

MEMO

To: Mayor & Council
From: Kelli Weese, City Recorder / Economic Development Coordinator
Re: Chamber of Commerce Marketing Agreement
Date: May 3, 2017

HISTORY

Three years ago, the City conducted a request for proposals to determine the best consultant for the City’s contract concerning tourism marketing, visitor center administration and events management. After thorough review of all options, the City elected to continue to work with the Florence Area Chamber of Commerce to perform these services. The new contract was effective as of June 1, 2014 and is set to expire June 30, 2017.

CONTRACT EXTENSION & POTENTIAL CHANGES

Staff and Chamber representatives met to discuss the two year contract renewal and potential changes to help either clarify responsibilities and/or simplify the working relationship where appropriate. These changes have been incorporated into the proposed contract extension with an overview below...

Overview of changes to the Chamber Marketing Contract	
Clarity on Specific Roles of the Chamber within the Agreement	<p>The contract was proposed to be changed to add clarity to the Chamber’s role within the agreement, including specifically calling out the following areas of responsibility...</p> <ol style="list-style-type: none"> 1. Marketing & Visitor Promotion 2. Management & Administration of the Visitors Center 3. Events Management with a focus on events beneficial to tourist attraction 4. Tourism Efforts Coordination <p>These specific areas were called out to ensure that the contract accounts for all of the services the Chamber provides regarding tourism promotion and the use of Transient Room Tax funds.</p>
Changes to simplify working relationship	<p>Changes were made to help simplify the City and the Chamber’s working relationship to...</p> <ol style="list-style-type: none"> 1. Clean up the deadlines and items required during the Chamber’s annual report to the Council 2. Add flexibility to the payment timeline

WORK SESSION DISCUSSION & NEXT STEPS

The May 3rd City Council work session offers an opportunity to review the proposed two year contract extension with representatives from the Chamber of Commerce and staff. After discussion of the proposed extension and confirmation from the Council to proceed, the Chamber will present their annual progress review presentation (currently scheduled for the June 12th City Council meeting), and the Council will consider formal approval of the marketing contract extension at the same meeting.

ATTACHMENTS:

- Proposed First Renewal and Restatement of Agreement, June 2017
- Chamber of Commerce Tourism Promotion Agreement, June 2014

AGREEMENT
between
CITY OF FLORENCE
and
FLORENCE AREA CHAMBER OF COMMERCE
First Renewal and Restatement of Agreement

This Agreement is entered into this 1st day of July, 2017, between the Florence Area Chamber of Commerce, hereinafter referred to as “Chamber,” and the City of Florence, a municipal corporation, hereinafter referred to as “City.” This agreement supersedes all prior agreements between the City and the Chamber.

RECITALS

1. Intent – The intent of the parties is to enter into an arrangement in order for the Chamber to provide tourism marketing, visitor information and events management services. These services will be provided for a period of two (2) years beginning July 1, 2017, and ending June 30, 2019.
2. Pursuant to state law and the Florence City Code, the City receives transient room tax revenues paid by occupants of transient lodging facilities located within the City.
3. State law requires that the City spend a portion of the room tax revenues to fund tourism promotion or tourism-related facilities.
4. Tourism promotion means any of the following activities:
 - a. advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;
 - b. conducting strategic planning and research necessary to stimulate future tourism development;
 - c. operating tourism promotion agencies; and
 - d. marketing special events and festivals designed to attract tourists.
5. A tourist is a person who, for business, pleasure, recreation or participation in events related to the arts, heritage, or culture, travels more than 50 miles from the person’s community of residence to Florence, or stays overnight in Florence.
6. The Chamber has knowledge and experience related to tourism promotion, including but not limited to the ability to advertise and market Florence in such a way as to encourage more people to come, stay, recreate and shop in Florence.
7. The City has a need for the services of a contractor with the particular training, ability, knowledge, and experience possessed by the Chamber.
8. In 2014, the City conducted a procurement pursuant to its public contracting rules and the Chamber was chosen as the most highly qualified consultant, best suited to meet the City’s needs, and the City awarded the contract to the Chamber. The parties thereafter entered into an agreement with an initial three year term through June 30, 2017 (original agreement). The original agreement allowed for three additional renewal terms of two years each. The parties intend this agreement to constitute the first renewal term under the original agreement. As part of the renewal, the parties also wish to simplify the working relationship and therefore enter into this restated agreement to replace the original agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The City agrees to contract with the Chamber for the provision of tourism promotion services, and the Chamber agrees to provide tourism promotion services subject to the terms and conditions of this agreement.

EXHIBITS

The following Exhibits are hereby incorporated by reference into this agreement:

Exhibit A: Oregon Personal Services Public Contracting Code Requirements

I. TERM OF AGREEMENT

The term of this Agreement is two (2) years subject to any renewal terms agreed to by the parties pursuant to paragraph 2 of this section.

1. Initial Term – The initial term of this agreement will commence on July 1, 2017 and expire on June 30, 2019, unless earlier terminated pursuant to the terms and conditions of this agreement.
2. Additional Renewal Terms – Following this initial term of this agreement, the parties may agree to extend the term of this agreement for up to two (2) renewal terms of two years each. On or before the October 31st preceding the expiration of any term of this agreement the parties will meet and discuss the potential for renewal of the contract for a subsequent two (2) year renewal term.

