



**TRANSIENT LODGING TAX AD HOC COMMITTEE AGENDA
JANUARY 2, 2019, 4:00 PM
NEWBERG CITY HALL, 414 E FIRST STREET**

- I. CALL MEETING TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF MINUTES – DECEMBER 5, 2018**
- IV. MINUTES OF THE MARKETING SUBCOMMITTEE – NOVEMBER 19, 2018**
- V. PUBLIC COMMENTS**
- VI. VISIT NEWBERG – TOURISM ORGANIZATION – DRAFT AGREEMENT AND BYLAWS**
- VII. STATUS OF DESTINATION DEVELOPMENT-MARKETING GRANTS FY 17/18 (NEWBERG DOWNTOWN WINERIES ASSOCIATION, CHEHALEM CULTURAL CENTER, AND WOLVES & PEOPLE)**
- VIII. TLT MEMBER UPDATES**
- IX. NEXT MEETING – FEBRUARY 6, 2019**
- XI. ADJOURNMENT**

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the Office Assistant II of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the Office Assistant II at (503) 544-7788. For TTY services please dial 711.



TRANSIENT LODGING TAX AD HOC COMMITTEE MEETING MINUTES
December 5, 2018, 4:00 PM
Permit Center Conference Room, Newberg City Hall
414 E First Street

Chair Lewis called the meeting to order at 4:04 p.m.

ROLL CALL

Members Present:	Dennis Lewis, Chair	Jessica Bagley
	Megan Carda	Rob Felton
	Robert Griffin	Shannon Buckmaster
	Loni Parrish	Elise Yarnell-Hollamon
	Mayor Andrews, Ex Officio	Joe Hannan, Ex Officio

Members Absent: Kyle M. Lattimer, Ashley Lippard, Lori Louis, Brian Love, Sheila Nicholas (all excused)

Staff Present: Doug Rux, Community Development Director

Guests Present: David Wall

APPROVAL OF MINUTES

MOTION: Robert Griffin/Elise Yarnell-Hollamon moved to approve the minutes of November 7, 2018.
Motion carried (8 Yes/ 0 No).

PUBLIC COMMENTS:

David Wall thanked Chair Lewis and CDD Rux for their efforts on the tourism program. He suggested tightening up language in the grant process and that members of the Committee should not be approving grants if there is a conflict of interest.

VISY NEWBRG - TOURISM ORGANIZATION – DRAFT AGREEMENT AND BYLAWS

Agreement

CDD Rux recapped there are one-time funds available in an estimated amount of \$490,000.

Member Card inquired if Visit Newberg could earn interest on funds.

Member Griffin inquired if startup cost should be limited to one-quarter of the available amount.

Member Card asked how Visit McMinnville received its initial funding.

Member Parrish suggested a possible startup amount of \$100,000.



Member Buckmaster noted startup cost would include items such as Executive Director recruitment, State filings, costs for establishing the organization, funds for the Executive Director salary, rent and software.

Ex Officio Hannan noted he was uncomfortable giving \$500,000 to a new organization at one-time. He noted that dollars that stay in the TLT Fund earn interest. A national search could cost in the range of \$25,000. Another hotel is proposed within a year and will generate another \$40,000 of revenue. There needs to be metrics for a new organization.

Chair Lewis referred back to the startup costs.

Ex Officio Hannan noted three pillars: 1) Marketing 2) Facilities and 3) Events. He shared that dollars were provided to the Chehalem Cultural Center of \$250,000 with a grant and was matched by \$250,000 in outside grant funds. He shared the desire to renovate the upstairs and a match of dollars to get that project started.

Member Bagley recapped what she was hearing is to break up the onetime funds over a three to four year period.

Member Felton suggested a startup amount of \$100,000 to \$250,000.

Member Yarnell-Hollamon indicated the Committee should look at what Visit McMinnville did for startup costs.

Chair Lewis noted that McMinnville is 3 – 4 times greater in revenue than Newberg.

Member Parrish asked the Committee if language could be developed that lays out startup needs and not give a specific number.

Member Buckmaster indicated that the Visit Newberg Board is the stop gap, City Council has to review and approve the Business Plan and budget on what the dollars could be spent on.

Member Griffin shared he has sat on a number of committees and they never gave all of the funds at once. He inquired what the 5% contingency was for.

Ex Officio Hannan noted that Visit Bend had a rocky start and he was involved in that process. He noted someone may come to the City and ask for TLT dollars for tourism.

Chair Lewis indicated he was not in support on the 5% contingency in the current Agreement proposal.

Member Griffin noted a 5% contingency of \$490,000 is a smart thing to do. He inquired if the 5% could be used by the City for tourism. Ex Officio Hannan indicated yes.

CDD Rux noted that dates in the Agreement are flexible and subject to change. Section 3.e. “up to” language was discussed. The Committee was ok leaving in the “up to” language.

Ex Officio Hannan shared that the 70% -30% split is being investigated and how it applies to new hotels and lodging.



Chair Lewis suggested a change to Section 3e and remove the percentage and replace it with “in conformance with State Law”.

Member Carda inquired if it is found that the City improperly split dollars over the past three years will the City make up the difference.

MOTION: Robert Griffin/Loni Parrish moved to approve the Agreement with changes noted today.
Motion carried (8 Yes/ 0 No).

Member Yarnell-Hollamon left the meeting at 5:08 p.m.

Bylaws

CDD Rux recapped the draft Bylaws noting all of the track changes. The TLT Committee discussed and had no suggested changes.

MOTION: Megan Carda/Robert Griffin moved to approve the Draft Bylaws.
Motion carried (7 Yes/ 0 No).

Visit Newberg Board Member Recommendation

CDD Rux summarized there are twenty names proposed and that they need to be short listed for a recommendation to the Mayor.

