guidelines, and consideration of the criteria set forth below, the Secretary, upon recommendation of the CFC, shall determine whether the proposed project should receive a Grant Award under the Program. Such determination shall be made in the sole discretion of the Secretary.

The Secretary, based upon the availability of award funding, sets the available award amounts until the funds available for the Program have been exhausted. In no event shall the amount exceed the lesser of (i) the total benefit to the State as calculated by the Department or (ii) twenty-five percent (25%) of Qualifying Expenses.

Grant Awards are limited to one grant for a single Major Event.

### **3.3a Statutory Criteria for a Grant Award**

Pursuant to G.S. § 143B-437.112, in deciding whether to make a Grant Award, the Department will review and must find that all of the following conditions are met:

- 1) The economic activity directly or indirectly attributable to the Major Event is sufficient to justify the use of State funds to attract or retain the Major Event in this State.
- 2) That it is anticipated that the Major Event will provide positive media exposure for the State, thereby supplementing the State's efforts to promote travel and tourism within the State.
- 3) That the Site Selection Organization considered multiple sites located outside of the State for the Major Event.
- 4) That the Site Selection Organization has selected a site within this State as the sole location for the event.
- 5) That the Major Event is not held more often than annually.
- 6) That the Major Event will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy.
- 7) That the Major Event is consistent with economic development goals for the State and for the area where it will be located.
- 8) That a Grant Award is necessary to attract or retain the Major Event within this State.
- 9) That the total benefits of the Major Event to the State outweigh its costs and render the Grant Award appropriate for the Major Event.

### **3.3b Additional Factors to be Considered**

In reviewing and deciding whether to make a Grant Award and determining its amount, the Department will also review and consider the following criteria:

- 1) The percentage of the Site Selection Organization's Team Members who will work on the Major Event in North Carolina who may also be permanent State residents;
- 2) The anticipated number of out-of-state visitors anticipated to attend the Major Event;
- 3) Whether the Major Event invests in permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties or areas, or in programs that develop the Major Events industry in the State;
- 4) The duration of Major Event activities in the State;
- 5) The total of anticipated Qualifying Expenses;
- 6) Any other factors that the Department in its discretion determines are relevant.

### **3.4 Execution of Appropriate Contracts**

The appropriate contract for a grant will be a satisfactory Grant Agreement (the "Grant Agreement") between the Local Entity, and Site Selection Organizations, and the Department in a form acceptable to the Department and including the performance criteria necessary for funds to be released and expended. The Department shall develop forms for these Grant Agreements, although performance criteria for specific Agreements may vary as determined by the Department in consideration of the specifics of a given Major Event.

#### **3.5a Terms to be Included in Grant Agreements**

The form of a Grant Agreement between a grantee and the Department will be prescribed by the Department. At a minimum, it shall contain the following:

- 1) An agreement to comply with the terms of the Application, the Authorizing Legislation, and these Guidelines.
- 2) An agreement to submit the information required by Exhibit A to these Guidelines and Section 4.2, below, including the compliance audit (“Compliance Audit”) to the Department to be prepared by an independent Certified Public Accountant (“CPA”) licensed to practice in the State of North Carolina.
- 3) An agreement to permit the Department and the State Auditor, access to all records and places necessary to evaluate compliance with the relevant law, Guidelines, and all agreements executed under them.
- 4) A clawback provision, as addressed further in Section 5 below.
- 5) All additional terms and safeguards as deemed appropriate by the Department.

**4.0 SUBMISSION OF PROOF OF PERFORMANCE AND DISBURSEMENT OF FUNDS**

Program funds shall be disbursed after the Major Event and upon submission and confirmation of evidence of all Qualifying Expenses already incurred by the Applicants for the Major Event, as set forth in Exhibit A to these Guidelines and herein, along with all the information required in Section 4.3. If the Department determines the appropriate performance criteria have been met, payment will be made in a timely manner, typically within 60 days.