II. SERVICES TO BE PROVIDED

The scope of services that the Chamber shall provide is as follows:

1. Marketing and Visitor Promotion Activities – Chamber shall provide all functions, literature, advertising, staff, supplies, equipment and support associated with an educational awareness program designed to promote the City of Florence area as a destination for tourism.
2. Management and Administration – Management and administration of the Visitor Center located in the City of Florence. The Chamber shall provide all necessary staff, volunteers, materials, and services to meet with visitors, dispense information regarding the area, develop necessary informational programs and coordinate with associated agencies and entities.
3. Events Management – The Chamber shall manage events and festivals of which the intent is to attract and provide entertainment for tourists as defined in recital 5. Such events shall include the annual Rhododendron Festival and any other events and festivals of which the Chamber believes will be beneficial to tourist attraction.
4. Florence Tourism Efforts Coordination –The Chamber shall coordinate its activities, as appropriate, with affiliated regional tourism organizations such as Travel Lane County, Travel Oregon, Oregon State Chamber of Commerce and other visitor promotional entities. In addition, the Chamber shall coordinate with local tourism related businesses and/or non-profit entities, including but not limited to the Florence Events Center, to ensure cohesiveness of tourism message(s) to the extent practicable. In addition, the Chamber of Commerce shall collaborate with the Florence Events Center in relation to any request for Rural Tourism Marketing Program (RTMP) monies that would affect both properties.

III. BUDGETING

In consideration of the services provided in this agreement, the City agrees to provide transient room tax funds to the Chamber for the operation, management, and performance of services outlined in this agreement.

1. Budget Ratio – Within the limitations of its annual budget, the City will endeavor to provide the Chamber with forty percent (40%) of the collected transient room tax revenue for that fiscal year (Tourism Promotion Revenue), to provide the maximum amount of funds for the fulfillment of the scope of services.
2. Budget Estimates - Notwithstanding the above, the City's payment obligations under this agreement are contingent on the City's collection of the budgeted room tax estimates for the fiscal year in question.
3. Payment Allocation –
 - a. The City will pay the Chamber for services rendered pursuant to this agreement in twelve installments. The first eleven installments shall consist of one twelfth (1/12) of the estimated Tourism Promotion Revenue.
 - b. The twelfth and final annual payment shall be withheld until actual transient room tax revenue for the fiscal year is received by the City. This twelfth and final payment will be based on actual revenue received. Thus, the final payment shall consist of the balance of actual received Tourism Promotion Revenue to ensure the Chamber receives its full allotment of collected Tourism Promotion Revenue.
4. Payment Timeline – The first eleven payments shall be made within 45 days after the completion of the month. The twelfth and final payment shall be made within 45 days after the actual transient room tax revenue for the fiscal year is received.
5. Budget Laws of the State of Oregon - The City of Florence is a municipal corporation and is obligated to abide by the budget laws of the State of Oregon known as the Local Budget Law. Any provision of this agreement which is not in conformance with the Local Budget Law is null and void. Further, the City cannot expend monies beyond the revenues received. The City authorizes expenditures in accordance with the City's transient room tax ordinance and its budget and revenue projections. If the City does not receive revenues in accordance with its projections, expenditures must be decreased.
6. Chamber Contribution - The City expects that the Chamber shall maintain a financial investment in visitor information and marketing services. The amount of the Chamber's annual contribution shall hereafter be presented in each year's annual progress review presentation.

IV. ANNUAL PROGRESS REVIEW

1. Annual Reporting: On or before June 1st of each year, the Chamber shall appear before the City Council at a regularly scheduled meeting or work session to present an annual progress review.

The presentation shall include the following information

- a. Financial reports, including statement of revenues & expenditures which are specifically applicable to the Chamber's execution of this agreement.

- b. Activity report detailing establishment and progress on goals, objectives and tasks related to the execution of this agreement
- c. General overview of the local economy and the Chamber's operations, including information on membership count, number of visitor's center inquires, number of relocation packets requested, number of employees, board of directors, and any other pertinent information.

V. RECORDS AND ACCOUNTING

1. The Chamber will keep an accounting of funds received pursuant to this agreement to ensure that the funds are used as required by this agreement. The Chamber will provide the accounting required by this paragraph to the City within the annual report required by paragraph 1 of Section IV of this agreement. In addition, within three business days of a written request by the City, the Chamber shall make such accounting records available for review by the City and any other entities authorized by the City.
2. The Chamber will maintain the Chamber's books, documents, papers, and records related to this agreement for the longer of: 1) six years from the date of final completion of this agreement; or 2) until the conclusion of any audit, controversy, or litigation arising out of or related to this agreement.
3. The Chamber acknowledges and agrees that the City shall have reasonable access to the Chamber's books, documents, papers, and records related to this agreement during the period described in paragraph 2 of this section. The Chamber shall make copies of applicable records available to the City upon request.

VI. INSURANCE

1. During the initial term and any renewal terms of this agreement, the Chamber shall maintain and provide certification of the following minimum public liability and property damage insurance, naming the City as an additional insured, which shall protect City and the Chamber from claims for injuries including accidental death, as well as from claims for property damage, which may arise from the performance of work under this agreement.
 - a. Commercial general liability insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit for bodily injury and property damage shall not be less than \$1,500,000.
 - b. Statutory workers' compensation and employer's liability insurance for the State of Oregon.
2. During the initial term and any renewal terms of this agreement, the Chamber shall maintain and provide certification of professional liability insurance with limits of not less than \$500,000.
3. Insurance policies shall not be cancelled or terminated without 30-days prior written notice to the City.