Member Parrish noted she wants to have representation from wineries, art, and culture.

Member Felton suggested adding Ted Crawford as he is interested in a Board position.

Chair Lewis suggested Ted Crawford as an Ex Officio Board Member.

Member Parrish noted that Jessica Bagley is interested representing restaurants.

Member Card suggested Loni Parrish to represent art.

Member Griffin asked who represents Georg Fox University. It was noted Rob Felton represents the university.

Member Bagley suggested Cliff Anderson with ties to vineyards and a background in marketing.

Member Buckmaster noted to strike Emily Weichold and Mark Moisan as they both have applied to be on the Chamber Board of Directors. She suggested Britta Stewart.

Member Parrish suggested Christian DeBenedetti. He has been spoken with and is interested. She also talked to Cathy Martin who has a background in marketing and she is interested.

Member Buckmaster noted with nine Board Members could there be alternates.

Member Griffin noted to delete Hub Marduck as he has other commitments.



Member Felton suggested Jennifer Sitter and that she has been contacted and is willing to serve. She could represent the downtown, retail and vacation rentals.

Chair Lewis noted Doug Peterson is willing to serve but should be stricken. He inquired if Shannon Buckmaster could be an Ex Officio member.

Member Carda indicated she supported Cathy Martin.

Member Buckmaster also noted she supports Cathy Martin.

Member Parrish noted she support Lori Louis.

Member Buckmaster asked about the background of Robert Griffin. He noted he has served on prior boards and has a minor in marketing.

The Committee developed the following list if names to recommend to the Mayor:

Dennis Lewis
Rob Felton
Loni Parrish
Megan Carda
Robert Griffin
Lori Louis
Jessica Bagley
Cathy Martin
Britta Stewart
Christian DeBenedetti
Shelia Nicholas
Jennifer Sitter

Ex Officio: Shannon Buckmaster – Chehalem Valley Chamber of Commerce, Ted Crawford – City of Dundee

MOTION: Dennis Lewis/Rob Felton moved to approve the slate of names.

Motion carried (7 Yes/ 0 No).

WILLAMETTE VALLEY VISITOR ASSOCATION GRANT

Member Felton shared that the Marketing Subcommittee discussed the Willamette Valley Visitor Association grant that was approved for Dundee in the amount of \$20,000. He wants to ask the Newberg City Council for \$20,000 to do the marketing for Wake Up In Wine County.

Member Carda shared that Dundee hopes Newberg would apply for the Travel Oregon Grant in April 2019. Dundee will do development first. Newberg would push out the marketing.

Member Buckmaster inquired if the City Council will approve the funds that were not spent for the prior Travel Oregon grant and use those funds plus additional funds to do the marketing.



STATUS OF DESTINATION DEVELOPMENT-MARKETING GRANTS FY 17/18

No discussion on this item was held.

TLT MEMBER UPDATES

None.

NEXT MEETING

January 2, 2019 at 4:00 pm

ADJOURNMENT

Meeting adjourned at 5:40 pm

Approved by the Newberg Transient Lodging Tax Ad-Hoc Committee this January 2, 2019.

Dennis Lewis, TLT Ad-Hoc Committee Chair

Doug Rux, Community Development Director



**TRANSIENT LODGING TAX AD HOC COMMITTEE
MARKETING SUBCOMMITTEE
November 19, 2018, 8:30 am
Newberg City Hall, 414 E First Street**

The meeting was called to order by Chair Rob Felton at 8:37 a.m.

ROLL CALL:

Members Present: Rob Felton, Chair Dennis Lewis
Shelia Nicholas

Members Absent: Shannon Buckmaster, Jessica Bagley

Staff Present: Doug Rux, Community Development Director

Guests:

APPROVAL OF MINUTES

Approval of the minutes of October 22, 2018.

MOTION: Felton/Nicholas moved to approve the October 22, 2018 meeting minutes as amended. The motion carried 2 Yes/ 0 No / 1 Abstain (Lewis).

PUBLIC COMMENTS:

None.

VISIT NEWBERG – TOURISM ORGANIZATION – DRAFT AGREEMENT AND BYLAWS

Chair Felton noted that date of the Bylaws Subcommittee is November 28, 2018 at 4 p.m. at City Hall.

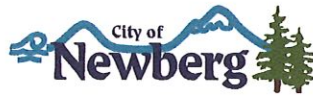
Member Lewis inquired if legal counsel will be present. CDD Rux noted Mr. Bridges is invited.

CDD recopied that he had received names for Visit Newberg Board consideration from Rob Felton and Kyle Lattimer. He will send another email to TLT Committee members on potential Board member names. The intent is to get the Visit Newberg material on the December 12, 2018 City Council agenda.

Member Nicholas noted that Paul Bachand from Recipe is interested.

Member Lewis shared that during the Rain or Shine campaign Paul Bachand was supportive.

Member Nicholas shared that people in the wine industry have marketing experience. She would support a round two to look at names for consideration.



CDD Rux noted that Truman Stone and Matt Zook are reviewing the draft Agreement and Bylaws.

Chair Felton asked about the difference between a 501(c)(6) and a 501(c)(3) organization. Member Lewis provided clarification.

Member Nicholas inquired about Page 17 in the packet and Section 4 on the reference to the Newberg zip code that is incorrect. She also had a question on the majority of industry representation language. The committee discussed and changed the zip code reference and kept the industry representation language as proposed.

Chair Felton suggested Ex Officio members to get broader representation. He suggested the City of Newberg, Chehalem Cultural Center and Newberg Downtown Coalition.

CDD Rux referred to Page 18 of the packet and the language reference public meetings and records.

Member Lewis clarified that he was concerned about daily operations being public verses Board meetings.

CDD Rux indicated the Bylaws would be discussed in depth by the Bylaws Subcommittee.

