



Item No. 13a

LAUDERDALE • BY • THE • SEA

### Agenda Item Memorandum

**Town Clerk**

Department

**June White**

Department Director

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> October 9, 2012 – Regular Meeting 7:00 PM	Oct 3

\*Subject to Change

- |  |   |                                       |                                       |
|--|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation          | <input type="checkbox"/> Reports        | <input type="checkbox"/> Consent      | <input type="checkbox"/> Ordinance    |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

**FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE:** Resolution 2012-37 Authorizing an Agreement with the Lauderdale-By-The-Sea Chamber Of Commerce for Operation and Funding a Visitor and Welcome Center

**EXPLANATION:** The Town Commission agreed in July to provide \$40,664 in funding for labor to operate the Chamber's Tourist Information/Welcome Center in the upcoming fiscal year. This agreement establishes the conditions of that donation.

**EXHIBITS:** Resolution 2012-37 Agreement

**RECOMMENDATION:** Authorize proper Town officials to execute the agreement

Reviewed by Town Attorney  
 Yes  No

Town Manager Initials JA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**RESOLUTION NO. 2012-37**

**A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING AN AGREEMENT WITH THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE FOR OPERATION AND FUNDING A VISITOR AND WELCOME CENTER; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

16       **WHEREAS**, the Town of Lauderdale-By-The-sea finds it in the best interest of the Town  
17 to fund a visitor and welcome center in the Town; and

18       **WHEREAS**, the Town Chamber of Commerce has agreed to operate this Center; and

19       **WHEREAS**, the parties wish to memorialize their agreement regarding operations and  
20 funding the Center.

21       **NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF  
22 THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

23       **Section 1.** Each "WHEREAS" clause set forth is true and correct and herein  
24 incorporated by this reference.

25       **Section 2.** The Town Manager is hereby authorized to execute, on behalf of the  
26 Town, the Agreement with the Lauderdale-By-The-Sea Chamber of Commerce, in the form  
27 attached hereto as Exhibit "A", with such non-material changes as may be approved by the Town  
28 Manager and Town Attorney, and such other documents necessary to implement the terms of the  
29 Agreement.

30       **Section 3.** The Town Manager and/or her designee and the Town Attorney are  
authorized to take all actions necessary to implement the terms and conditions of the Agreement.

1           **Section 4.**    The dollar amount of the funds being sought is \$40,664.00.

2           **Section 5.**    All resolutions or parts of resolutions in conflict herewith are hereby  
3 repealed to the extent of such conflict.

4           **Section 6.**    If any clause, section or other part of this resolution shall be held by any  
5 court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid  
6 part shall be considered as eliminated and in no way affecting the validity of the other provisions  
7 of this resolution.

8           **Section 7.**    This resolution shall become effective immediately upon its passage.

9           **PASSED AND ADOPTED** this \_\_\_\_\_ day of October, 2012.

10

11

12

13

\_\_\_\_\_  
Mayor Roseann Minnet

14

15    Attest:

16

17

18

19

\_\_\_\_\_  
Town Clerk June White, CMC  
(CORPORATE SEAL)

20

21

22

23

24    APPROVED AS TO FORM:

25

26

27

\_\_\_\_\_  
Susan L. Trevarthen, Town Attorney

28

## AGREEMENT

This is an agreement, made this \_\_\_\_ day of October, 2012 by and between the Town of Lauderdale-By-The-Sea, Florida a municipal corporation organized and operating under the laws of the State of Florida hereinafter referred to as "TOWN" and Lauderdale-By-The-Sea Chamber of Commerce, Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as "CHAMBER"

Whereas, the CHAMBER has requested financial assistance from the TOWN for labor costs to operate the Tourist Information Center/Welcome Center;

Whereas, the TOWN and CHAMBER agree to enter a funding agreement to ensure the continued operation of the Tourist Information Center/Welcome Center;

Now, therefore, in consideration of the mutual promises, terms, provisions covenants and payments set forth herein, it is hereby agreed by and between the TOWN and CHAMBER as follows:

1. **Recitals** The above recitals are true and correct and are hereby incorporated herein
  
2. **Services and Responsibilities of CHAMBER**
  - 2.1 CHAMBER agrees to operate a Tourist Information Center/Welcome Center at 4201 Ocean Drive, for the twelve month period ending September 30, 2013, for the benefit of the citizens, merchants and residents of the Town. The Tourist Information Center/Welcome Center shall be open and manned no less than seven days a week and eight hours per day, except holidays, and shall respond to letters, telephone calls, faxes, electronic mail, text messages and website inquiries regarding lodging, restaurants, businesses, recreational opportunities, and events in the Town of Lauderdale-by-the-Sea.
  