VII. TERMINATION OF AGREEMENT

This Agreement can be terminated as follows:

1. At-will – Either party may terminate this agreement, without cause, upon ninety (90) days written notice to the other party.

2. Failure to Complete Annual Progress Review – If the Chamber fails to complete an annual progress review as required by Section IV of this agreement the City may terminate this agreement by written notice to the Chamber.
3. For Cause – Except as otherwise provided in paragraph 2 of this Section, either the City or the Chamber may terminate this agreement in the event of a breach of the agreement by the other. Prior to such termination, the party seeking termination shall give the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the agreement at any time thereafter by giving a written notice of termination. If the City breaches this agreement, the Chamber’s remedy shall be limited to termination of the agreement and receipt of payments to which Chamber is entitled.
4. Budget Constraints – The City may terminate or amend this agreement effective upon delivery of written notice to the Chamber, or at such later date as may be determined by the City, if it becomes clear that the City will not collect the estimated transient room tax revenue budgeted.
5. Cessation of Operations – Upon receiving a notice of termination, and except as otherwise directed in writing by the City, the Chamber shall immediately cease all activities related to the services and work under this agreement. As directed by the City, the Chamber shall, upon termination, deliver to the City all then-existing work products that, if the agreement had been completed, would be required to be delivered to the City.
6. Liability – The City shall not be liable for any indirect, incidental, consequential, or special damages under the agreement or any damages arising solely from terminating the agreement in accordance with its terms.

VIII. ADDITIONAL SPECIFICATIONS

1. Rural Tourism Marketing Program (RTMP) - This agreement does not govern the use of any RTMP monies provided by the City to the Chamber.
2. Independent Contractor – The Chamber is an independent contractor for all purposes and is not entitled to any compensation other than the compensation provided for under this agreement. While the City reserves the right to set various schedules and evaluate the quality of the Chamber’s completed work, the City cannot and will not control the means or manner of the Chamber’s performance. The Chamber is responsible for determining the appropriate means and manner of performing the work required by this agreement. The Chamber is responsible for all federal and state taxes applicable to payments made to the Chamber pursuant to this agreement. The City will not withhold any amounts to cover the Chamber’s tax obligations. The Chamber and its employees, officers, contractors, and agents are not eligible for any City benefit plans.
3. No Employment Relationship - The Chamber acknowledges and agrees that this agreement does not create an employment relationship between the City and the Chamber, its officials, employees, agents or contractors. The Chamber further agrees that the Chamber is exclusively responsible for all costs and expenses related to Chamber’s employment of individuals to perform work pursuant to this agreement, including but not limited to retirement contributions, workers’ compensation, unemployment taxes, and state and federal income tax withholdings.
4. Federal Funds – If payments made pursuant to this agreement are to be charged against federal funds, the Chamber certifies that the Chamber is not currently employed by the federal government and the amount charged does not exceed the Chamber’s normal charge for the type of service provided.

5. Compliance with Applicable Laws – The Chamber shall comply with all federal, state, and local laws and ordinances applicable to the work done pursuant to this agreement, including, without limitation, applicable provisions of the Oregon Public Contract Code including ORS 279B.020, 279B.230, and 279B.235, as more particularly set forth in Exhibit A attached to this agreement and incorporated herein by this reference.
6. Subcontracts and Assignment – The Chamber shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Chamber shall remain obligated for full performance under this agreement, and the City shall incur no obligation other than its obligations under this agreement. The Chamber agrees that if subcontractors are employed in the performance of this agreement, the Chamber and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
7. Errors – The Chamber shall perform such additional work as may be necessary to correct errors in the work required under this agreement without undue delays and without additional cost. The standard of care applicable to the Chamber's service will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time such services are performed. The Chamber will re-perform any services not meeting this standard without additional compensation.
8. Confidentiality – The Chamber shall maintain the confidentiality of any of the City's information that has been marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Chamber from establishing a claim or defense in an adjudicatory proceeding. The Chamber shall require similar agreements from any subcontractors to maintain the confidentiality of information provided by the City.
9. Arbitration – If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this agreement, the parties shall, upon the request of either party, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable terms of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lane County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

Notwithstanding any dispute under this agreement, whether before or during arbitration, the Chamber shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the agreement for undisputed portions of work.

10. Indemnification – The Chamber agrees, to the fullest extent permitted by law, to indemnify and hold the City and its officers, employees, agents, and volunteers harmless from any damage, liability, or cost (including reasonable attorney fees and costs of defense) to the extent caused by the intentional or negligent acts, errors, or omissions of the Chamber, or its officers, employees, contractors, or agents in the performance of this agreement, or and to indemnify hold the City and its officers, employees, agents, and volunteers harmless from any patent infringement or copyright claims arising out of the use of the Chamber's designs or other materials by the City and from any claims or disputes involving subcontractors.

