

RESOLUTION NO. 1412

A RESOLUTION RECOMMENDING ADOPTION OF AN AGREEMENT BETWEEN  
THE CITY OF CENTRAL POINT AND THE CENTRAL POINT CHAMBER OF  
COMMERCE FOR CONTRACT OPERATIONS OF THE CITY'S VISITOR  
INFORMATION CENTER.

*As amended*

RECITALS:

- A. The City of Central Point retains the authority to reduce costs and produce public benefit through the use privatized contract services.
- B. The City of Central Point and the Central Point Chamber of Commerce deem it to be to their mutual advantage and to be in the best interest of their respective constituencies/membership to enter into this agreement for the purpose of the Chamber of Commerce to operate the City's Visitor Information Center.

The City of Central Point resolves:

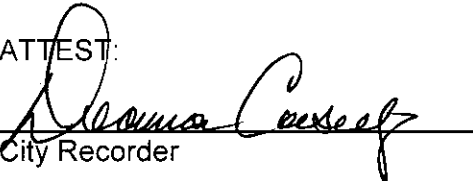
**Section 1.** The attached agreement between the City of Central Point and the Central Point Chamber of Commerce for the operation of the City's Visitor Information Center is approved.

**Section 2.** Upon approval of this agreement by the Central Point Chamber of Commerce, the attached agreement shall govern contract services between the two agencies from October 1<sup>st</sup>, 2014 to September 30<sup>th</sup>, 2016.

The Mayor and City Manager of Central Point are authorized to sign the attached agreement on behalf of the City of Central Point.

11<sup>th</sup> Passed by the Council and signed by me in authentication of its passage this  
day of September, 2014.

  
Mayor Hank Williams

ATTEST:  
  
City Recorder

## **VISITOR CENTER AGREEMENT**

THIS AGREEMENT by and between the CITY OF CENTRAL POINT, a municipal corporation of the State of Oregon hereinafter called "the CITY", and the CENTRAL POINT CHAMBER OF COMMERCE, an Oregon not-for-profit corporation hereinafter called "the CHAMBER," is effective as of October 1<sup>st</sup>, 2014.

### **RECITALS**

WHEREAS, the CITY desires to contract for tourism promotion utilizing funds derived in whole or in part from transient lodging taxes ("TLT") collected within the CITY; and

WHEREAS, the CHAMBER has the capability and desire to undertake such a tourism promotion program, through a Visitor Information Center ("VIC");

NOW THEREFORE the parties agree as follows:

### **SECTION I TERM AND RENEWAL**

This Agreement is effective beginning October 1, 2014. Its initial term extends through September 30, 2016. Unless this Agreement is terminated under Section II below, it will automatically be renewed another two years (October 1, 2016 – September 30, 2018), on the same terms, except for the payments to be made as described in Section III below and except to the extent the parties may choose to amend or modify the Agreement under Section XII below. Payments for the renewal period will be determined as set forth in Section V below.

### **SECTION II TERMINATION**

1. Either party, for any reason, upon one hundred eighty (180) days prior written notice to the other, may terminate this Agreement without further obligations. Notwithstanding this general rule:

- a) Either party may terminate this Agreement in the event of a breach of the Agreement by the other party. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within ninety (90) days after such notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. Provided, however, if said default cannot reasonably be cured within ninety (90) days, then this Agreement shall not terminate if the defaulting party uses reasonable efforts and diligence to commence curing said problem within the 90-day period and completes the cure of said problem within a reasonable time thereafter. Such termination will be without prejudice to a party's rights to other legal or equitable remedies for breach of this Agreement, such as the right to recover money damages for such breach.

- b) This Agreement will terminate, without further action by the parties and without further obligations, in either of the following events:
  - 1. If the CITY'S appropriation of funds for this Agreement in any fiscal year fails to equal or exceed the budget submitted by the CHAMBER to the CITY under Section V below, or the CITY' S schedule for payment of funds differs from that budget, this agreement will terminate on June 30 of the last fiscal year for which sufficient funds are appropriated and paid; or
  - 2. If sufficient funds are not available for this Agreement.

