

AGENDA
TOURISM DEVELOPMENT COMMISSION
TUESDAY, November 1st, 2022, 4:30 P.M.
Gov't Center RM 204



Video call link: <https://meet.google.com/iyg-dxup-qif>
Or dial: (US) +1 662-356-1828 PIN: 482 032 733#

Mission Statement: *“The Superior Tourism Commission will develop, market, and promote Superior as a destination for visitors to stay and enjoy our natural landscape, culture, arts, parks, and businesses.”*

Commissioners: Lindsey Graskey (Chair), Mark Johnson (Council Representative), Steven Pool, JoAnn Jardine, and Pattie Soliday (Vice Chair)

- 1. Call to Order**
- 2. Roll Call**
- 3. SWIM Creative Presentation: Website, Concepts, Logos**
- 4. Film Incentive Contract**

Notice is hereby given that a majority of the members of the Common Council may be present at the meeting, and although this may constitute a quorum of the Common Council, the Council will not take any action at this meeting.

Pursuant to the Americans with Disabilities Act of 1990, if you are in need of an accommodation to participate in the public meeting process, please call (715) 395-7200 by 4:30 p.m. on the day prior to the scheduled meeting date (OR dial 711 for Telecommunications Relay Service). The City will attempt to accommodate any request depending on the amount of notice received.

In compliance with Wisconsin Open Meetings Law, this agenda was posted on 10/31/2022 at the following locations: Superior Government Center, Douglas County Courthouse, and online at <https://www.ci.superior.wi.us/agendacenter>. It was also emailed to the Superior Public Library and the Superior Telegram, and PACT.

**Professional Services
Agreement
Between
Northspan Group, Inc. on behalf of the Upper Minnesota Film Office
And
The City of Superior**

This agreement, made this _____ day of _____, 2022, by and between, Northspan Group, Inc. on behalf of the Upper Minnesota Film Office, a Minnesota corporation with an office at 221 West First Street, Duluth, Minnesota (herein known as ‘Contractor’), and the City of Superior, a municipal corporation, through its Superior Tourism Commission, located at 1316 North 14th Street, Superior, Wisconsin (herein known as ‘City’). The parties to this Agreement shall be bound by the following terms and conditions.

Purpose

The City of Superior is in need of development of the tourism, promotion, and economic development potential. The purpose of this Agreement is for the Contractor to provide professional services, in accordance with the terms and conditions of this Agreement.

Scope

The scope services under this Agreement includes, but is not limited to, all of the tasks, activities and requirements included in Exhibit A, “Scope of Services” and other tasks and responsibilities as identified by the City. By reference, Exhibit A is hereby incorporated into this Agreement, but shall not in any way restrict the services provided by the Contractor, nor prohibit the City from requesting other tasks or procedures germane to the Agreement. Tasks that are beyond the scope identified in Exhibit A, will be considered extra services and can be added to this agreement by an amendment or a supplemental agreement.

Term

The term of this Agreement shall be from the date of the agreement through December 31, 2023, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Agreement shall be renewable as agreed upon terms and conditions by both parties, unless terminated earlier in accordance with the terms and provisions to this Agreement.

Services and Fees

Contractor shall provide the services for a not to exceed amount of twenty thousand dollars (\$20,000.00). Ten percent (10%) (\$2,000.00) of the fee shall be retained by the Contractor to cover administrative and logistical costs. The remaining ninety percent (90%) (\$18,000.00) shall be spent on the Rebate funds as described in the scope of services. Such payment shall be full compensation for services performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the services.

Changes to services and/or fees must be agreed upon by both parties and acknowledged in an amendment signed by both parties.

Payments

Contractor may invoice the City of Superior, Attn: Mayor's Office, on a monthly basis during the progress of the scope of services for partial payment on account for approved rebates issued to date and shall not impose any penalties or interest for amounts invoiced. The 10% administrative fees shall be invoiced as follows: 25% (\$500.00) upon execution of this Agreement and the remainder \$1,500.00 to be paid monthly thereafter until December 31, 2023, or billed in full upon complete expenditure of rebate funds. The invoice shall be itemized and, in a form, satisfactory to the City, of expenses incurred in the previous period. The City shall pay agreed upon amounts within thirty (30) days of receipt.