11. Ownership of Work and Documents – All work performed by the Chamber and compensated by the City pursuant to this agreement shall be the property of the City upon payment of full compensation for the work. The Chamber hereby conveys, transfers, and grants to the City all rights of reproduction and the copyright to all such work.
12. Attorney Fees – If either party commences any arbitration, suit, or proceeding against the other to rescind, interpret, or enforce the terms of this agreement, the parties agree that the prevailing party shall be awarded reasonable attorney’s fees and costs incurred in any such arbitration, action, suit or proceeding and in any later appeals filed as a consequence thereof.
13. Applicable Law - This agreement shall be construed in accordance with Oregon law.
14. Venue - Any legal action or proceeding arising out of or relating to this agreement shall be commenced in the Circuit Court of the State of Oregon for Lane County. The parties hereby consent to the jurisdiction of that court, waive any objections to venue, and waive any claim that the forum is an inconvenient forum.
15. Severability - If any part, term, or clause of this agreement is held by a court or arbitrator to be unenforceable, of no effect, or in conflict with any law, the validity of the remaining provisions and clauses shall not be affected and the rights and obligations of the parties shall be construed and remain in force as if the agreement did not contain the particular part, term or clause held to be unenforceable.
16. Waiver of Breach - The waiver by either the City or the Chamber of a breach of any provision of this agreement will not operate or be construed as a waiver of any other provision of this agreement or of any subsequent breach of the same provision of this agreement.
17. Modification - No modification of this agreement will be valid unless it is in writing and signed by both parties.
18. Entire Agreement - This agreement and all attached exhibits constitute the entire agreement of the parties relating to the subject matter herein. There are no promises, terms, conditions or obligations, oral or written, other than those contained herein. This agreement supersedes all prior communications, representations, or agreements, either oral or written, between the parties to the subject matter herein.
19. No Third-Party Beneficiaries - This agreement is entered into for the sole benefit of the City and the Chamber, and nothing contained herein is intended for the benefit of any other person or entity.
20. Relationship of Parties - The parties acknowledge and agree that nothing in this agreement is intended to nor shall be construed to create any form of partnership or joint venture relationship between the parties.
21. Headings - Paragraph headings are used solely for convenience and are not to be used in construing or interpreting this agreement.
22. Counterparts - This agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
23. Notice– All notices given pursuant to this agreement must be in writing and delivered to the parties at the following addresses. Notice given pursuant to this section will be deemed to have been received: 1) on the date of personal delivery; 2) three calendar days after deposit in the United States mail postage prepaid; 3) or on the date of confirmed delivery by: a) registered mail, return receipt requested; or b) overnight delivery. Either party may change its notice address under this section at any time by written notice of the other party.

City Manager
City of Florence
250 Hwy 101
Florence, OR 97439

Executive Director
Florence Area Chamber of Commerce
290 Hwy 101
Florence, OR 97439

24. Authority to Enter into Agreement - Each person executing this agreement on behalf of a party to this agreement hereby covenants that he or she is duly authorized by that party to bind that part to this agreement.

CITY OF FLORENCE

250 Hwy 101
Florence, OR 97439

BY:

FLORENCE AREA CHAMBER OF COMMERCE

290 Hwy 101
Florence, OR 97439

BY:

Erin Reynolds, City Manager Date

Bettina Hannigan, Executive Director Date

EXHIBIT A
ORS CHAPTER 279B PUBLIC CONTRACTING CODE
REQUIREMENTS
FOR THE PURCHASE OF GOODS AND SERVICES

- (1) Chamber shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any subcontractor. ORS 279B.220(1).
- (2) Chamber shall promptly pay all contributions or amounts due the Industrial Accident Fund from Chamber or Chamber's subcontractor incurred in the performance of the contract, and shall promptly pay all sums due the State Unemployment Compensation Fund from Chamber or Chamber's subcontractor in connection with the performance of this agreement.
- (3) Chamber shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished, and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Chamber and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- (5) Chamber shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of Chamber, of all sums which the Chamber agrees to pay for such services and all monies and sums which the Chamber collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (6) Chamber shall pay employees for overtime work performed under this agreement in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (7) Chamber must give notice to employees who work on this agreement in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).
- (8) All employers, including Chamber, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Chamber shall ensure that each of its subcontractors complies with these requirements.
- (9) All sums due the State Unemployment Compensation Fund from the Chamber or Chamber's subcontractor in connection with the performance of this agreement shall be promptly paid. ORS 701.430.
- (10) Chamber certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385. Chamber represents and warrants that it has complied with the tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Chamber covenants to continue to comply with the tax laws of this state during the term of the public contract. Chamber's failure to comply with the tax laws of this state before the contractor executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law. ORS 279B.045 and 305.385.

(11) Chamber certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.

(12) As used in this section, “nonresident contractor” means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a “resident bidder” under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

(13) In the performance of this contract, the Chamber shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

AGREEMENT
between
CITY OF FLORENCE
and
FLORENCE AREA CHAMBER OF COMMERCE

This Agreement is entered into this 1st day of July, 2014, between the Florence Area Chamber of Commerce, hereinafter referred to as “Chamber,” and the City of Florence, a municipal corporation, hereinafter referred to as “City.” This agreement supersedes all prior agreements between the City and the Chamber.