The Subcommittee discussed possible individuals who would have an interest on being a Board Member of Visit Newberg. This included Emily Weichold, Doug Peterson, Rebecca Ponzi, Paul Bachand, Andrew Heinschn, Hub Marduck, Britta Stewart, Cliff Anderson, and Mark Moisan.

2019 CAMELLIA FESTIVAL

CDD Rux outlined the possibility of utilizing the \$10,000 from the unsuccessful Travel Oregon grant application and the \$2,500 awarded to Anvil Academy that is not moving forward as funding sources for the Camellia Festival which is seeking \$14,000 of funding assistance.

Member Lewis asked about past awards to the Camelia Festival and if it is a want or a need.

CDD Rux outlined \$8,000 was awarded in 2018 to cover the 2018 Festival and a portion of the 2019 festival. The split was roughly \$4,000 for the 2018 festival and \$4,000 for the 2019 festival.

Member Nicholas inquired if the Camellia Festival should be asked to provide a written proposal.

Chair Felton shared that if the Chehalem Valley Chamber of Commerce gave the festival dollars he was ok with them giving \$4,000 again.

Member Lewis noted that the International Camellia Festival would be a draw for tourist.

NEXT MARKETING SUBCOMMITTEE MEETING

December 17, 2018.

ADJOURNMENT

Chair Felton adjourned the meeting at 9:19 a.m.



Approved by the Transient Lodging Tax Ad Hoc Committee Marketing Subcommittee this 17th day of December, 2018.

A handwritten signature in blue ink, appearing to read "Rob Felton", written over a horizontal line.

Rob Felton
TLT Ad Hoc Committee
Marketing Subcommittee Chair

A handwritten signature in blue ink, appearing to read "Doug Rux", written over a horizontal line.

Doug Rux, Community Development Director



Community Development Department
P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132
503-537-1240 ▪ Fax 503-537-1272 ▪ www.newbergoregon.gov

MEMORANDUM

TO: Transient Lodging Tax Ad Hoc Committee
FROM: Doug Rux, Community Development Director
SUBJECT: Tourism Marketing Organization
DATE: January 2, 2019

The City Council held a public hearing on the Visit Newberg/City of Newberg Agreement for tourism promotion on December 17, 2018. The City Council had a series of questions regarding the proposed agreement and tabled the decision on the Agreement until January 22, 2019. Below are a series of concerns and questions posed by the City Council for the TLT Ad Hoc Committee to consider:

1. Visit Newberg has not been established as a 501(c)(6) organization yet.
2. What are the off ramps for the Agreement and when will the Agreement terminate?
3. Concern's about Visit Newberg meetings not being public meetings and following public records law as the funding is public funds.
4. What are the rules on Visit Newberg meetings and a desire to see those rules?
5. Why not an initial grant for start-up costs rather than an Agreement?
6. Desire to see small incremental steps rather than a full Agreement.
7. Other organization may come forward to City Council seeking funding requests.
8. Concerns on giving a new organization approximately \$499,000 with no track record all at once.
9. Concerns on findings in the staff report an inconsistency in some of the numbers.
10. What is happening to the former grant program and will Visit Newberg be providing grants?
11. Dates when certain activities are to be completed by Visit Newberg for a Business Plan, budget and hiring an Executive Director.
12. Outside funding sources for Visit Newberg and how that fits into their budget.
13. Can Visit Newberg hire outside consultants?
14. Will there be an amendment to the City/Chamber contract for Visitor Center services?
15. Where will the Visit Newberg Executive Director be located? At the Chamber?

Attached is the draft Agreement and draft Bylaws. We will discuss the City Council concerns and questions at the January 2, 2019 meeting.

Attachments: 1. Draft Agreement
3. Draft Bylaws

AGREEMENT BETWEEN
CITY OF NEWBERG, OREGON
AND
VISIT NEWBERG

FOR TOURISM MARKETING AND PROMOTION SERVICES

This Agreement is between the City of Newberg, an Oregon municipal corporation, (City) and Visit Newberg, Inc. (Contractor), an Oregon non-profit corporation. The City wishes to enter into this Agreement with the Contractor for tourism promotion services for the City. The Contractor is willing to provide the tourism promotion services the City desires. The City will compensate the Contractor with a portion of the Transient Lodging Taxes the City assesses pursuant to Oregon State law and Ordinance No. 1976-1835A and as amended by Ordinance No. 1989-2262, 1996-2433, 1997-2476, and 2014-2771.

1. Definitions:

- a. "tourism promotion" means any of the following activities:
 - i) advertising, publicizing, or distributing information for the purpose of attracting and welcoming tourists,
 - ii) conducting strategic planning and research necessary to stimulate future tourism development,
 - iii) operating tourism promotion agencies, and
 - iv) marketing special events and festivals designed to attract tourists (ORS 320.300(7)).
- b. "tourism" means economic activity resulting from tourists (ORS 320.300(6)).
- c. "tourist" means a person who, for business, pleasure, recreation, or participation in events related to the arts, heritage, or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from, and unrelated to the person's community of residence, and that trip:
 - i) requires the person to travel more than 50 miles from the community of residence, or
 - ii) includes an overnight stay (ORS 320.300(10)).
- d. "tourism promotion agency" includes:
 - 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 (ORS 320.300(8)).

2. Contractor's Services:

In exchange for the payment provided in Section 6, the Contractor will provide the following tourism promotion services to the City:

- a. Tourism promotion activities: The Contractor will provide functions, activities, programs, literature (develop, arrange for printing, and distribute), advertising, staff, supplies, equipment, and support to promote the Newberg area as a destination for tourists and visitors. The Contractor will coordinate its activities, as appropriate, with other organizations such as the Chehalem Valley Chamber of Commerce and the Newberg Downtown Coalition and other visitor promotion entities.
- b. Administrative and management functions: The Contractor will provide day to-day management activities including planning and acquisition of services, equipment, supplies, and facilities to fulfill the Annual Business and Marketing Plan (the Business Plan) for Visit Newberg. The Contractor will be responsible for maintaining capable and competent staff, including management staff. The Contractor's Executive Director or designee will attend any City Council meetings as requested by the City Council to provide updates, information, or other data on Visit Newberg plans and services.