  - 2.2 CHAMBER shall maintain a web site which promotes the businesses and Town as a desirable destination and shall include a link to the TOWN'S website.
  
  - 2.3 The CHAMBER shall submit a monthly report to the TOWN which indicates the number of inquiries to the Welcome Center, the number of walk-in visitors to the Welcome Center, and the estimated number of attendees at Chamber-sponsored events in TOWN.
  
  - 2.4 The Chamber shall remain in good standing as a Florida corporation during the term of this agreement.
  
  - 2.5 CHAMBER shall aid in the promotion of all TOWN-sponsored events—as mutually agreed to by the CHAMBER and the TOWN.

- 2.6 CHAMBER agrees that any funds provided by the TOWN shall only be used for the labor costs to operate the Welcome Center and the CHAMBER shall reimburse the TOWN for any funds paid to the CHAMBER by the TOWN in excess of actual labor costs to operate the Welcome Center for the twelve month period commencing October 1, 2012 through December 31, 2013. The CHAMBER agrees the TOWN has the right to audit the CHAMBER'S financial records in this regard.
- 2.7 It is expressly agreed that all staff personnel hired by and paid for by the CHAMBER shall be employees of the CHAMBER, shall remain under the control, supervision, and direction of the CHAMBER and shall not be employees of the TOWN.
- 2.8 The Chamber shall provide the Town a quarterly financial report on the operations of the welcome center. Such reports shall be submitted in January, April, July and October.

### **3. Services and Responsibilities of TOWN**

- 3.1 The TOWN agrees to provide funding for the term of this agreement in the amount of \$40,664.00 for the operation of the Tourist Information Center/Welcome Center. Funding shall commence in December, 2012 and be remitted in full by September 30, 2013.
- 3.2 The schedule of payments of the \$40,664.00 by the TOWN shall be as follows: \$10,166.00 paid to the CHAMBER by December 31, 2012, and additional payments in that same amount by March 31, June 30, and September 30, 2013.
- 3.3 TOWN agrees to continue providing full and exclusive use of the facility located at 4201 Ocean Drive in Lauderdale-By-The-Sea for the benefit of CHAMBER. The facility shall remain the property of the TOWN. Additionally, TOWN agrees to continue providing building maintenance, grounds maintenance and utilities, including electricity, water and waste collection.
- 3.4 The TOWN and CHAMBER agree to cooperate in each other's efforts to positively promote the Town and host events that bring visitors to Town and residents to the downtown.
- 3.5 The TOWN and CHAMBER agree that, should other governmental funds be given to the CHAMBER during the term of this agreement for the operation of the Tourist Information Center/Welcome Center or to offset the labor costs of the paid Chamber staff, the TOWN'S \$40,664.00 funding commitment for that purpose will be reduced by the same amount that the CHAMBER receives from another governmental agency. In such event, each subsequent payment due

CHAMBER from TOWN shall be reduced equally to accommodate the total reduced amount due.

#### **4. Term and Termination**

- 4.1 This agreement shall be effective for a term of twelve months, effective October 1, 2012 unless terminated by either party according to the terms set forth in Section 4.2 or Section 7 of this agreement.
- 4.2 The TOWN may terminate this agreement unilaterally with ninety (90) days notice to the CHAMBER and only with a supermajority vote of 4/5 vote of the members of the Town Commission.
- 4.3 In the event of unilateral termination of this agreement by the TOWN, the CHAMBER shall retain exclusive use of the facility located at 4201 Ocean Drive in Lauderdale-By-The-Sea which shall remain maintained by the TOWN through December 31, 2013.
- 4.4 The TOWN shall fund any remaining portion of the agreement up to termination date as laid out by section 4 herein, calculated prorata based on the termination date.
- 4.5 The CHAMBER may terminate this agreement unilaterally with ninety (90) days notice to the TOWN. In such event CHAMBER shall forfeit any rights or entitlements due after the termination date.