The CITY certifies that funds for this Agreement are included in the CITY'S budget for the current fiscal year which ends on June 30, 2015. The CITY, in compliance with the appropriation of funds requirements in ORS 294.305 to 294.565, will in good faith endeavor to budget and appropriate such funds for subsequent fiscal years. If funds are not appropriated for this agreement for any fiscal year after 2014-2015, the CITY will notify the Chamber sixty (60) day prior to termination of this agreement.

### **SECTION III CITY FUNDING FOR VISITOR INFORMATION CENTER**

During the term of this Agreement, unless otherwise stipulated in the budget submitted by the CHAMBER to the CITY under Section V below, the CITY shall pay to the CHAMBER, from funds lawfully appropriated, a monthly amount equal to one-twelfth of the CHAMBER' S approved budget for the VIC for the CHAMBER'S fiscal year in question (for VIC purposes, and for purposes of this Agreement, the CHAMBER'S fiscal year is July 1 -June 30, although for other purposes, the CHAMBER operates on a calendar-year basis). Such monthly payments will be no later than the 10th business day of each month (a "business day" is a day that is neither a weekend nor an official holiday under Oregon state law). However, inasmuch as the initial term of this Agreement ends on September 30, 2016, and it may thereafter be renewed, the CITY'S payments will be:

- a) For the initial term of this Agreement, the current appropriated amount for visitor's information center (VIC) operation is \$22,400 per year (\$1866.67/month). These monthly payments shall initially be reduced to \$1,500.00/month beginning October 1<sup>st</sup>, 2014. This reduction shall remain in effect for a period of 24 months (ending September 30<sup>th</sup>, 2016). The parties agree said monthly reduction of \$366.67 will be applied to an accounting error/overpayment of \$8,800.00 dollars paid by the City to the Chamber during the 2013/2014 fiscal cycle. The foregoing reduction will allow the City to recover the entire overpayment of \$8,800.00. This reduction in operating funds does not preclude the City Council from appropriating additional funds for Chamber related events or budget requests.
- b) For successive terms the parties acknowledge and agree that the VIC will be funded by the CITY in amounts, and according to the schedule of payments, set forth in the CHAMBER'S approved budget submitted to the CITY under Section V below, provided that if such funding is not appropriated, the CHAMBER may terminate this Agreement as provided in Section II b above. Inasmuch as TLT is expected to be the primary or exclusive source of funds for the VIC under this Agreement, the CHAMBER understands and agrees that use and expenditure of TLT is subject to the requirements of ORS 320.300 to 320.350, and the parties will follow these requirements with respect to TLT.

- c) The City of Central Point is currently leasing office space for the operation of the Central Point Chamber of Commerce & Visitor's Information Center. The office space is located at 650 E. Pine Street and the current lease agreement remains valid until June 30<sup>th</sup>, 2016. Future lease agreements/funding will be subject to the terms and process described in section V of this agreement.