3. First Year of the Agreement:

- a. Once the Agreement is fully executed and before it is funded, the City may make payments on behalf of Visit Newberg for various charges (e.g. insurance premiums, advertising costs for the Executive Director). These payments will be deducted from the funding the City will provide Visit Newberg when the certificates of insurance are approved by the City.
- b. Once the Agreement is fully executed and acceptable certificates of insurance have been provided to the City, the City will provide Visit Newberg with funding for startup costs in an amount to be determined and negotiated by the City and Contractor of the Transient Lodging Taxes accrued and unexpended since the inception of the Transient Lodging Tax, minus the City's annual expenditures to the Chehalem Valley Chamber of Commerce for the Visitor Center contract, and funds committed from the Transient Lodging Tax Destination Development-Marketing Grant program grant awards.

- c. No later than February 15, 2019:
 - i) The Contractor will establish an initial high-level budget to enable the Contractor's Board to make informed decisions regarding staff, contract vendors, leases, and other issues and
 - ii) The Contractor will adopt financial policies and procedures.
- d. No later than March 31, 2019, the Contractor will hire an Executive Director.
- e. No later than February 28, 2019, the Contractor will prepare and submit a Business and Marketing Plan (the Business Plan) to the City Council. The Business Plan will contain a detailed description of the services the Contractor proposes to provide during the remainder of the fiscal year, as well as a proposed budget for the remainder of the fiscal year.

The Plan will identify activities and performance goals. The Contractor will be fully responsible for the implementation of services and programs and the City will not control the day-to-day activities and operations of Visit Newberg and its employees and agents. However, the City may provide general suggestions regarding the funding of various services or programs, which the Contractor will consider in the use of City funds.

The Contractor's proposed 2018-2019 budget will be prepared assuming a total budget for services provided under this Agreement of the amount of accrued and unexpended Transient Lodging Tax collections from previous years paid to Visit Newberg under the provisions of 3.b. above, and in accordance with funding distribution by State law for projected Transient Lodging Tax collections for the current year, minus the City's annual expenditures to the Chehalem Valley Chamber of Commerce for the Visitor Center contract, and funds committed from the Transient Lodging Tax Destination Development-Marketing Grant program grant awards. The budget will contain a reserve fund in an amount equal to at least three months of total operating expenses.

- f. The City Council will consider the Business Plan during a Council meeting in the month of March 2019, after which, the Council will determine whether to approve the Plan. If the Council approves the Business Plan, the Council will authorize continued funding for the remainder of the fiscal year. The Contractor will expend funds received from the City under this Agreement only as set out in and authorized by the Business Plan. If the Council does not approve the Business Plan and the parties cannot reach agreement on modification, this Agreement will terminate in the same manner as if the Contractor had defaulted or breached the Agreement, pursuant to Article 13.

- g. No later than June 1, 2019, the Contractor will prepare and submit to the City Council a written progress report on the Business Plan, including the budget. The City Council may request that a representative of the Contractor attend a City Council meeting to provide further information and to answer any questions.

4. Annual Business and Marketing Plan:

- a. Beginning with the 2019-2020 fiscal year, the Contractor will prepare and submit a Business Plan to the City Council no later than March 1 each year. The Business Plan will contain a review of the previous year's performance and a detailed description of the services the Contractor proposes to provide in the next fiscal year, as well as a proposed budget for the next fiscal year. The Business Plan will identify activities and performance goals. Additionally, the Business Plan will contain a detailed explanation of any amendments the Contractor has made to the Contractor's bylaws. The Contractor will be fully responsible for the implementation of services and programs and the City will not control the day to-day activities and operations of Visit Newberg and its employees and agents. However, the City may provide general suggestions regarding the funding of various services or programs, which the Contractor will consider in the use of City funds.
- b. The City Council will consider the Business Plan during a Council meeting in the month of May each year, after which, the Council will determine whether to approve the Plan. If the Council approves the Business Plan, the Council will authorize continued funding of Visit Newberg for the next fiscal year. The Contractor will expend funds received from the City under this Agreement only as set out in and authorized by the Business Plan. If the Council does not approve the Business Plan and the parties cannot reach agreement on modifications, this Agreement will terminate in the same manner as if the Contractor had defaulted or breached the Agreement, pursuant to Article 13.
- c. The Contractor's proposed budget will be prepared assuming a total budget for services provided under this Agreement and in accordance with funding distribution by State law for projected Transient Lodging Tax collections for the current year, minus the City's annual expenditures to the Chehalem Valley Chamber of Commerce for the Visitor Center contract, and funds committed from the Transient Lodging Tax Destination Development-Marketing Grant program grant awards.

The Contractor's annual budget will contain a reserve fund in an amount equal to at least three months of total operating expenses as defined by the Contractor's adopted fiscal policies. The reserve fund may be used in the case of actual revenues being less than forecast and in support of activities

included in the approved Business Plan. In no case will expenditures exceed actual funds payable under this Agreement. However, nothing in this section precludes the Contractor using funds secured from sources other than the City in the Contractors' complete and total discretion.