RECITALS

1. Intent – The intent of the parties is to enter into an arrangement in order for the Chamber to provide visitor information and marketing services. These services will be provided for a period of three (3) years beginning July 1, 2014, and ending June 30, 2017.
2. Pursuant to state law and the Florence City Code, the City receives transient room tax revenues paid by occupants of transient lodging facilities located within the City.
3. State law requires that the City spend a portion of the room tax revenues to fund tourism promotion or tourism-related facilities.
4. Tourism promotion means any of the following activities:
 - a. advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;
 - b. conducting strategic planning and research necessary to stimulate future tourism development;
 - c. operating tourism promotion agencies; and
 - d. marketing special events and festivals designed to attract tourists.
5. A tourist is a person who, for business, pleasure, recreation or participation in events related to the arts, heritage, or culture, travels more than 50 miles from the person’s community of residence to Florence, or stays overnight in Florence.
6. The Chamber has knowledge and experience related to tourism promotion, including but not limited to the ability to advertise and market Florence in such a way as to encourage more people to come, stay, recreate and shop in Florence.
7. The City has a need for the services of a contractor with the particular training, ability, knowledge, and experience possessed by the Chamber.
8. The City conducted a procurement pursuant to its duly adopted public contracting rules and the Chamber was chosen as the most highly qualified consultant, best suited to meet the City’s needs, and the City has awarded the contract to the Chamber.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The City agrees to contract with the Chamber for the provision of tourism promotion services, and the Chamber agrees to provide tourism promotion services subject to the terms and conditions of this agreement.

EXHIBITS

The following Exhibits are hereby incorporated by reference into this agreement:

- Exhibit A: Approved Business Plan for FY 2014/2015
- Exhibit B: Example of Payment Schedule
- Exhibit C: Oregon Personal Services Public Contracting Code Requirements
- Exhibit D: City's Request for Proposals for Marketing and Communications Services, issued January 13, 2014, and Chamber's Proposal for Marketing and Communications Services, dated February 12, 2014

I. TERM OF AGREEMENT

The term of this Agreement is three (3) years subject to approval of the annual business plan as provided in paragraph 2 of this section and subject to any renewal terms agreed to by the parties pursuant to paragraph 3 of this section.

1. Initial Term – The initial term of this agreement will commence on July 1, 2014 and expire on June 30, 2017, unless earlier terminated pursuant to the terms and conditions of this agreement.
2. Annual Business Plan Approval – The parties have approved a business plan for the first year of the initial term of this agreement. The approved business plan is attached as Exhibit "A" and incorporated into this agreement. The attached business plan will expire on June 30, 2015. On or before May 1, 2015, and on or before the first day of May in each succeeding year of the initial term of this agreement and any renewal terms, the Chamber will deliver a business plan to the City for the following fiscal year (July 1st through June 30th). The City and the Chamber will discuss in good faith any issues concerning the business plan with the objective to continue to operate the visitor information and marketing services. The City will approve or reject the Chamber's proposed business plan on or before June 30th following submission of the business plan to the City. The City's rejection of the business plan will suspend the City's obligation to make payments under this agreement. Upon rejection of the Chamber's business plan, the City may terminate this agreement as provided in paragraph 2 of Section VII of this agreement.
3. Renewal After Three (3) Year Term – Following the initial term of this agreement, the parties may agree to extend the term of this agreement for up to three (3) renewal terms of two years each. On or before the October 31st preceding the expiration of the initial term and the first and second renewal terms of this agreement the parties will meet and discuss the potential for renewal of the contract for a subsequent two (2) year renewal terms.

II. SERVICES TO BE PROVIDED

The scope of services that the Chamber shall provide is documented in Exhibit "A" and as follows:

1. Management and Administration – Management and administration of the Visitor Center located in the City of Florence. The Chamber shall provide all necessary staff, volunteers, materials, and services to meet with visitors, dispense information regarding the area, develop necessary informational programs and coordinate with associated agencies and entities.
2. Marketing and Visitor Promotion Activities – Chamber shall provide all functions, literature, advertising, staff, supplies, equipment and support associated with an educational awareness program designed to promote the City of Florence area as a destination for tours and visitors. Chamber shall coordinate its activities, as appropriate, with affiliated organizations such as Travel Lane County, Travel Oregon and other visitor promotional entities.

3. Coordination on Florence Events Center Marketing – The Chamber of Commerce shall collaborate with the Florence Events Center on any overlapping advertising opportunities and in relation to any request for Rural Tourism Marketing Program (RTMP) monies that would affect both properties.

III. BUDGETING

In consideration of the services provided in this agreement, the City agrees to provide transient room tax funds to the Chamber for the operation, management, and performance of services outlined in this agreement. An example of what the timeline and payment allocation could look like for one year of this agreement is provided in Exhibit “B”.