**4.1 Qualifying Expenses**

Exhibit A to these Guidelines addresses the requirements for Qualifying Expenses to be verified by the CPA in the Compliance Audit.<sup>1</sup>

**4.2 Compliance Audit and Proof of Performance to the Department**

Before funds are disbursed, the Department must be provided with proof of compliance with the terms of the grant. Payment shall occur upon certification and proof of completion of the entire project in a form and manner satisfactory to the Department. However, the Applicant(s) receiving funds may remain subject to forfeiture, repayment, and other requirements following closeout, as set forth in the Grant Agreement

The following should be submitted by the Applicants:

- 1) Compliance Audit described in Exhibit A, along with detailed results of their sampling;
- 2) Proof CPA/firm is licensed in North Carolina;
- 3) Completed Totals Summary worksheet (which will include, but is not limited to, final employment numbers, final attendance numbers, and final direct in-state spend total);
- 4) Explanation of Site Selection Organization’s activities in NC;
- 5) Updated statement of no overdue tax debt for Site Selection Organization as of audit, which should be notarized;
- 6) Statement by Site Selection Organization confirming compliance with Grant Agreement, which should be notarized;
- 7) List of any permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties/areas;
- 8) Confirmation that Site Selection Organization afforded marketing opportunities to the State, including what those opportunities were; and

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<sup>1</sup> Exhibit A contains non-exclusive examples of the documents the CPA should review in the course of completing the compliance audit procedures, guidance for the CPA in determining what constitute qualifying expenses

and non-exclusive requirements for what the CPA should include in its Compliance Audit .

- 9) Actual attendance total of the Major Event, including attendance by out-of-state visitors, if known.

#### **4.3 Review of the Compliance Audit**

Following the CPA's submission of the Compliance Audit Report, the Department will review the Report. The Department has the absolute discretion to direct any questions or request any additional information (including supporting documents or data) from the CPA or the Applicants so as to clarify or verify a claimed Qualifying Expense.

If the information or any requested written responses are not forthcoming within 10 business days,

the Department has the absolute discretion to consider the challenged expense to be non-qualifying.

#### **5.0 CLAWBACK**

To the extent it is discovered that grant funds already disbursed to a Site Selection Organization and/or Local Organizing Committee were expended ineligibly, or the Site Selection Organization and/or Local Organizing Committee failed to conform to any applicable grant requirements, the Department shall have the ability to recapture all grant funds disbursed to the Site Selection Organization and/or Local Organizing Committee and de-obligate any additional grant funds not yet disbursed.

## EXHIBIT A

### Guidance for Conducting the Compliance Audit Under the North Carolina Major Events, Games and Attractions Fund

In this Exhibit A, the North Carolina Department of Commerce (“Department”) supplements its Guidelines and Procedures (“Guidelines”) for the Administration of the North Carolina Major Events, Games and Attractions Fund (“Program”) with non-exclusive guidance on audit procedures and the subsequent report. See [N.C. Gen. Stat. § 143B437.114](#).

#### A.1 THE CPA’S ROLE

The role of the independent North Carolina-licensed CPA in conducting the audit procedures under the Program is to examine the actual qualifying expenses that the Major Event has incurred in North Carolina, and then provide assurance on these expenses through a report to the Department.

For the purposes of the Guidelines, an “independent” CPA is one within the definition of [N.C. Gen. Stat. § 97-165\(3\)](#) who has no direct financial interest in the Major Event and whose compensation for the audit is not derived in any part from the outcome of the audit, including whether any specific claimed qualifying expenses in fact qualify.

The audit must be performed in accordance with generally accepted auditing standards as set forth in Generally Accepted Auditing Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). Additionally, the CPA should have sufficient knowledge of accounting principles and practices generally recognized in the Esports events industry.

#### A.2 IDENTIFYING QUALIFYING AND NON-QUALIFYING EXPENSES

The CPA’s duty to identify in its compliance audit actual qualifying expenses for the Major Event includes a responsibility to identify those specific expenses which the Site Selection Organization and/or Local Organizing Committee has claimed as qualifying but which, in the course of the audit, the CPA determines do not qualify.

For example, the Site Selection Organization and/or Local Organizing Committee may submit to the CPA a receipt for a rental of goods. If, upon investigation, the CPA determines the goods were not both rented from a person with a physical location in the State and actually rented at an in-State location belonging to the person, then the CPA should specifically identify the transaction as non-qualifying in its audit. Similarly, if an Applicant submits to the CPA receipts for payments of compensation or wages on which North Carolina withholding taxes were **not** remitted, the CPA

should specifically identify such payments as non-qualifying in its audit.