#### **SECTION IV SERVICES TO BE PROVIDED**

- a) The CHAMBER'S purpose for operating the VIC is to provide local citizens and visitors with information about Central Point area visitor facilities, recreational opportunities, services offered by the CITY and other relevant governmental entities, and services provided by private nonprofits and other nongovernmental organizations and charities in the Central Point area; and other information that is reasonable for the CHAMBER to provide by means of a VIC, given the limits of the CHAMBER'S budget, the level of funds available for the VIC, and the hours the VIC is open.
- b) The CHAMBER shall operate the VIC with an office and telephone service, regularly open and available to the public. The CHAMBER Board of Directors, in its discretion, will determine the VIC'S hours of operation, provided that office and telephone service to the public will be available at least 25 hours each week during daytime hours; the CHAMBER may choose to include Saturday in this 25-hour week, or limit hours of operation to weekdays.
- c) The CHAMBER'S activities in furtherance of its purposes for the VIC will include marketing and promotion of tourism and promotion of economic development, and providing information necessary to support such activities. Specific examples of activities the CHAMBER will conduct include:
1. Production, display and distribution of promotional brochures;
  2. Advertising in local and regional publications;
  3. Providing information about services offered by the CITY and other governmental and nongovernmental entities;
  4. Providing the public with maps, brochures and other information about the Central Point and the surrounding area;
  5. Publicizing local and regional entertainment, events, and tourist attractions, and tourist destinations;
  6. Informing the public about restaurants, lodging, and similar accommodations that may be of interest to visitors;
  7. Publicizing opportunities for the development and promotion of tourism and tourism related businesses; and
  8. Assisting with and promoting annual events which foster CHAMBER goals.

#### **SECTION V BUDGET**

Beginning no later than February 1, 2015, and the first business day of each February thereafter, for as long as this Agreement remains in effect (including renewal periods), the CHAMBER shall submit a detailed program and revenue request for the VIC'S upcoming fiscal year to the CITY. The proposal shall become part of the CITY'S annual budget appropriation process. The proposal

will include a copy of the CHAMBER'S board-approved VIC operating budget for the next fiscal year. The proposal also will include the CHAMBER'S projected goals and objectives for the VIC for the next fiscal year. (Example: On February 1, 2015, the CHAMBER will submit the proposal, including the budget, for the VIC for the year July 1, 2015 -June 30, 2016.)

## **SECTION VI ACCOUNTING AND REPORTING**

- a) The CHAMBER will separately account for VIC monies apart from its general books of account. The City Finance Director or his/her designee may examine this separate VIC accounting during normal business hours after providing written notification to the CHAMBER, at least 48 hours prior to the time such examination is to be held. Nothing contained herein shall be interpreted to grant the CITY access to the general books, papers, and accounting records of the CHAMBER, or to any other records of the CHAMBER not directly related to the VIC.
- b) The CHAMBER shall account to the CITY for monies received from the CITY for the VIC. This accounting will be provided by the seventh business day of the first month following the end of each fiscal-year quarter. The accounting shall refer to the three calendar months preceding the accounting. (Example: The October 2015 accounting will be for July -September 2015.) The CHAMBER shall forward this report to the CITY Finance Department.
- c) The CHAMBER also shall file with the CITY, with each quarterly accounting, a program report. This report will cover the same time period as the accounting submitted under Section VI b above. If the Chamber fails to meet the accounting/reporting requirements described in this section VI (a-c) of this Agreement, CITY may withhold future monthly payments of appropriated funds until proper accounting/reporting required under this Section is provided. CITY shall not be required to pay interest or penalties for such delayed payment, where the delay is caused by CHAMBER's failure to properly account/report to CITY.
- d)
- e) The CHAMBER shall maintain adequate accounting records of all revenues and expenditures covered by this Section VI, with supporting invoices, for a period of three (3) years.
- f) It is understood and agreed that the CITY may appropriate funds derived from any source it chooses to fund the VIC under this Agreement. Even so, it is understood that TLT will most likely be the source of such funds. Therefore, if the CITY'S projections for future collection of TLT change during the CITY'S fiscal year, the CITY will advise the CHAMBER of the CITY'S changes in projections for TLT collection within forty (40) days after the close of the CITY'S fiscal year- quarter in which the change in collection projections occurred.

## **SECTION VII CITY REPRESENTATIVE**

The CHAMBER'S board of directors will, no later than October 31<sup>st</sup>, 2014, appoint an advisory committee for the VIC. This advisory committee will meet at least once each fiscal-year quarter while this Agreement is in effect, beginning in the October 1-December 31, 2014, quarter. The advisory committee will provide the CITY with notification of the date, time, and location of its meetings, at least 14 days before the scheduled date of the meeting, except that in the case of emergency or specially-scheduled meetings, the notification will be (if possible) at least four days

before the meeting is to take place. The CITY will appoint a city council liaison to sit as a member of this committee, and this individual will be entitled to a seat on the committee. Nothing in this section will affect the right of the CHAMBER'S board of directors to conduct the CHAMBER'S business under the CHAMBER'S bylaws and other governing documents. However, if requested by the board, the appointed city council liaison will be available to attend any chamber board meeting.