5. Other Reports:

- a. The Contractor will prepare and submit to the City Council three written progress reports each year (in August, November, and February) on the Business Plan, including the budget. These reports will also contain notice of any amendments the Contractor has made to the Contractor's bylaws. The City Council may request that a representative of the Contractor attend a City Council meeting to provide further information and to answer any questions.
- b. If the City's actual collection of Transient Lodging Tax revenues exceeds the amount approved in the Contractor's budget by 20% or more, before the City will provide additional funds to the Contractor, the Contractor will submit a revised Business Plan to the City, describing how the additional funds will be spent on tourism promotion activities.

6. Funding:

The City agrees to compensate the Contractor from Transient Lodging Tax revenues collected by the City. The compensation will be for services provided under this Agreement. The amount paid quarterly (in August, November, February, and May) to the Contractor will be in accordance with funding distribution by State law for projected Transient Lodging Tax collected by the City in the preceding quarter minus the City's annual expenditures to the Chehalem Valley Chamber of Commerce for the Visitor Center contract, and funds committed from the Transient Lodging Tax Destination Development-Marketing Grant program grant awards. This amount is subject to the following:

- a. The provisions of Section 5.b above, and
 - b. Administrative charges by the City.
7. Administrative Costs: The Contractor's administrative and management costs, including but not limited to personnel, rent, financial management services, internal budgeting and accounting, purchasing, insurance, maintenance, supervision, legal services, printing, and any other costs will be at the cost and discretion of the Contractor.
8. Assets: The Contractor is an independent entity and will be responsible for acquiring and maintaining real and personal property related to the provision

of services under this Agreement. The Contractor will own all real and personal property acquired by it. On termination of this Agreement, the Contractor will transfer any intellectual property or promotional materials associated with the provision of services under this Agreement to the City at no cost.

9. Risk of Loss and Insurance: The Contractor bears the risk of loss of all its property (as described in Section 8). The Contractor, at its own expense, will procure and maintain general liability insurance to protect the Contractor from claims that may arise out of or result from the services provided under this Agreement. Prior to funding of this Agreement, the Contractor will provide proof that it has acquired this insurance. The insurance will be in an amount per occurrence at least equal to the City's tort claims liability limits under the Oregon Tort Claims Act with a \$3,000,000 aggregate. The policy will name the City, its officers, agents, and employees as additional insureds.

The Contractor and any of its subcontractors will maintain in full force and effect Worker's Compensation insurance and Employer Liability insurance in compliance with Oregon State law.

The Contractor will be responsible for all deductibles, self-insurance retentions, and self-insurance for the insurance required under this section. The Contractor will notify the City thirty days prior to any material change in the Contractor's insurance, or, if that is not possible, immediately upon the Contractor receiving notice of a change.

10. Annual Review/Audit: The financial books of Visit Newberg will be audited or reviewed annually by an independent certified public accountant. The accountant will make a written report of the review/audit to the Board of Directors which will then submit a copy of the report to the Newberg City Council. The audit or review will be completed as soon as practical after the close of the fiscal year.
11. Records and Accounting: The Contractor will maintain records and accounts that will allow the City to assure that all funds paid for the performance of this Agreement are properly accounted for. Within 72 hours of a written request by the City, the Contractor will make records relating to income and expenditures available for review and audit by the City. The City will have the right during the term of this Agreement, or within 180 days after the expiration or termination of this Agreement, to audit the Contractor's records for the period of three years prior to the audit. The audit may be undertaken by a qualified person or entity selected by the City. The Contractor agrees that it will provide financial records from its accountants to the City every month. These records will include, at minimum, a balance sheet and income and expense reports. The Contractor will maintain these financial records for at least six years after the expiration of this Agreement.

12. Term: This Agreement will be in effect in February, 2019. It will remain in effect for three years unless terminated earlier under the provisions of Section 3.f (Council fails to approve the Business Plan), Section 4.b (Council fails to approve the Business Plan), Section 13 (default or material breach) or Section 21 (assignment without approval). At the end of the three year term, the Agreement will automatically renew for three one year periods unless either party wishes at any time not to extend the Agreement. If a party wishes not to extend the Agreement, that party will notify the other party that the Agreement will terminate at the end of the current Agreement period. Notification will be in writing and will be delivered no later than January 1 of the year in which the notifying party wishes the Agreement to terminate.
13. Default and Breach: Either party may terminate this Agreement in the event of a default or material breach by the other party. The notifying party must provide written notice to the other party specifying how the other party is not in compliance with the terms of this Agreement. The non-complying party will have thirty days after receipt of a notice of non-compliance to cure the issue(s). Should the correction(s) not be made during this thirty day period, this Agreement may be terminated, at the discretion of the notifying party, unless the correction(s) cannot be made within thirty days. If the non-compliance cannot be corrected within thirty days, the non-complying party must, at minimum, begin corrective action within thirty days and proceed with due diligence until the correction is completed. This Agreement may be terminated, at the discretion of the notifying party, if the non-complying party either fails to begin to take corrective action within thirty days or fails or ceases to use due diligence to continue with the corrective action.
14. Equal Opportunity: The Contractor agrees that it will not discriminate against any employee or applicant for employment on the basis of race, age, color, sex, religion, ancestry, national origin, sexual orientation, gender identity, genetic information, or disability and will take any affirmative action necessary to ensure that all employees and applicants are treated equally. The Contractor and its employees will not, in the performance of this Agreement, discriminate against any customer, potential customer, patron, or other person on the bases listed above in this section and will provide services to all persons equally.
15. Contractor Indemnification: The Contractor will defend, protect, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, losses, damages, injuries, or liability including claims for misapplication of contributions or other funds, state or federal anti-trust violations, personal injury or death, damage to property, liability arising out of the use of materials, concepts, or processes protected by intellectual property rights, and the liens of workmen and material men, regardless how these were caused, if they arose directly or indirectly from the performance

of this Agreement by the Contractor, unless caused by the negligence or willful misconduct of the City. The Contractor is not an officer, employee, or agent of the City under ORS 30.285 or 30.287.

