

RESOLUTION NO. 2022-3843



A RESOLUTION ENTERING INTO AN AGREEMENT WITH THE CHEHALEM VALLEY CHAMBER OF COMMERCE FOR VISITOR CENTER SERVICES, APPROVING EXEMPTION FOR THE SOLICITATION METHOD BY THE AUTHORITY OF THE CITY COUNCIL AS THE CONTRACT REVIEW BOARD, AND APPROVING THE ONE YEAR CONTRACT AND OPERATING PLAN

Recitals:

1. The City of Newberg established a Transient Lodging Tax in 1976 by Ordinance No. 1976-1835A and as amended by Ordinance No. 1989-2262, 1996-2433, 1997-2476, and 2014-2771.
2. The City has previously entered into agreements with the Chehalem Valley Chamber of Commerce (Chamber) to operate a Visitor Information Center under the authority of Resolution No. 1996-1970, Resolution No. 1998-2121, Resolution No. 2003-2483, Resolution No. 2011-2927, Resolution No. 2015-3180, Resolution No. 2019-3524, Resolution No. 2019-3573, Resolution No. 2020-3655, and Resolution No. 2021-3732.
3. The City of Newberg contract with the Chehalem Valley Chamber of Commerce expired on June 30, 2022.
4. The City desires to continue that relationship and enter into an agreement with the Chamber of Commerce to provide Visitor Information Center Services for the City.
5. The City desires to support the Chamber with a portion of the transient lodging tax levied throughout the City, and the Chamber shall provide support in part by private sector contributions.
6. The City desires to improve the quality and efficiency of managing the Visitor Information Center, and finds the Chamber is duly qualified and be able to provide that role.
7. The City of Newberg and the Chehalem Valley Chamber of Commerce have been negotiating a new contract since April 2022.
8. In March 2020 the coronavirus pandemic impacted the global, national, regional, and local tourism markets and the City has projected a slight increase in transient lodging tax revenue for FY 2022/2023 compared to FY 2021/2022 to provide visitor center functions.
9. The City Council, as the Contract Review Board, has the authority to grant an exemption to the approval of the agreement based upon criteria set out in Newberg Municipal Code §3.25.

The City of Newberg Resolves as Follows:

1. The City Council as the Contract Review Board approves an exemption to the normal solicitation process based upon the findings of fact attached as Exhibit "A" and by this reference incorporated.
2. Entry into the attached agreement (Exhibit "B") with the Chehalem Valley Chamber of Commerce is in the best interest of the City for operation of visitor information services.
3. The City Manager is authorized to sign the agreement in substantial conformance with Exhibit "B".
4. The City Attorney shall review the contract for form and content.

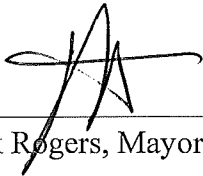
Effective Date of this resolution is the day after the adoption date, which is: August 2, 2022.

Adopted by the City Council of Newberg, Oregon, this 1st day of August, 2022



Sue Ryan, City Recorder

Attest by the Mayor this 4th day of August, 2022.


Rick Rogers, Mayor

**Exhibit “A” to Resolution No. 2022-3843
Findings of Fact for Exemption – File GEN22-0007**

The City Council is the Contract Review Board (Board) pursuant to Newberg Municipal Code Chapter 3.25. The City Council in its authority as the Board grants an exemption from the normal solicitation process and approves entering into an agreement with the Chehalem Valley Chamber of Commerce (Chamber) based on the following Findings of Fact:

NMC 3.25.070 Process for approval of special solicitation methods and exemptions.

- A. Authority of City Council. In its capacity as contract review board for the city, the city council, upon its own initiative, or upon request of the purchasing manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

***Finding:** The City Manager, who oversees the Visitor Center contract, has requested the exemption from competition.*

- B. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the city council that contains the following:

1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;

***Finding:** The contract would be for an agreement between the City of Newberg and Chehalem Valley Chamber of Commerce. The Chehalem Valley Chamber of Commerce will provide visitor center services utilizing transient lodging tax proceeds collected by the City for tourism marketing promotion as defined by Oregon Revised Statute (ORS) 320.300(6), (7), (8), and (10). The Chehalem Valley Chamber of Commerce is a non-profit organization in compliance with ORS 320.300(8).*

2. The estimated contract price or cost of the project, if relevant;

***Finding:** The estimated contract price is \$45,000 for the one-year contract, FY 2022-2023 which will be paid out in monthly disbursements.*

3. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;

***Finding:** The Chehalem Valley Chamber of Commerce has operated the visitor center for the past twenty-seven (27) years under contract with the City. The Chehalem Valley Chamber of Commerce has established protocols and processes to operate the visitor center and has staffing and resources to operate the required functions.*

This is in the form of an arrangement in which the City furnishes partial funding through the transient room tax and the Chamber contributes funding as well, thus, being a joint funding effort.