#### A.3 DOCUMENTS THE CPA SHOULD REVIEW IN COMPLETING THE AUDIT PROCEDURES

The following is a non-exclusive list of documents to which the CPA should obtain access and which the CPA should review in the course of completing its audit:

1. A detailed explanation of the Applicant’s business activities in North Carolina throughout the course of the event, including a listing of all State locations at which the Major Event took place.
2. A detailed Schedule of all claimed qualifying non-payroll expenses in North Carolina. The schedule should include the name, address and business location of the relevant lessor, retailer, or vendor, as applicable. Further, the schedule should include the price of any claimed qualifying expenses and a description of the nature of such expenses.
3. For the period covering the claimed qualifying expenses, detailed payroll Schedules from the Site Selection Organization and/or Local Organizing Committee, any payroll company and any loan-out company registered to do business in North Carolina for all work performed on the Major Event in North Carolina. The schedules must be run on a pay-period basis, which will usually be a weekly basis. They cannot be run on a summary-period basis.
4. For any individual working on the Major Event in North Carolina during the period covering the claimed qualifying expenses, copies of all North Carolina withholding tax returns filed by the relevant Applicants, any payroll company and any loan-out company registered to do business in North Carolina.
5. Any other information that the relevant Applicant or CPA deems necessary to substantiate a claimed qualifying expense.

#### A.4 QUALIFYING EXPENSES

1. Qualifying expenses. – The sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d) of this section, and spent in this State by the Applicants in connection with a Major Event.



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### Guidance for Conducting the Compliance Audit Under the North Carolina Major Events, Games and Attractions Fund

Goods and services leased or purchased in this State from a North Carolina vendor. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the Major Event is completed. Goods and services include the cost of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the Major Event in accordance with generally accepted Major events industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the Major Event, of bonding related to the Major Event, of insurance coverage obtained on the Major Event.

Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under Article 4 of Chapter 105.

Employee fringe contributions, including health, pension, and welfare contributions.

Per diems, stipends, and living allowances paid for work being performed in the State.

Items that fulfill obligations of an endorsing local government or the State to a Site Selection Organization under a games support contract or event support contract may be considered.

Grant funds may include the payment of costs relating to the preparations necessary or desirable for conducting the Major Event.

#### 2. Taxes

Other than withholding taxes, taxes paid, whether federal, local, or state, are never qualifying expenses. The CPA should carefully examine documents supporting a claimed qualifying expense for any taxes charged, from fuel taxes to sales taxes to lodging taxes, and remove them from the pool of qualified expenses.

#### 3. Qualifying Expenses “In Connection with” a Major Event

The Department considers otherwise qualifying expenses incurred up to 30 days prior to the Major Event and up to 7 days after the Major Event to be expenses incurred “in connection with” the Major Event. Deposits for goods or services paid more than 30 days prior to the Major Event will be deemed eligible to the extent the goods or services are actually delivered within the period above and are otherwise a qualifying expense.

#### 4. Qualifying Payments for Goods and Services in North Carolina

##### a. Goods

The applicable Applicant must make the payment for goods to a business with a physical location in North Carolina. That the business merely charged the Applicant North Carolina sales tax, such as for equipment rentals, is not necessarily evidence that the business has a physical location in the State.

But, even if the Applicant(s) rents the goods from a business with a physical location in North Carolina, if the goods are utilized outside of the State a portion of the rental period, only a proportionate amount of rental price is a qualifying expense.

The fact that a retailer or lessor obtains a good from outside of the State may not necessarily be relevant to determining whether the good is a qualifying expense. For example, if a Production Company asks a North Carolina retailer to order a piece of equipment, the retailer orders it from South Carolina, and the Company picks it up from the retailer in North Carolina, it is a qualifying expense.