16. Licenses and Taxes: The Contractor will be responsible for the acquisition and maintenance of all licenses and permits to carry on the Contractor's business.
17. Independent Contractor: The Contractor is an independent contractor. The parties intend that an independent contractor relationship will be created by this Agreement. The City is interested only in the results to be achieved. Conduct and control of the work will be the responsibility of the Contractor. The Contractor will not be considered an agent or employee of the City for any purpose, and the employees of the Contractor are neither employees of the City nor are they entitled to any of the benefits that the City provides for its employees.
18. No Third Party Beneficiaries: The City and the Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless the third persons are identified by name in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement.
19. Authority: As specified in Section 17, the Contractor is an independent contractor in the performance of this Agreement. The Contractor will comply with all laws regarding unemployment insurance, disability insurance, and worker's compensation. The Contractor will have no authorization, express or implied, to bind the City to any agreement, settlement, liability, or understanding, and agrees not to perform any acts as an agent of the City.
20. Notice: Any notice or notices provided for in this Agreement or by law which must be given or served on either party will be given or served by personal service, certified mail (return receipt requested, postage prepaid), or by e-mail or facsimile followed by certified mailing of the original, in a pre-addressed, stamped envelope, addressed to:

City of Newberg
Joe Hannan
City Manager
PO Box 970
Newberg, OR 97132

Visit Newberg

Executive Director

21. Assignment: Neither party may assign, subcontract, or otherwise transfer any rights and responsibilities under this Agreement except upon the written

consent of the other party. If any assignment is made, both the assigning party and the assignee will be bound by the terms of this Agreement. The City may terminate the Agreement if transferred or assigned without the prior written consent of the City.

- 22. Amendments: This Agreement may be amended only by written agreement signed by both parties.
- 23. Laws of Oregon: This Agreement will be governed by the laws of the State of Oregon, both as to the interpretation and performance, and the venue will be Yamhill County.
- 24. Waiver: The City's failure to enforce a provision of this Agreement will not constitute a continuing waiver, will not constitute a relinquishment of the City's right to performance in the future, and will not operate as a waiver of the City's right to enforce any other provision of this Agreement.
- 25. Merger: This Agreement constitutes the entire agreement between the parties.

There are no understandings, agreements, or representations regarding this Agreement, whether oral or written, that are not specified in this Agreement.

This contract is entered into by the City of Newberg and the initial Board of Directors of Visit Newberg, Inc., effective February _____, 2019.

CITY OF NEWBERG

VISIT NEWBERG, INC.

Joe Hannan, City Manager

, Chair

**BYLAWS
VISIT NEWBERG**

Article 1. Name

Section 1. Name. This organization is incorporated under the state laws of Oregon as a 501(c)(6) non-membership organization and is known as Visit Newberg (hereinafter VN).

**Article II.
Purpose**

Section 1. Purpose and Role. VN is an economic and tourism development organization with a primary function of creating an effective mix of marketing, sales, and service programs designed to produce a positive economic impact on visitor spending in the Newberg area. Developing and implementing these programs results in an enhancement of the areas livability and economic viability by, among other things, providing increased employment and economic opportunity. VN promotes the entire area and works in partnership with all sectors of the visitor industry. VN practices the highest principles of civic citizenship and follows good business practices and policies.

**Article III.
Contract**

Section 1. Contract. The City of Newberg (City) contemplates entering into a sole source procurement contract with VN based on VN's status as the sole non-profit provider of the programs enumerated above through the use of the City's transient lodging tax income. The initial contract term is three years; however, VN will provide an annual review of the past year as well as an annual business plan for the upcoming year, and the contract may be terminated early if the City does not approve the review or business plan. The initial three year term of the contract will automatically renew for three one year periods unless either party wishes at any time not to extend the contract. If a party wishes not to extend the contract, that party will notify the other party that the contract will terminate at the end of the current contract period. Notification will be in writing and will be delivered no later than January 1 of the year in which the notifying party wishes the contract to terminate. Should VN's sole source status cease, the City will award subsequent contracts on the basis of the requirements of the public contracting law for non-sole source contracts.

Article IV. Board of Directors

Section 1. General Powers and Responsibilities. The governance of VN is vested in a Board of Directors as further provided in these bylaws. The Board of Directors (also referred to as the Board) sets policy, establishes strategic direction, and fulfills legal and fiduciary responsibilities to VN. Members of the Board of Directors (also referred to as Directors, Board members, and members) serve without compensation but they may be reimbursed for expenses related to Board services. Voting members of the initial Board of Directors have been recommended by the Newberg City Council by a majority vote.

Section 2. Number and Terms of Directors. The Board of Directors consists of no fewer than seven and no more than nine voting members, including the Chair, Vice-Chair, Treasurer-Secretary, and four members at large. The Board also includes two non-voting members: the Executive Director, and one City Councilor. The Board may identify Ex Officio members.

In order to stagger the terms of the Directors, approximately one third of the initial voting members of the Board of Directors will serve three year terms (a full term), approximately one third will serve two year terms, and approximately one third will serve one year terms. Subsequently, voting members of the Board will be elected to serve three year terms. Voting Board members will serve no more than three consecutive full terms. Voting Board members who have served three full terms may be re-elected to the Board after a hiatus of one year.

If the City Councilor position is to be filled, it will be filled by appointment by the Mayor upon approval of a majority of the City Council

Section 3. Selection of Directors. All Director positions to be filled after the election of the initial Board of Directors and will be filled pursuant to this Section.