#### **5. Equal Employment Opportunity**

- 5.1 In the performance of this agreement, CHAMBER shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

#### **6. Notice**

- 6.1 Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CHAMBER and the TOWN designate as the respective places for giving of notice:

TOWN: Constance Hoffmann  
Town Manager  
4501 Ocean Drive  
Lauderdale-By-The-Sea, FL 33308

CHAMBER: Mark Silver  
President, Lauderdale-by-the-Sea Chamber of Commerce  
4201 Ocean Drive  
Lauderdale-By-The-Sea, FL 33308

## **7. Default and Cure**

- 7.1 Shall the TOWN or CHAMBER find the counter party in default; the counter party shall be noticed in writing of the default and the commencement of the cure period of sixty (60) days.
- 7.2 During the cure period, the noticed party shall cure the default and return to such actions that comply with the terms of this agreement. If the default is not cured the non-defaulting party may terminate the agreement with no further obligation to the defaulting party.
- 7.3 Should the dispute be over the lack of agreed upon funding from the TOWN to the CHAMBER, half the funds shall be dispersed upon notice of the default, and half the funds shall be held in escrow.

## **8. Property**

- 8.1 The parties agree that all items equipment property and materials owned or purchased by CHAMBER and provided for the execution of this agreement shall remain the property of CHAMBER. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided for the execution of this agreement shall remain the property of the TOWN. In the event of damage or destruction, the party causing such damage or destruction shall promptly repair or replace the property.

## **9. Waiver**

- 9.1 Failure of either party to insist upon strict performance of any covenant or condition of this agreement or to execute any right here in contained shall not be construed as a waiver or relinquishment for the future of any such covenant condition or right but the same shall remain in full force and effect

## **10. Severability**

10.1 If any provision of this agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

**11. Governing Law**

11.1 This agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

**12. Extent of Agreement**

12.1 This agreement represents the entire and integrated agreement between the TOWN and the CHAMBER and supersedes all prior negotiations, representations or agreements either written or oral.

**13. Indemnification**

13.1 CHAMBER agrees to indemnify and hold harmless the TOWN for all costs, losses and expenses, including, but not limited to, damages to persons or property, including, but not limited to judgments arising out of or in connection with CHAMBER'S use of the TOWN'S property. If requested by TOWN, CHAMBER shall assume and defend itself and TOWN in connection with any such suit or cause of action, and such defense shall be at the cost of the CHAMBER. The CHAMBER shall carry liability insurance in an amount no less than \$1,000,000.00 and shall provide a copy of the policy to the TOWN with the TOWN listed as additional insured on the policy.

IN WITNESS WHEREOF, TOWN and CHAMBER have signed this Agreement.

**TOWN OF LAUDERDALE-BY-THE-SEA,  
FLORIDA**

BY: \_\_\_\_\_  
Constance Hoffmann  
Town Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk June White, CMC

APPROVED AS TO FORM:

*Susan L. Trevarthen*  
Susan L. Trevarthen, Town Attorney

*Mark Silver*  
LAUDERDALE-BY-SEA CHAMBER OF COMMERCE  
Mark Silver, President

\_\_\_\_\_  
Signature of Corporate Secretary

(Corporate Seal)

\_\_\_\_\_  
Printed Name of Corporate Secretary

STATE OF Florida )  
                                  ) ss.  
COUNTY OF Broward )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Mark Silver of Lauderdale-By-Sea Chamber of Commerce, a Florida corporation, and acknowledged they executed the foregoing Agreement as the proper officials of Lauderdale-By-Sea Chamber of Commerce, for the use and purposes mentioned in the Agreement and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 4 day of October, 2012.

My Commission Expires:

*Karen Gates*  
\_\_\_\_\_  
Signature of Notary Public

Notary Seal

Karen Gates  
\_\_\_\_\_  
Printed Name of Notary Public