### **SECTION VIII. INSURANCE**

The CHAMBER shall carry insurance as follows:

- a) Workers' compensation coverage in accordance with Oregon law; and
- b) Commercial general liability insurance for the VIC, with a reputable insurance carrier, naming the CITY, elected officials, officers, agents and employees as an additional insured. The insurance limits shall be a minimum of \$1 million per occurrence and \$2 million aggregate. Evidence of such insurance coverage, in the form of a certificate from the CHAMBER'S insurer, will be provided to the CITY within fifteen (15) days from the end of each calendar-year quarter. The CHAMBER also will furnish a new certificate of coverage to the CITY forthwith, upon any change of insurance carrier by the CHAMBER. The CHAMBER may not cancel this insurance without at least thirty (30) days prior written notice to the CITY.

### **SECTION IX INDEMNIFICATION**

1. CHAMBER will indemnify defend and hold CITY, its elected officials, officers, agents and employees, harmless from and against all claims, demands, actions, costs and expenses, including attorneys' fees and costs of defense, which may be incurred by or asserted against CITY, arising out of or resulting CHAMBER'S acts and omissions and the acts and omissions of CHAMBER'S officers, subcontractors, agents and employees.

2. CITY will indemnify defend and hold CHAMBER, its officers, directors, agents and employees, harmless from and against all claims, demands, actions, costs and expenses, including attorneys' fees and costs of defense, which may be incurred by or asserted against CHAMBER, arising out of CITY'S acts and omissions and the acts and omissions of CHAMBER'S officers, subcontractors, agents and employees.

### **SECTION X COMPLIANCE WITH LAWS**

The CHAMBER will comply with the provisions of all federal, state and local laws and ordinances that are applicable to the VIC and its operations.

**SECTION XI  
STATUS AS AN INDEPENDENT CONTRACTOR**

In the performance of the work, duties, and obligations required of the CHAMBER under this agreement, it is mutually understood and agreed that the CHAMBER is at all times acting and performing as an independent contractor and not an agent, partner, or joint venture with the CITY. The CITY shall neither have nor exercise any control over the methods by which the CHAMBER performs its work and functions. The parties acknowledge that any contracts entered into between the CHAMBER and any third party are not an obligation of the CITY, and the CHAMBER must not represent that it has the power or authority to contractually bind or obligate the CITY.

**SECTION XII  
MODIFICATION**

This Agreement may not be released, discharged, abandoned, changed, or modified in any manner, except by an instrument in writing signed on behalf of each of the parties, by their duly authorized representatives.

**SECTION XIII  
ASSIGNMENT**

The responsibility for performing the CHAMBER'S services under the terms of this Agreement shall not be assigned, transferred, delegated or otherwise referred by the CHAMBER to a third person without the prior written consent of the CITY.

**SECTION XIV  
NOTICES**

For purposes of this Agreement, notices by one party to the other are deemed to be made if in writing, sent by certified mail, return receipt requested to the other party, addressed as follows:

A. For the CHAMBER: Executive Director  
Central Point Chamber of Commerce  
650 E. Pine Street  
Central Point, OR 97502

B. For the CITY: City Manager  
City of Central Point  
140 S. 3rd Street  
Central Point, OR 97502

IN WITNESS WHEREOF, this agreement is entered into as of \_\_\_\_\_, 2014.

CITY OF CENTRAL POINT

\_\_\_\_\_  
Director

\_\_\_\_\_  
Mayor

CENTRAL POINT CHAMBER OF  
COMMERCE