



# AGENDA ITEM MEMORADUM

**Town Manager's Office**

**Connie Hoffmann**

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> Jan 10, 2012	Dec 30 <sup>th</sup>
<input type="checkbox"/> Jan 17, 2012 SPECIAL COMMISSION MEETING	Jan 6
<input type="checkbox"/> Jan 24, 2012	Jan 13
<input checked="" type="checkbox"/> Feb 14, 2012	Feb 3
<input type="checkbox"/> Feb 28, 2012	Feb 17

**\*Subject to Change**

- Presentation     Reports     Consent     Ordinance  
 Resolution     Quasi-Judicial     Old Business     New Business

**FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE: ALLEY OOP BEACH USE AGREEMENT**

**EXPLANATION:** As you will recall, we entered into an agreement last year with a new local business, Alley Oop, to use the Town's beach to offer skim board camps and provide free skim board lessons periodically. Given that they were a new business, we gave them four months' use without any compensation to the Town for these privileges. For the next six months (through December 31, 2011) they were required to pay the Town 5% of their gross revenues from the skim board program held on the Town's beach. And for the period January 1- February 29, 2012 they are to pay the Town 10%. The income to the Town has been nominal (under \$300), but we view this more as an economic development issue than a revenue-generating proposition.

The original agreement had a one year term that ends at the end of this month, with a one year renewal option. Alley Oop has requested modifications to the agreement. They prefer to submit reports and payments to the Town quarterly rather than monthly, which is acceptable to staff. They also indicate the skim board camp revenue has been developing much slower than they expected, so they are asking for a reduced payment to the Town. In our negotiations they have agreed to pay the Town 5% on the first \$5,000 in gross revenue, and 10% on any revenue in excess of \$5,000.

The attached contract reflects those modifications. We also added a provision that they may rent skim boards in connection with their programs. It is a new contract for a term of one year, with a one year renewal option.

Although it is a contract that I have the authority to execute, I thought it best to bring it to the Commission because it involves the use of the beach.

**RECOMMENDATION: Authorize execution of a new contract with Alley Oop.**

**EXHIBITS:** Proposed contract with Alley Oop.

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials CH

**AGREEMENT**  
**FOR SKIMBOARDING PROGRAM**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 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 **ALLEY-OOP SKIM FLORIDA, LLC**, a business with an address of 220 E. Commercial Boulevard, Suite B, Lauderdale-By-The-Sea, Florida 33308-4434, referred to as "**CONTRACTOR**". **TOWN** and **CONTRACTOR** are hereinafter collectively referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, the **TOWN** has determined that it is in the best interest of the **TOWN** to operate a skimboard program (the "Program"); and

**WHEREAS**, the **TOWN** and **CONTRACTOR** enter into this Agreement to reflect their mutual understanding regarding the Program.

**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 **CONTRACTOR** as follows:

**1.0 Services and Responsibilities of CONTRACTOR.**

1.1 **CONTRACTOR** agrees to create and operate the Program to include skimboarding camps, skimboarding lessons, skimboard rentals in connection with their programs, and free skimboarding clinics to be operated on the **TOWN'S** beach south of the fishing pier. The **TOWN** reserves the right to move the location of the Program. It is recognized and agreed by the Parties that Program development will be a gradual process that will develop according to the requests of participants and the identification of appropriate volunteers.

1.2 **CONTRACTOR** shall have the following responsibilities:

1.2.1 Obtain a special use permit from **TOWN** and fulfill all requirements related to the permit as described under Section 14.3-5(a) of the **TOWN** Code prior to commencing performance hereunder.

1.2.2 Hire and train sufficient and competent instructors and volunteers.

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1.2.3 Provide direct on-going supervision of the instructors and volunteers and all other necessary administrative support.

1.2.4 Provide for the cleanup of all areas in which the Program and any related events occur immediately following the use of the area.

1.2.5 Assist in the promotion of positive media coverage for the Program and the **TOWN**.

1.3 **CONTRACTOR** agrees to cooperate with the **TOWN** in the operation of the Program and provide a monthly participation report to the **TOWN** Manager.

1.4 **CONTRACTOR** agrees to provide all materials and equipment used in the Program and to perform all marketing and advertising of the Program at **CONTRACTOR'S** expense.