1. Budget Ratio – Within the limitations of its annual budget, the City will endeavor to provide the Chamber with forty percent (40%) of the collected transient room tax revenue for that fiscal year (Tourism Promotion Revenue), to provide the maximum amount of funds for the fulfillment of the business plan. During the annual budgeting process, (generally in April), the City will provide the Chamber with an estimate of the Tourism Promotion Revenue for the upcoming fiscal year for use in the Chamber’s business plan preparation.
2. Budget Estimates - Notwithstanding the above, the City’s payment obligations under this agreement are contingent on the City’s collection of the budgeted room tax estimates for the fiscal year in question.
3. Payment Allocation –
 - a. The City will pay the Chamber for services rendered pursuant to this agreement in twelve installments. The first eleven installments shall consist of one twelfth (1/12) of the estimated Tourism Promotion Revenue.
 - b. The twelfth and final annual payment shall be withheld until actual transient room tax revenue for the fiscal year is received by the City. This twelfth and final payment will be based on actual revenue received. Thus, the final payment shall consist of the balance of actual received Tourism Promotion Revenue to ensure the Chamber receives its full allotment of collected Tourism Promotion Revenue.
4. Payment Timeline – The first eleven payments shall be made during the City’s second accounts payable cycle during the months of July through the following May. The twelfth and final payment shall be made after the actual transient room tax revenue for the fiscal year is received, with the final payment made not later than September 1st.
5. Budget Laws of the State of Oregon - The City of Florence is a municipal corporation and is obligated to abide by the budget laws of the State of Oregon known as the Local Budget Law. Any provision of this agreement which is not in conformance with the Local Budget Law is null and void. Further, the City cannot expend monies beyond the revenues received. The City authorizes expenditures in accordance with the City’s transient room tax ordinance and its budget and revenue projections. If the City does not receive revenues in accordance with its projections, expenditures must be decreased.
6. Chamber Contribution - The City expects that the Chamber shall maintain a financial investment in visitor information and marketing services. The amount of the Chamber’s annual contribution shall hereafter be established in each year’s business plan.

IV. ANNUAL BUSINESS PLAN AND REPORTING

1. Annual Reporting: On or before May 1st of each year, the Chamber shall submit a report to the City delineating the Chamber's activities pursuant to this agreement during the previous year, and shall appear before the City Council at a regularly scheduled meeting to present the annual report and findings.

The report shall include the following information and shall address the successes and failures of the business plan in place at the time of submission of the report (Current Business Plan):

- a. Financial reports, including statement of revenues & expenditures which are specifically applicable to the Chamber's operation of the visitor's center and marketing services.
 - b. Activity report detailing progress on goals, objectives and tasks identified in the Current Business Plan.
 - c. General overview of the local economy and the Chamber's operations, including information on membership count, number of visitor's center inquires, number of relocation packets requested, number of employees, board of directors, and any other pertinent information.
2. Business Plan: On or before May 1st of each year, the Chamber shall submit to the City a business plan for the upcoming fiscal year. Once it is approved by the City Council, the business plan shall become an exhibit to this agreement. The business plan shall contain a request for funds, detailed budget, identification of activities, and a statement of performance goals for all activities contemplated pursuant to this agreement. The approved business plan for the first year of this agreement is attached to this agreement as Exhibit "A".

V. RECORDS AND ACCOUNTING

1. The Chamber will keep an accounting of funds received pursuant to this agreement to ensure that the funds are used as required by this agreement. The Chamber will provide the accounting required by this paragraph to the City within the annual report required by paragraph 1 of Section IV of this agreement. In addition, within three business days of a written request by the City, the Chamber shall make such accounting records available for review by the City and any other entities authorized by the City.
2. The Chamber will maintain the Chamber's books, documents, papers, and records related to this agreement for the longer of: 1) six years from the date of final completion of this agreement; or 2) until the conclusion of any audit, controversy, or litigation arising out of or related to this agreement.
3. The Chamber acknowledges and agrees that the City shall have reasonable access to the Chamber's books, documents, papers, and records related to this agreement during the period described in paragraph 2 of this section. The Chamber shall make copies of applicable records available to the City upon request.

VI. INSURANCE

1. During the initial term and any renewal terms of this agreement, the Chamber shall maintain and provide certification of the following minimum public liability and property damage insurance, naming the City as an additional insured, which shall protect City and the Chamber from claims for injuries including accidental death, as well as from claims for property damage, which may arise from the performance of work under this agreement.
 - a. Commercial general liability insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit for bodily injury and property damage shall not be less than \$1,500,000.

- b. Statutory workers' compensation and employer's liability insurance for the State of Oregon.
2. During the initial term and any renewal terms of this agreement, the Chamber shall maintain and provide certification of professional liability insurance with limits of not less than \$500,000.
3. Insurance policies shall not be cancelled or terminated without 30-days prior written notice to the City.

VII. TERMINATION OF AGREEMENT

This Agreement can be terminated as follows:

1. At-will – Either party may terminate this agreement, without cause, upon ninety (90) days written notice to the other party.
2. Failure to Furnish Reports/City's Rejection of Proposed Business Plan – If the Chamber fails to furnish its annual report or business plan as required by Section IV of this agreement, or if the City rejects the Chamber's proposed business plan pursuant to paragraph 2 of Section IV of this agreement, the City may terminate this agreement by written notice to the Chamber.
3. For Cause – Except as otherwise provided in paragraph 2 of this Section, either the City or the Chamber may terminate this agreement in the event of a breach of the agreement by the other. Prior to such termination, the party seeking termination shall give the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the agreement at any time thereafter by giving a written notice of termination. If the City breaches this agreement, the Chamber's remedy shall be limited to termination of the agreement and receipt of payments to which Chamber is entitled.
4. Budget Constraints – The City may terminate this agreement effective upon delivery of written notice to the Chamber, or at such later date as may be determined by the City, if it becomes clear that the City will not collect the estimated transient room tax revenue budgeted.
5. Cessation of Operations – Upon receiving a notice of termination, and except as otherwise directed in writing by the City, the Chamber shall immediately cease all activities related to the services and work under this agreement. As directed by the City, the Chamber shall, upon termination, deliver to the City all then-existing work products that, if the agreement had been completed, would be required to be delivered to the City.
6. Liability – The City shall not be liable for any indirect, incidental, consequential, or special damages under the agreement or any damages arising solely from terminating the agreement in accordance with its terms.