##### b. Services

Services do not have to be rendered by a North Carolina resident or by an individual with a physical location in the State so long as they are actually rendered within the State.

payments to a shipping company (such as Fed Ex, DHL, or UPS) are qualifying expenses so long as the shipping services are obtained from a North Carolina location of the shipping company. If goods are delivered into North Carolina from an

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out-of-state location, the shipping services charge does not qualify because it is not considered to have been rendered within the State.

CPAs may confront “mixed transactions” involving, for example, goods brought from outside the State but used for services performed inside the State. For example, if an out-of-state caterer brings its mobile kitchen and food from outside North Carolina and then charges the Production Company for the use or consumption of these items inside the State as well as for its food-preparation services rendered inside the State, only the food preparation services are qualifying expenses.

- c. As the statute notes, goods used and services performed primarily and customarily in pre-production and post-production are qualifying expenses. The statute also specifically excludes certain typical production costs, however, such as financing, marketing, and production insurance costs.
- d. The cost of the CPA’s Compliance Audit and its creation of the Report is not a qualifying expense because, but for the Grant Award, these services would not be customarily performed in post-production.

#### A.5 QUALIFYING COMPENSATION, WAGES OR PAYMENTS

1. If a payment is made for wages or compensation to an individual for whom no withholding taxes have been remitted, it is not a qualifying expense. The only exception to this rule is if the CPA determines, after reviewing N.C. Gen. Ch. 105, Art. 4A and applying the IRS independent contractor test and any related guidance by the North Carolina Department of Revenue, that the payment represents a payment to a true service provider/independent contractor.
2. If the CPA identifies a payment for wages or compensation to an individual for whom no withholdings have been remitted, the relevant payor (whether the Production Company, payroll company or loan-out company registered to do business in North Carolina) can always remit the withholdings, thereby converting the payment into a qualifying expense.
3. Payroll companies or Production Companies

must remit taxes on their payments to out-of-state loan-out companies that are not registered to do business in North Carolina.

4. Only the first \$140,000 of each individual’s compensation and wages will count towards the Qualifying Expenses total.

#### A.6 QUALIFYING PAYMENTS FOR EMPLOYEE FRINGE BENEFIT CONTRIBUTIONS

1. In order for a payment for an employee fringe benefit contribution to be a qualifying expense, it must relate exclusively to compensation or wages for work performed on the production in North Carolina.
2. Additionally, to determine whether a payment is a qualifying expense for an employee fringe benefit contribution, the CPA must determine whether the payment is for an “employee.” For employee fringe benefits under the statute, an employee is “a person who is employed for consideration and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.” [N.C. Gen. Stat. § 143B-437.02B\(b\)\(2\)](#).
3. If it so qualifies, an employee fringe benefit payment can include health insurance, pension, and other employee fringe benefit contributions by the Production Company. The CPA must be certain to distinguish any such payment from required federal or State tax payments, however.

#### A.7 QUALIFYING PAYMENTS FOR PER DIEMS, STIPENDS AND LIVING ALLOWANCES

Per diems, stipends and living allowance payments are qualifying expenses so long as they represent payments for work actually performed in North Carolina. The CPA may have to review hotel receipts, production schedules and related documents to determine whether the payment at issue represents an allowance for expenses on a date on which the individual who received the payment was actually working in North Carolina. Records of such qualifying payments are not necessarily located in payroll reports but rather may only be reflected in petty cash receipts or other accounts payable invoices.

#### A.8 THE COMPLIANCE AUDIT REPORT

The CPA’s Audit Report is a public record governed by N.C. Gen. Ch. 132, including the confidentiality exceptions therein.

## **EXHIBIT A**

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The CPA's audit report to the Department and the Partnership must be submitted in two (2) hard copies and in **electronic form**.

The report should include a Cost Report of Production Expenditures broken out by (i) goods, (ii) services, (iii) wages/compensation/payments on which withholdings were remitted, (iv) employee fringe benefit contributions and (v) per diems, stipends and living allowances. If requested, the production company shall make available to the Department and any other State officials designated in the Grant Agreement documents required under section A.3 above, as well as any other documents or data substantiating the CPA's conclusion in the audit.

The report should also include a note as to whether non-qualifying expenditures were identified.

#### **A.9 ADDITIONAL INFORMATION**

The CPA shall provide any additional information requested by the Department.