**2.0 Compensation.**

2.1 **CONTRACTOR** agrees to pay the **TOWN** five percent (5%) of gross revenue received from the Program from the first \$5,000 of gross revenue received during the initial term of this Agreement; and ten percent (10%) of gross revenue received in excess of \$5,000 during the initial term of this Agreement. Compensation shall be paid to the **TOWN** quarterly, by the fifteenth (15<sup>th</sup>) day of June, September, December, and March, based on gross revenue received the prior quarter. The first quarterly payment shall be due on June 15, 2012. If the Agreement is renewed, compensation shall revert back to five percent (5%) paid for the first \$5,000 of gross revenue received during the one-year renewal term; and ten percent (10%) of gross revenue received in excess of \$5,000 during the renewal term, paid to **TOWN** quarterly by **CONTRACTOR**, as described above.

2.2 **CONTRACTOR** shall provide the **TOWN** Manager a report outlining Program dates, participation numbers, fees collected per participant and total gross revenues for the preceding quarter by the fifteenth day of June, September, December, and March during the term of this Agreement, describing Program activities in the prior quarter. If there were no Program activities, such should be noted in the report. Since this Agreement begins on March 1, 2012, it is recognized that first quarterly report shall be due in June, 2012.

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2.3 The **TOWN** shall have the right to audit the books, records, and accounts of **CONTRACTOR** to ascertain that the revenues are being remitted to the **TOWN** in accordance with this Agreement. **CONTRACTOR** shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Program. **CONTRACTOR** shall preserve and make available, at reasonable times for examination and audit by **TOWN**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by **TOWN** to be applicable to **CONTRACTOR'S** records, **CONTRACTOR** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **CONTRACTOR**. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for **TOWN'S** disallowance and recovery of any payment upon such entry.

**3.0 Term and Termination.**

3.1 This Agreement shall take effect as of the date of execution (the "Effective Date"). This Agreement shall be for a term of twelve (12) months commencing March 1, 2012. **TOWN** reserves the right to renew this Agreement, by written notice to **CONTRACTOR** thirty (30) days prior to the expiration of the current term, for a one (1) year extension on the same terms and conditions as contained herein.

3.2 This Agreement may be terminated by **TOWN** or **CONTRACTOR** for convenience, upon written notice to either party. Upon receipt of such notice, the Agreement shall be terminated at the end of the next full calendar month subsequent to the month in which the notice was received in order to allow for the completion of scheduled activities and proper feedback to volunteers, instructors and participants.

**4.0 Liability Insurance.**

4.1 **CONTRACTOR** shall not commence work under this Agreement until a certificate of liability insurance in the amount of one million dollars (\$1,000,000), naming the **TOWN** as additional insured, has been received by the **TOWN**.

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4.2 **CONTRACTOR** shall maintain workers compensation insurance during the term of this Agreement as required by law to comply with Florida statutory limits and proof of such insurance shall be provided to the **TOWN** before commencement of the Program.

4.3 The **TOWN** reserves the right to require any other insurance coverage it deems necessary in the circumstances of the Program.

**5.0 Protection of TOWN'S Property.**

5.1 The Parties understand that the **TOWN** does not intend to provide insurance in connection with the Program.

5.2 At all times during the performance of this Agreement, **CONTRACTOR** shall protect the **TOWN's** property from all damage whatsoever and shall repair or replace any damaged property as required by **TOWN**.

**6.0 Indemnification.**

6.1 **CONTRACTOR** agrees to obtain waivers and releases of all liability of **TOWN**, in a form satisfactory to **TOWN**, from all participants, volunteers, and instructors involved in the Program. All waivers and releases shall be provided to **TOWN** in original form prior to any participant, volunteer or instructor participating in the Program. These parties shall agree not to sue or seek any money or damages from the **TOWN** in connection with the Program or activities related to this Agreement.

6.2 **CONTRACTOR** agrees to indemnify, defend and hold harmless the **TOWN**, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the **TOWN** or any third party arising out of, or by reason of, or resulting in any way, whether directly or indirectly, from **CONTRACTOR'S** acts or failure to act under this Agreement or in any other way related to the Program or this Agreement.

6.3 The covenants and representations relating to this indemnification provision shall survive for the term of this Agreement and continue in full force and effect thereafter.

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**7.0 Independent Contractor.** This Agreement does not create an employee/employer or joint venture relationship between the Parties.

**8.0 Equal Employment Opportunity.** In the performance of this Agreement, **CONTRACTOR** 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.