VIII. ADDITIONAL SPECIFICATIONS

1. Rural Tourism Marketing Program (RTMP) - This agreement does not govern the use of any RTMP monies provided by the City to the Chamber.
2. Independent Contractor – The Chamber is an independent contractor for all purposes and is not entitled to any compensation other than the compensation provided for under this agreement. While the City reserves the right to set various schedules and evaluate the quality of the Chamber's completed work, the City cannot and will not control the means or manner of the Chamber's performance. The Chamber is responsible for determining the appropriate means and manner of performing the work required by this agreement. The Chamber is responsible for all federal and state taxes applicable to payments made to the Chamber pursuant

to this agreement. The City will not withhold any amounts to cover the Chamber's tax obligations. The Chamber and its employees, officers, contractors, and agents are not eligible for any City benefit plans.

3. No Employment Relationship - The Chamber acknowledges and agrees that this agreement does not create an employment relationship between the City and the Chamber, its officials, employees, agents or contractors. The Chamber further agrees that the Chamber is exclusively responsible for all costs and expenses related to Chamber's employment of individuals to perform work pursuant to this agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
4. Federal Funds – If payments made pursuant to this agreement are to be charged against federal funds, the Chamber certifies that the Chamber is not currently employed by the federal government and the amount charged does not exceed the Chamber's normal charge for the type of service provided.
5. Not a PERS Member – The Chamber is not a member of the Oregon Public Employee Retirement System, nor employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
6. Compliance with Applicable Laws – The Chamber shall comply with all federal, state, and local laws and ordinances applicable to the work done pursuant to this agreement, including, without limitation, applicable provisions of the Oregon Public Contract Code including ORS 279B.020, 279B.230, and 279B.235, as more particularly set forth in Exhibit "C" attached to this agreement and incorporated herein by this reference.
7. Subcontracts and Assignment – The Chamber shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Chamber shall remain obligated for full performance under this agreement, and the City shall incur no obligation other than its obligations under this agreement. The Chamber agrees that if subcontractors are employed in the performance of this agreement, the Chamber and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
8. Errors – The Chamber shall perform such additional work as may be necessary to correct errors in the work required under this agreement without undue delays and without additional cost.
9. Confidentiality – The Chamber shall maintain the confidentiality of any of the City's information that has been marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Chamber from establishing a claim or defense in an adjudicatory proceeding. The Chamber shall require similar agreements from any subcontractors to maintain the confidentiality of information provided by the City.
10. Arbitration – If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this agreement, the parties shall, upon the request of either party, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable terms of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lane County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

Notwithstanding any dispute under this agreement, whether before or during arbitration, the Chamber shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the agreement for undisputed portions of work.

11. Indemnification –

- a. The Chamber agrees, to the fullest extent permitted by law, to indemnify and hold the City and its officers, employees, agents, and volunteers harmless from any damage, liability, or cost (including reasonable attorney fees and costs of defense) to the extent caused by the intentional or negligent acts, errors, or omissions of the Chamber, or its officers, employees, contractors, or agents in the performance of this agreement, or and to indemnify hold the City and its officers, employees, agents, and volunteers harmless from any patent infringement or copyright claims arising out of the use of the Chamber's designs or other materials by the City and from any claims or disputes involving subcontractors.
- b. The standard of care applicable to the Chamber's service will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time such services are performed. The Chamber will re-perform any services not meeting this standard without additional compensation.

12. Ownership of Work and Documents – The Chamber shall retain ownership, rights of reproduction, and copyright to all work created or performed pursuant to this agreement (work product), but hereby grants the City of Florence the right to utilize the work product to promote the City of Florence. The City of Florence's right to utilize the work product shall survive expiration or earlier termination of this agreement.

13. Attorney Fees – If either party commences any arbitration, suit, or proceeding against the other to rescind, interpret, or enforce the terms of this agreement, the parties agree that the prevailing party shall be awarded reasonable attorney's fees and costs incurred in any such arbitration, action, suit or proceeding and in any later appeals filed as a consequence thereof.

14. Applicable Law - This agreement shall be construed in accordance with Oregon law.

15. Venue - Any legal action or proceeding arising out of or relating to this agreement shall be commenced in the Circuit Court of the State of Oregon for Lane County. The parties hereby consent to the jurisdiction of that court, waive any objections to venue, and waive any claim that the forum is an inconvenient forum.

16. Severability - If any part, term, or clause of this agreement is held by a court or arbitrator to be unenforceable, of no effect, or in conflict with any law, the validity of the remaining provisions and clauses shall not be affected and the rights and obligations of the parties shall be construed and remain in force as if the agreement did not contain the particular part, term or clause held to be unenforceable.

17. Waiver of Breach - The waiver by either the City or the Chamber of a breach of any provision of this agreement will not operate or be construed as a waiver of any other provision of this agreement or of any subsequent breach of the same provision of this agreement.