3.1 Voting Directors: No later than January of each year, the Board Chair will appoint a Board member to serve as the Nominating Committee Chair. The Board Chair will also appoint one other Board member to serve on the Nominating Committee, along with the Executive Director. Both appointments must be approved by a majority vote of the Board of Directors. The Nominating Committee will conduct interviews with candidates who are willing to accept voting Directorship responsibilities for upcoming vacancies on the Board. No later than March, the Nominating Committee will present a slate of candidates to the Board for approval through a majority vote of the Board.

Section 4. Qualifications of Directors. Board members will be selected based on their willingness and availability to serve and the experience, knowledge, and energy they can bring to the Board. There is no residency requirement nor is there a requirement that any Director be connected with a company, business, or organization located in the area.

Section 5. Vacancies. If vacancies reduce the number of voting Directors to less than seven, and if more than sixty days remain in the term of the Director or Directors whose leaving has/have caused the number of voting Directors to fall below seven, the Chair will propose one candidate for each voting Director position which is to be filled and the Board will vote on that/those candidate(s). The election of the candidate(s) will be by a majority vote of the Board.

In all other cases, VN is not required to fill voting Director positions which are vacated mid-term. However, if such a voting Director position becomes vacant mid-term, the Chair will, within sixty days of the vacation, make a recommendation to the Board as to whether to fill the position. If the recommendation is to fill the position, the Chair will propose a candidate to complete the term. The election of the candidate will be by a majority vote of the Board.

A voting Director elected to fill a vacancy under this section will serve until the expiration of the term of the position to which the Director was elected.

A City Councilor may be appointed to fill a vacancy in a City Councilor position as specified in Article IV, Section 2. The appointee will serve until the expiration of the term of the position to which the City Councilor was appointed.

Section 6. Removal or Resignation of Directors. If any Director misses more than two meetings in a row or more than three meetings during the fiscal year, the Director's resignation will be deemed to have been tendered and accepted. The other Directors, by majority vote, may make an exception for good cause shown.

Any Director may be removed by a majority vote of the Board of Directors for failure to fulfill the duties required of Directors, or intentional acts or omissions which a prudent person could reasonably have foreseen would damage the reputation or interests of VN. Removal will be based on a finding of the Board that the best interests of VN will be served by this action.

Any Director may resign at any time by providing thirty days written notice to the Executive Director or the Chair.

In all cases of removal or resignation under this section, vacancies will be filled or left vacant under the specifications of Article IV, Section 5.

Section 7. Meetings. The Board of Directors meets no less than once every quarter, at a time and location determined by the Chair. All meetings will be held in accordance with State and Federal laws for 501(c)(6) organizations . The Chair or Executive Director may cancel or reschedule meetings. The Chair or Executive Director may call special meetings of the Board of Directors at any time.

Regularly scheduled Board meetings may be held without separate notice if the location, date, and time are fixed by resolution or all Directors were originally notified of the schedule. Special meetings of the Board and any regular meetings of the Board which are not pre-scheduled as specified above must be noticed to each Director no less than two days and no more than thirty days in advance of the meeting.

Decisions of a routine nature may be made by the Chair and Executive Director. These decisions, if outside the governance policies established by the Board, must be ratified by majority vote at the next regularly scheduled Board meeting.

Section 8. Quorum. A quorum consists of a simple majority of the voting Board members in good standing immediately before the meeting begins. A quorum must be present at Board of Directors' meetings in order for the Board to take action. A majority vote consists of a simple majority of the quorum of voting Board members in attendance at any given meeting.

Section 9. Voting. With the exception of the Executive Director, and the City Councilor each member of the Board of Directors has one vote. Proxy voting is not allowed, either at a meeting of the Board of Directors or in any other way connected with the Board reaching a decision. Directors unable to attend a meeting of the Board may send a letter, e-mail, or other written communication to the Board stating his/her opinion or position on any matter before the Board. A copy of the communication will be distributed to each Board member present, and, if the absent Board member so requests, the communication will be read aloud at the meeting during the discussion of the issue. Any Board member may attend a meeting via telephone, conference call, or video conferencing provided that the attendance allows all participants to speak and to be heard by all other participants.

Voting will be allowed if attending a meeting in person, or by means of telephone or video conference that meets the above rule. Additionally, the Board may vote on matters by electronic means, including, but not limited to email or other software or applications that allows for distribution to all of the Board Members simultaneously and will be capable of being maintained as a permanent record of the decision.

Section 10. Conflicts of Interest. When a Board member has an actual or potential conflict of interest in a transaction with VN, the material facts of the transaction and the Board member's interest will be disclosed to the Board of Directors at each meeting prior to any vote taking place. The conflict will be recorded in the minutes of the meeting. The existence of an actual conflict of interest disqualifies a Board member from participating in both the discussion and the vote on the issue. A Board member with a potential conflict of interest may participate in the discussion and vote on the matter after declaring the conflict as discussed above. Each Board member will sign a conflict of interest statement annually.

Section 11. Officers, Duties. There are three officers of the Board: Chair, Vice-Chair, and Treasurer. All officers must be voting members of the Board of Directors.

11.1 Chair: The Chair presides at meetings of the Board of Directors, assures that the Board of Directors is advised on all significant matters of business, and provides guidance in the development of overall VN long-term objectives. The Chair may also perform other duties as prescribed by the Board of Directors.

Although the Chair may vote on any issue before the Board, s/he may remain neutral on issues before the Board unless his/her vote is needed to break a tie.

The Chair and the Executive Director serve as the official spokespersons for VN. The roles of Executive Director and Chair are complementary, with the Executive Director seeing to the operation of VN and the achievement of the desired results, and with the Chair seeing to the health of the Board and the achievement of Board responsibilities.

The Chair and the Executive Director may sign deeds, mortgages, bonds, contracts, or other instruments, which the Board of Directors has authorized to be executed. A minimum of two signatures is necessary for such legal documents, except in cases where the signing is expressly delegated to some other agent by the Board of Directors or statute.