The method of funding the Visitor Information Center is similar to a grant method with contributions of matching funds by the Chamber.

Grants would ordinarily be exempt from Public Contracting Rules. This agreement actually provides for more accountability through the reporting mechanisms than would be found if a grant was issued.

This arrangement with the Chamber's participation will have cost savings to the City as compared with the City totally funding the Visitor Information Center.

4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;

Finding: *Entering into an agreement with the Chehalem Valley Chamber of Commerce is unlikely to encourage favoritism or diminish competition because Oregon Revised Statutes (ORS 320.300(8)) defines what a tourism promotion agency includes. Specifically, a tourism promotion agency is:*

- i) an incorporated non-profit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis,*
- ii) a non-profit entity that manages tourism-related economic development plans, programs, and projects, and*
- iii) a regional or statewide association that represents entities that rely on tourism-related business for more than 50 percent of their total income*

The City of Newberg has worked under contract with the Chehalem Valley Chamber of Commerce for the past twenty-seven (27) years to perform the visitor center functions.

There are no other stated non-profit organizations within the area that provide the level of services the City desires to operate a Visitor Information Center for Newberg.

With the sharing of costs by the Chamber and ongoing accountability, this exemption would be unlikely to encourage favoritism in the awarding of public contracts.

The awarding of the agreement would substantially promote the public interest in a manner that could not practically be realized by complying with the solicitation requirements, such as a Request for Proposals. This is because this agreement requires partial funding of the Visitor Information Center through private sector funds from the Chamber.

5. A description of the proposed alternative contracting methods to be employed; and

Finding: *The identified alternative method for contracting for visitor center functions is for a one (1) year period. The Chehalem Valley Chamber of Commerce is a non-profit 501(c)(6) organization. The contract would be for a one-year period.*

This agreement entered into with the Chamber as the sole source for the Visitor Information Center services is justified because:

The Chamber is furnishing partial funding of the services, which will save the City and the public costs from having to totally having to fund a Visitor Information Center.

The Chamber has operated the Visitor Information Center for a number of years with partial funding from the City and therefore has developed contacts and other methods of operation.

The Chamber is in a unique situation to have the relationships with the businesses that operate tourist industries within the city and surrounding areas, which are the destination and visited by the visitors using the services for the Visitor Information Center.

6. The estimated date by which it would be necessary to sign the contract(s).
In making a determination regarding a special selection method, the city council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

Finding: *The estimated date to sign the contract with the Chehalem Valley Chamber of Commerce is August 2, 2022.*

C. Hearing.

1. The city shall approve the special solicitation or exemption after a public hearing before the city council following notice by publication in at least one newspaper of general circulation in the city area.

Finding: *A public hearing was held on August 1, 2022, for the exemption and was noticed in the Newberg Graphic on July 20, 2022. The City Council held the hearing to take testimony.*

2. At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.

Finding: *Interested parties were provided the opportunity to comment on the exemption at the public hearing on August 1, 2022, which meets the requirement.*

3. The city council will consider the findings and may approve the exemption as proposed or as modified by the city council after providing an opportunity for public comment.

Finding: *The City Council considered the findings in this report and after the opportunity for public comment at the hearing on August 1, 2022 and meets the requirement.*

D. Special Requirements for Public Improvement Contracts.

1. Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.

Finding: *The Chehalem Valley Chamber of Commerce agreement is not a public improvement and does not apply.*

2. The notice shall state that the public hearing is for the purpose of taking comments on the city's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

Finding: *The Chehalem Valley Chamber of Commerce agreement is not a public improvement and does not apply.*

E. Commencement of Solicitation Prior to Approval. A solicitation may be issued prior to the approval of a special exemption under this section; provided, that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the city council approves the exemption. If the city council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled. [Ord. 2618, 3-7-05. Code 2001 § 34.07.]

Finding: *There has been no solicitation for tourism promotion services in accordance with NMC 3.25.070E.*

Conclusion

Based on the above Findings of Fact and in consideration of the long-term, ongoing relationship, the Council authorizes the City to enter into the agreement with the Chamber to operate the Visitor Information Center. This agreement has been reached through direct negotiations with the Chamber. The process is exempt from the normal public contracting process. This exemption applies only to this particular agreement.