18. Modification - No modification of this agreement will be valid unless it is in writing and signed by both parties.

19. Entire Agreement - This agreement and all attached exhibits constitute the entire agreement of the parties relating to the subject matter herein. There are no promises, terms, conditions or obligations, oral or written, other than those contained herein. This agreement supersedes all prior communications, representations, or agreements, either oral or written, between the parties to the subject matter herein.

20. No Third Party Beneficiaries - This agreement is entered into for the sole benefit of the City and the Chamber, and nothing contained herein is intended for the benefit of any other person or entity.
21. Relationship of Parties - The parties acknowledge and agree that nothing in this agreement is intended to nor shall be construed to create any form of partnership or joint venture relationship between the parties.
22. Headings - Paragraph headings are used solely for convenience and are not to be used in construing or interpreting this agreement.
23. Counterparts - This agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
24. Notice - All notices given pursuant to this agreement must be in writing and delivered to the parties at the following addresses. Notice given pursuant to this section will be deemed to have been received: 1) on the date of personal delivery; 2) three calendar days after deposit in the United States mail postage prepaid; 3) or on the date of confirmed delivery by: a) registered mail, return receipt requested; or b) overnight delivery. Either party may change its notice address under this section at any time by written notice of the other party.

City Manager
 City of Florence
 250 Hwy 101
 Florence, OR 97439

Executive Director
 Florence Area Chamber of Commerce
 290 Hwy 101
 Florence, OR 97439

25. Authority to Enter into Agreement - Each person executing this agreement on behalf of a party to this agreement hereby covenants that he or she is duly authorized by that party to bind that part to this agreement.

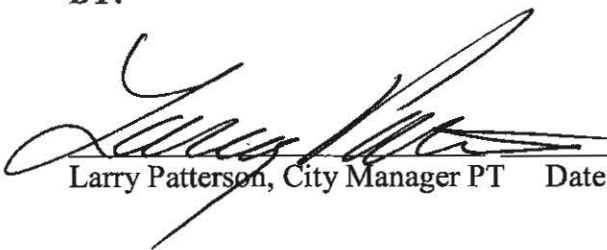
IN EVIDENCE THE UNDERSIGNED HAVE EXECUTED THIS AGREEMENT:

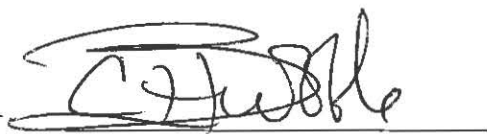
CITY OF FLORENCE
 250 Hwy 101
 Florence, OR 97439

FLORENCE AREA CHAMBER OF COMMERCE
 290 Hwy 101
 Florence, OR 97439

BY:

BY:


 Larry Patterson, City Manager PT Date


~~Cal Applebee, Executive Director~~ Date 6/23/14
 CINDY WOBBE
 PRESIDENT

City of Florence

Transient Room Tax (TRT) Revenue Historical Trend Report For the year ending June 30, 2017

Chamber allocation:	Budget			40% TRT to Chamber Contract FY15-17		40%	
	\$ 145,800	\$ 143,138	\$ 128,552	\$ 113,946	\$ 50,000		

For the Month Ending	FY2017		FY2016		FY2015		FY2014		FY2013	
	4% Tax	Change %	4% Tax	Change %	4% Tax	Change %	4% Tax	Change %	4% Tax	Change %
July	\$ 62,270	7%	\$ 58,128	69%	\$ 34,446	-24%	\$ 45,551	35%	\$ 33,865	
August	55,556	-3%	57,561	-21%	73,048	43%	51,141	25%	40,756	
September	47,647	1%	47,098	26%	37,400	12%	33,376	42%	23,493	
October	23,893	-5%	25,165	27%	19,891	16%	17,174	-34%	25,992	
November	15,916	9%	14,623	-6%	15,631	5%	14,917	41%	10,613	
December	13,897	39%	9,963	7%	9,341	6%	8,786	9%	8,053	
January	12,575	-9%	13,894	8%	12,806	7%	11,930	75%	6,819	
February	15,486	2%	15,175	-1%	15,346	42%	10,810	-21%	13,629	
March	24,551	2%	24,165	12%	21,547	16%	18,591	1%	18,413	
April	-		21,762	16%	18,739	16%	16,116	7%	15,101	
May	-		25,124	-5%	26,402	12%	23,630	8%	21,867	
June	-		45,186	23%	36,783	12%	32,842	19%	27,563	
Total	\$ 271,791		\$ 357,844	11%	\$ 321,380	13%	\$ 284,864	16%	\$ 246,164	

	FY2017		FY2016	
	4% Tax	Change %	4% Tax	Change %
1st Quarter	\$ 165,473		\$ 162,787	
2nd Quarter	53,706		49,751	
3rd Quarter	52,612		53,234	
YTD Total	\$ 271,791	2%	\$ 265,772	

RTMP Revenue	Actual	Budgeted
FY17	\$ 99,093	\$ 93,000
FY16	\$ 92,350	\$ 88,000
FY15	\$ 85,782	\$ 83,000
FY14	\$ 82,821	\$ 75,000
FY13	\$ 78,886	\$ 74,000

	Chamber	TOTAL
FY17	\$ 145,800	\$ 365,001
FY18	\$ 148,716	\$ 372,301
FY19	\$ 151,690	\$ 379,747