Insurance

Contractor shall provide up-to-date, accurate professional liability information on Contractor's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Contractor shall furnish the City with an endorsement for earlier notice of cancellation and/or non-renewal and the Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Contractor shall not cancel or materially alter this coverage without prior written approval by the City. Contractor shall be responsible for Contractors maintaining professional liability insurance during the life of their Agreement and for 2 years after final acceptance for the service.

Contractor and its subContractors retained under the terms of this Agreement shall procure and maintain professional liability insurance providing for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement.

It is hereby agreed and understood that the insurance required by the City is primary coverage and that any insurance or self-insurance maintained by the City, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the Agreement or listed below whichever is longer.

1. **PROFESSIONAL LIABILITY**
 - A. Limits
 - (1) \$1,000,000 each claim
 - (2) \$1,000,000 annual aggregate
 - B. Must continue coverage for 2 years after final acceptance for service/job

2. **GENERAL LIABILITY COVERAGE**
 - A. Commercial General Liability
 - (1) \$1,000,000 each occurrence limit
 - (2) \$1,000,000 personal liability and advertising injury
 - (3) \$2,000,000 general aggregate
 - B. Claims made form of coverage is not acceptable.
 - C. Insurance must include:
 - (1) Premises and Operations Liability

- (2) Contractual Liability
 - (3) Personal Injury
3. **BUSINESS AUTOMOBILE COVERAGE**
- A. \$1,000,000 combined single limit for Bodily Injury and Property Damage each accident
 - B. Must cover liability for Symbol #1 - "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability.
4. **WORKERS COMPENSATION AND EMPLOYERS LIABILITY**
- A. Must carry coverage for Statutory Workers Compensation and an Employers Liability limit of:
 - (1) \$100,000 Each Accident
 - (2) \$500,000 Disease Policy Limit
 - (3) \$100,000 Disease - Each Employee
5. **UMBRELLA LIABILITY** - Provide coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.
6. **ADDITIONAL INSURANCE PROVISIONS**
- A. Primary and Non-contributory requirement - all insurance must be primary and non-contributory to any insurance or self-insurance carried by City
 - B. Acceptability of Insurers - Insurance is to be placed with insurers who have an **A.M. Best** rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
 - C. **Additional Insured Requirements - The following must be named as additional insureds on the General Liability and Business Automobile liability coverage arising out of project work - City.** On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 or its equivalent for a minimum of 2 years after acceptance of work. This does not apply to Workers Compensation Policies.
Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City.
 - D. Evidences of Insurance - Prior to execution of the Agreement, the Contractor shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement.

General Terms and Conditions

1. **No Relationship.** Contractor understands and agrees that the relationship of Contractor and the City arising out of this Agreement is that of a contracted service provider, not an

employee or contracted employee of the City of Superior or any other entity within the municipality, and therefore, is not entitled to any benefits provided to employees of the City of Superior.

2. **Taxes.** Contractor will act as an independent Contractor and will be responsible for all federal, state and local taxes arising in accordance with this Agreement, as well as any other taxes, fees or licensing expenses pertaining to these services.

3. **Confidentiality.** Contractor shall diligently protect the confidentiality of any information, documentation or communication received from the City that contains personal, financial or other information of a confidential nature, and shall not disclose said information to any other persons, organizations or entities without the expressed written approval of the City.

4. **Qualifications.** By accepting this Agreement, Contractor represents that he possesses the necessary skills and qualifications to perform work under this Agreement. Contractor will comply with all local, state, and federal licensure requirements and will provide proof upon request.