**9.0 Notice.** 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 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 **CONTRACTOR** and the **TOWN** designate the following as the respective places for giving of notice:

**TOWN:** Constance Hoffmann, Town Manager  
Town of Lauderdale-By-The-Sea  
4501 Ocean Drive'  
Lauderdale-By-The-Sea, Florida 33308  
Phone: (954) 776-0576  
Fax: (954) 776-1857

**Copy To:** Susan L. Trevarthen, Town Attorney  
Weiss Serota Helfman Pastoriza  
Cole & Boniske, P.L.  
200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, Florida 33301  
Phone: (954) 763-4242  
Fax: (954) 764-7770

**Contractor:** Alley-Oop Skim Florida, LLC  
220 E. Commercial Boulevard, Suite B  
Lauderdale-By-The-Sea, Florida 33308-4438  
Phone: (954) 530-4954  
Fax: (954) 530-5461

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**10.0 Ownership.** The parties agree that all items, equipment, property and materials owned or purchased by **CONTRACTOR** and provided for the execution of this Agreement shall remain the property of **CONTRACTOR**. All items, equipment, property and materials owned or purchased by **TOWN** shall remain the property of **TOWN**.

**11.0 Assignments.** This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by **CONTRACTOR** without the prior written consent of the **TOWN**, which may be withheld for any reason. Any assignment without such approval will render this Agreement void at **TOWN'S** option. For purposes of this Agreement, any change of ownership of **CONTRACTOR** shall constitute an assignment, which requires **TOWN** approval.

**12.0 No Contingent Fees.** **CONTRACTOR** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for **CONTRACTOR** to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for **CONTRACTOR**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. No officer or employee of the **TOWN**, during his or her employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. For the breach or violation of this provision, the **TOWN** shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration. No vendor shall give, solicit for, deliver or provide a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of Mayor or Commissioner.

**13.0 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**14.0 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**15.0 Headings.** Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

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**16.0 Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, whether or not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

**17.0 Waiver.** Failure of the **TOWN** to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein 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.

**18.0 Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

**19.0 Severability.** 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.

**20.0 Governing Law.** This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

**21.0 Extent of Agreement.** This Agreement represents the entire and integrated agreement between the **TOWN** and the **CONTRACTOR** and supersedes all prior negotiations, representations or agreements, either written or oral.

**22.0 Attorney's Fees.** In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seal the day and year first written above.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

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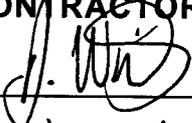
BY: \_\_\_\_\_  
June White, CMC, Town Clerk

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

Approved As To Form:

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

**CONTRACTOR:**

  
\_\_\_\_\_  
By Jason W. Wilson  
Title: owner/Marketing

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

12/21/2011

PRODUCER  
**FOR SERVICE CALL:**  
**Frazier Insurance Agency, Inc.**  
 P.O. Box 1250  
 Midlothian, VA. 23113  
 PH (804) 754-7610 FX (804) 754-7613  
 E-Mail [JFrazier@Frazierinsurance.com](mailto:JFrazier@Frazierinsurance.com)

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

### COMPANIES AFFORDING COVERAGE

COMPANY A **Riverport Insurance Company**  
 Company B  
 COMPANY C  
 COMPANY D

INSURED **Sports & Recreation Providers Assn. Risk Management, Inc.**  
**Alley-Oop Skim, Inc.**  
**2000 Coastal Highway, Unit 106**  
**Dewey Beach, DE 19971**

### COVERAGE

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b>	FLDG180411	12/21/11	12/21/12 12:01 AM	GENERAL AGGREGATE \$ 2,000,000.00
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG \$ 2,000,000.00
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 1,000,000.00
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 1,000,000.00
	<input checked="" type="checkbox"/> INCLUDES ATHLETIC PARTICIPANTS				FIRE DAMAGE (Any one fire) \$ 300,000.00
					MED EXP (Any one person) \$ 5,000.00
	<b>AUTOMOBILE LIABILITY</b>				COMBINED SINGLE LIMIT \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$
	<input type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	<b>GARAGE LIABILITY</b>				AUTO ONLY-EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:
					EACH ACCIDENT \$
					AGGREGATE \$
	<b>EXCESS LIABILITY</b>				EACH OCCURRENCE \$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE \$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				\$
	<b>WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATUTORY LIMITS OTH-ER
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				EL EACH ACCIDENT \$
					EL DISEASE - POLICY LIMIT \$
					EL DISEASE - EA EMPLOYEE \$
	<b>OTHER</b>				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
 POLICY DEDUCTIBLE: \$0.00 PER EACH BODILY INJURY OR PROPERTY DAMAGE CLAIM.

**Certificate Holder is An Additional Insured, But Only As Regards The Operations Of The Named Insured.**

### CERTIFICATE HOLDER

**Town of Lauderdale-By-The-Sea**  
**4501 Ocean Drive**  
**Lauderdale-By-The Sea, FL 33308**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*John W. Frazier*