The Chair, along with the Vice-Chair and the Treasurer, conducts an annual performance evaluation of the Executive Director and provides a written report of the review, along with a recommendation for any action, to the Board of Directors. Insofar

as possible, reviews will be confidential.

11.2 Vice-Chair: The Vice-Chair serves as the first assistant to the Chair, performing the duties of the Chair in the Chair's absence. The Vice-Chair succeeds the Chair in the event of a mid-term vacancy in the position of Chair.

11.3 Treasurer: The Treasurer oversees financial reports, which describe the financial condition of VN and serves as liaison between the contracted financial management services provider and the Board. The Treasurer succeeds as Vice-Chair in the event the Vice-Chair position becomes vacant mid-term and s/he succeeds as Chair in the event that both the Chair and Vice-Chair positions become vacant mid-term.

Section 12. Election of Officers. The current voting Directors nominate voting Directors for the positions of Chair, Vice-Chair, and Treasurer at the first meeting of each calendar year. The election of each officer is by a majority vote of the Directors. The election of the officers is conducted either at the first meeting of the calendar year or as soon as possible thereafter. Officers' terms are one calendar year, but officers remain in their offices until a new election has been held. Officers may be re-elected to the same position for subsequent years, as long as the officer is a member in good standing of the Board of Directors. If an officer position becomes vacant during a term, the rules of succession in Section 11 above apply. To fill any vacancy after applying the rules of succession, the Board of Directors nominates a member to serve out the term of that position. This interim officer must be approved by a majority vote of the Directors.

Article V. Executive Director

Section 1. Executive Director. The Board employs an Executive Director who is charged with the general supervision and management of the office and business affairs of VN. The Executive Director reports directly to the Board. The Board sets the Executive Director's salary. The Executive Director is charged with proposing to the Board and, upon approval by the Board, implementing an annual marketing plan and budget. The Executive Director has the authority for supervision of all employees, including all personnel actions and employee compensation within the annual budget as approved by the Board. The Executive Director serves as the Corporate Secretary, keeps all necessary records, and in general manages the affairs of VN to promote the objectives for which it was organized. In the absence of the Executive Director, all duties will be performed by a member of the staff appointed for that purpose. The Executive Director is a non-voting member of the Board of Directors, is a member of all Board committees, and carries out other duties as assigned by the Board, its officers, and committees. The Executive Director executes (with the Chair) and oversees all contracts,

mortgages, deeds, bonds, or other instruments in accordance with action plans and expenditures budgeted and approved by the Board of Directors.

The Executive Director and the Chair of the Board are the official spokespersons for VN. The roles of Executive Director and Chair are complementary, with the Executive Director seeing to the operation of VN and the achievement of the desired results, and with the Chair seeing to the health of the Board and the achievement of Board responsibilities.

The Executive Director is accountable to the full Board, not to individual Board members or committees. This does not prevent full interaction between the Executive Director and Board members and committees. The actions of the Executive Director must be in harmony with the wishes of the Board as a whole. A dispute between a Board member or a committee and the Executive Director will be arbitrated by the full Board and, where necessary, a majority Board vote will determine the outcome.

Article VI. Finances

Section 1. Fiscal Year. The fiscal year of VN commences on the first day of July and ends on the last day of June each year.

Section 2. Special Fund. No organized effort to raise funds for VN will be undertaken unless authorized by the Board.

Section 3. Annual Budget. The Executive Director prepares and submits an annual budget for the coming fiscal year to the Board of Directors for review no later than February 1 each year. The Board of Directors adopts a final budget by majority vote no later than February 28 each year.

Section 4. Disbursements. All disbursements must adhere to the financial policies and procedures approved by the Board of Directors by majority vote. No obligations or expenses will be incurred and no monies will be appropriated for unbudgeted items without prior approval of the Board of Directors by majority vote. Upon approval of the annual operating budget, the Executive Director is authorized to make disbursements on accounts and expenses provided for in the budget without additional approval of the Board of Directors. All disbursements except petty cash will be made by check or electronic funds transfer.

Section 5. Annual Review/Audit. The financial books of VN will be audited or reviewed annually by an independent certified public accountant. The accountant will make a written report of the review/audit to the Board of Directors which will then

submit a copy of the report to the Newberg City Council. The audit or review will be completed as soon as practical after the close of the fiscal year.

Article VII. Amendments

Section 1. Amendments. All proposed amendments or changes to these bylaws will be made by the Board of Directors and will be approved by a seventy-five percent (75%) majority vote of the voting Directors in good standing who are then in office. Prior to the adoption of the amendment, each Director will be given at least forty eight hours' notice of the date, time, and place of the meeting at which the proposed amendment is to be considered. The notice will state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the bylaws and it will contain a copy of the proposed amendment.

Article VIII. Indemnification

Section 1. Indemnification. VN will indemnify any person who was or is a party, or is threatened with being made a party, to any threatened or pending action or suit by reason of the fact that s/he is or was a director, officer, employee, or agent of VN, for expenses (including attorney's fees) actually and reasonably incurred by him/her in connection with the defense or settlement of the action or suit, provided s/he acted in good faith and in a manner s/he reasonably believed to be in, or at least not opposed to, the best interests of VN. No indemnification will be given to any person who has been adjudged to be liable for negligence or misconduct in the performance of his/her duty to VN unless and only to the extent that the court in which the action or suit was brought determines that, despite the adjudication of liability, and in view of all circumstance of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court deems proper.

Section 2. Insurance. VN will, at all times, carry all appropriate directors and officers and liability insurance.

Proposed Article IX. Dissolution Clause

Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(6) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by a court of competent jurisdiction in the

county in which the principal office of the organization is located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

These bylaws are approved this _____ day of _____, 2019, by the initial Board of Directors of Visit Newberg.

Treasurer

DRAFT