5. **Legal Relations.** All recommendations, policies, procedures and other communications provided by the Contractor under this Agreement will comply with all laws, ordinances, rules and regulations promulgated and enforced by the City and any other proper authority having jurisdiction over the conduct of the operations of the City of Superior. The Contractor shall comply with and observe federal, state and local laws that may be applicable to the project. In carrying out provisions of this Agreement or exercising power or authority granted to the Contractor thereby, there shall be no personal liability to the City of Superior, it being understood that in such matters the City of Superior act as representatives of the State. The Contractor is not an agent of the State.

6. **Assignment of Agreement.** The Contractor shall not subcontract, assign or transfer any part of this work to any other parties without the express written agreement of the City.

7. **Claims.** Claims, disputes and other matters in question arising from the performance of this Agreement shall be brought to the City of Superior prior to mediation, which is a condition precedent for litigation for all disputes aside from outstanding invoices. Contractor and City will in good faith efforts attempt to resolve disputes through a mutually agreed upon acceptable alternative.

8. **Ownership of Documents and Data.** All data or forms created, collected, received stored, used, maintained and other such documents or information prepared by the Contractor or any party pursuant to this Agreement shall become the property of the City on completion and acceptance of any of the Contractor's work, or upon termination of the Agreement, and shall be delivered to the City upon request.

10. **Indemnifications.** The Contractor hereby agrees to indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, representatives and volunteers, and each of them, from and against suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses to the extent caused by a negligent act, error or omission, of Contractor or of anyone acting under its direction or control or on its behalf. The obligation to indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The Contractor agrees to provide the City with all defense costs from any third-party claim brought against the City to the extent that such claim is caused by any negligent act, error or omission of the Contractor or by anyone acting under the Contractor's direction or control.

In the event that Contractor employs other persons, firms, corporations or entities (sub-contractor) or volunteers as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

11. **Deficiencies.** Contractor shall not be entitled to payment for work found deficient or failing to conform to the requirements set forth in this Agreement or as outlined in a supplemental Agreement and is not entitled to further payments until corrected. The City will inform the Contractor of any deficiencies and/or items that do not conform to this Agreement within thirty (30) days of receipt.

12. **Final Payment.** Prior to final payment, the City of Superior shall review expenditures submitted by Contractor to determine the satisfaction thereof; it will be at the City of Superior's sole discretion when the final payment is made. Final payment will be made to Contractor within thirty (30) days of the City's acceptance of services as complete.

13. **Termination.** This Agreement may be terminated by either party without cause upon thirty (30) days written notice to the other. In the event of termination, Contractor shall be paid for services performed to termination date. Administrative fees shall be prorated to termination date. The results of the work by Contractor shall immediately be turned over to the City of Superior and is a condition of final payment.

14. **Warranty of Documents.** The City, its representatives, employees, and agents make no representations of the accuracy of documents, drawings, procedures, etc., provided to Contractor under this Agreement. All materials provided represent the City's best understanding at the time of delivery.

15. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes all other written and oral agreements between the parties with respect to such matters.

16. **Modification.** This Agreement is binding only when signed by both parties. Any modifications or amendments must be in writing and signed by both parties.

17. **Force Majeure.** Each party shall be excused from any breach of this Agreement which is caused by war, strike, and act of Nature or other similar circumstances normally deemed outside the control of well-managed businesses.

18. **Governing Law.** The Agreement will be interpreted, and the rights and liabilities of the Parties determined, in accordance with the laws of the State of Wisconsin.

19. **Headings and Captions.** Headings and Captions appear solely for convenience of reference. Such headings and captions are not part of this Agreement and shall not be used to construe it.

20. **Validity.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. **Integrated Agreement.** This Agreement contains the entire Agreement and understanding among the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings regarding such matters. The Parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein. The terms of this Agreement are contractual and not a mere recital.

22. **Standard of Care.** Contractor represents that it will perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same locality. To the extent Contractor's services do not meet this standard of care; Contractor shall re-perform its work at no cost to the City.

23. **Appropriation.** State and/or Federal funds may be used to fund all or part of this Agreement. Allowances detailed in the Project scope shall be awarded at the City's discretion, and is subject to available funding, project progress and other terms and conditions as identified by the City. The City will not be held liable for any damages incurred due to changes in State or Federal funding, including (but not limited to) a reduction, delay, or cancellation of the project.

24. **Non-Discrimination.** Upon execution of this Agreement, Contractor agrees as follows: Contractor and all Subcontractors do not discriminate against any employee,

applicant for employment, independent contractor, or any other persons because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

In Witness Whereof, the parties, intending to be legally bound have executed this agreement on the day and year set forth above.

Signatures

Firm Name: Northspan Group, Inc, on behalf of Upper Minnesota Film Office
Address: 221 West First Street
Duluth, MN 55802

Name/Title

Name/Title

ATTEST: CITY OF SUPERIOR, WISCONSIN

Jim Paine, Mayor

Camila Ramos, Clerk

Deb Kamunen, Assistant Finance Director

Frog Prell, City Attorney

Provision has been made to pay the liability that will accrue under this contract.

*Approved at the Common Council meeting on



Upper Midwest Film Office (UMFO) Administration of Production Incentive Program

Provide overall program administration that includes, but is not limited to budgeting, budget monitoring, reporting, marketing, application review, project monitoring, expenditure review, payment processing, general communication, enforcing the Film Production Incentive Program Guidelines, and other general program management services, as needed.

Marketing, Promotion, Outreach, and Education:

Provide program marketing in print and/or digital formats and venues common to the film industry; promote the program availability to industry stakeholders and groups; provide outreach services and respond to inquiries; and provide education of program requirements and expectations.

Application Review and Evaluation:

Conduct application review for application completeness and program compliance; review required application materials and supporting documentation for accuracy; conduct application evaluation by using evaluation and scoring criteria; obtain internal organizational approvals and provide the city with a recommendation on each application, funding amount, and any special circumstances that may arise.

Application Approval:

Package each application and send to the City. When necessary, meet with and make a recommendation to the City regarding each application; and set aside program funds for approved project in budget.

Certification:

Provide denial or "Certification" letter to production company based upon approval; and provide the City with copies of final determination letters.

Production:

Assist, monitor, and provide support services to the approved production company before, during, and after production to ensure the production's success, including but not limited to: scouting services, production assistance, collaboration services, and general support services, where applicable and reasonable.

Rebate:

Collect any required electronic documentation and review to ensure requests are for eligible expenditures that have been fully paid. Confirm all expenditures were made in Superior. Review submitted Rebate Expenditures Report (RER) for program compliance and approval. Collect all final required documentation before rebate can be submitted for City review. Package rebate request, application and supporting documentation to the City for review and payment.

The City will issue a rebate funds to the Contractor via check or electronic transfer. The Contractor will deposit the rebate funds (or electronic transfer) into the Contractor's account and subsequently transfer funds in equal amount to the Rebate funds from Contractor to the respective production company via wire transfer, electronic funds transfer, or other method of electronic payment or by check, such form of payment being at the discretion of the Contractor. The Contractor shall provide proof that the payment has been made to the production company and the production company has received the payment.

Monthly and Yearly Updates:

Provide monthly electronic updates on the Film Production Incentive Program on inquiries, applications, funded



projects, and general details of each project. Provide a detailed final year-end report on the City's Film Production Incentive Program that includes details on each funded project, performance measures, and overview of the program, and the overall economic impact of the use of program funds.

RESPONSIBILITIES OF THE CITY

- To provide oversight and contract performance
- To promptly review and process rebate payments to the Contractor (UMFO).
- To be available for meetings and consultations related to the Film Production Incentive Program.

~~COMPENSATION FOR ADMINISTRATION~~

~~As agreed, 10% (\$xx,xxx) of the total funds will be paid to UMFO as an administrative fee on the following schedule: 25% (\$xxxx) upon execution of contract and the remainder \$XXX to be paid monthly thereafter until December 31, 2022.~~