



COMMITTEE OF THE WHOLE MEETING AGENDA

I. Roll Call

II. Consideration of Previous Minutes

1. Flood Damage Prevention Board 08/01/2023
2. Regular Council Meeting 08/01/2023
3. Committee of the Whole 08/01/2023
4. Work Session 08/08/2023

III. Unfinished Business

Miscellaneous

Resolutions

Ordinances

IV. New Business

Miscellaneous

1. Discuss appointment to the Gulf Shores & Orange Beach Tourism Board of Directors. (RE)

Resolutions

1. Resolution authorizing the execution of a cooperative agreement with the Alabama Department of Environmental Management (ADEM) for the city to provide permitting, regulating, monitoring, and inspection services and be reimbursed in an amount not to exceed \$37,950. (PW)
2. Resolution adopting an amended Procurement Policy for the City of Orange Beach. (RE)

3. Resolution authorizing the execution of amendment three to the subaward grant agreement with the Alabama Department of Conservation and Natural Resources for the RESTORE Act-funded North Sewer Force Main Upgrade. (NW)
4. Resolution authorizing the execution of a subaward grant agreement with the National Fish and Wildlife Foundation for the removal and recycling of large-scale marine debris caused by Hurricane Sally in the amount of \$367,959.44. (NW/PW)
5. Resolution authorizing the execution of a professional services agreement with Watermark Design Group, LLC, for architectural services. (RE)
6. Resolution authorizing execution of a task order with Watermark Design Group, LLC, to provide design, bid, and construction administration services for roof replacement at the Justice Center following the April 10, 2021, hailstorm in an amount not to exceed \$75,800. (GS)
7. Resolution authorizing the execution of a task order with McCollough Architecture, Inc., to provide design services for an event pavilion at the Coastal Arts Center in an amount not to exceed \$13,500. (GS)
8. Resolution appropriating funds to the Orange Beach Board of Education to support city school system operations in an amount not to exceed \$2,808,503. (FH)
9. Resolution authorizing execution of a performance agreement with McLean Motor Sports Productions, LLC, for the "Bama Coast Cruisin'" event as part of the 2023 Freedom Fest. (JL)

Public Hearings

1. Set a public hearing date to consider business license revocation of Super Salt Life LLC for charter boat "Southern Belle". (Suggested date 9/5/2023) (JL)
2. Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0801-CU-23, Money Bayou Storage Buildings at 4400 and 4402 Money Bayou Drive Conditional Use Approval on September 5, 2023.

Ordinances

1. Ordinance amending Chapter 10, Article II, Section 10-28 of the Code of Ordinances of the City of Orange Beach, Alabama, to ban exotic animals and provide regulations for sheltering by agents of recognized wildlife associations and zoos. (JL)
2. Ordinance amending Chapter 2, Article II, Division 2, Section 2-40(b) of the Code of Ordinances of the City of Orange Beach, Alabama, to establish an electronic meeting policy for City Council. (JL)

V. Public Comments

VI. Adjourn

**MINUTES OF
FLOOD DAMAGE PREVENTION ORDINANCE BOARD OF ADJUSTMENT
ORANGE BEACH CITY COUNCIL
AUGUST 1, 2023 – 4:45 P.M.
ORANGE BEACH COMMUNITY CENTER**

I. CALL TO ORDER Mayor Tony Kennon called the meeting to order at 4:49 P.M.

II. ROLL CALL

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

Absent: None

There being a quorum present, the meeting was opened for the transaction of business.

III. CONSIDERATION OF AGENDA

Motion made (Blalock/Silvers) to approve the agenda as presented. Vote unanimous in favor.

IV. UNFINISHED BUSINESS

1. Consider a variance request submitted by Angie Williams for 25555 Canal Road, Lot 32.

Adam Roberson, Building Official, presented the variance request asking for a 3' waiver on the City's freeboard requirement for the replacement of a mobile home damaged by Hurricane Sally. Mr. Roberson stated that the mobile home would still be raised to 5.5' elevation above grade to meet FEMA requirements.

Council discussed the difference between categories of flood zones, engineering requirements for elevated structures, and risk of future flooding.

Motion made (Silvers/Boyd) to approve the variance request. Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, nay; Blalock, nay; Boyd, aye; Kennon, aye. **Passed. (4-2).**

V. NEW BUSINESS

VI. ADJOURN

There being no further business to come before the council, motion made (Boyd/Blalock) to adjourn. Vote unanimous in favor

Time: 5:02 P.M.

APPROVED this the 5th day of September, 2023.

Renee Eberly
City Clerk

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
AUGUST 1, 2023 – 5:00 P.M.
ORANGE BEACH COMMUNITY CENTER**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:02 P.M.
- II. INVOCATION** Pastor Jerry Peebles, Romar Beach Baptist Church
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

Absent: None

V. CONSIDERATION OF AGENDA

Motion made (Blalock/Boyd) to approve the agenda as written. Vote unanimous in favor.

VI. CONSIDERATION OF PREVIOUS MINUTES

Flood Damage Prevention Board	07/11/2023
Regular Council Meeting	07/11/2023
Committee of the Whole	07/11/2023

The reading was waived and minutes were approved as written.

VII. REPORTS OF OFFICERS/COMMITTEES

- | | |
|--|------------|
| 1. <u>City Administrator – Ford Handley</u> | No report. |
| 2. <u>Director, Public Works – Tim Tucker</u> | No report. |
| 3. <u>Director, Community Development – Kit Alexander</u> | No report. |
| 4. <u>Chief, Police Department – Steve Brown</u> | No report. |
| 5. <u>Chief, Fire Department – Mike Kimmerling</u> | No report. |
| 6. <u>City Clerk – Renee Eberly</u> | No report. |
| 7. <u>Director, Finance – Ford Handley</u> | No report. |
| 8. <u>Parks & Recreation – Ford Handley</u> | No report. |
| 9. <u>Director, Utilities – Jeff Hartley</u> | No report. |
| 10. <u>Director, Coastal Resources – Phillip West</u> | No report. |
| 11. <u>Librarian, Public Library – Meagan Bing</u> | No report. |
| 12. <u>Director, Municipal Court – Pam Davis</u> | No report. |
| 13. <u>Director, Expect Excellence – Jonathan Langston</u> | No report. |
| 14. <u>Mayor/Council</u> | |

Mayor Kennon recognized Jonathan Langston, Caleb Pittman, Jessica Langston, Polly Pittman and the entire Expect Excellence Performing Arts team for their most recent production, "Dream On: A Tribute to Classic Rock." Jonathan shared that this marks the successful completion of 15 shows, and that 230 children are participating in various lessons with the music department.

VIII. AUDITING OF ACCOUNTS

Motion made (Mitchell/Silvers) to certify that cash requirements with no related interests are within budget and appropriate for payment. Vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (6-0).**

Motion made (Mitchell/Johnson) to certify that cash requirements with related interests in Swift Supply are within budget and appropriate for payment. Vote revealed: Silvers, abstain; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (5-0-1).**

IX. PRESENTATIONS

1. Presentation by Matt Young, Alabama State Parks Southwest District Superintendent. Mr. Young thanked the Mayor and City Council for the city's partnership. He summarized upcoming projects and programs for the Gulf State Park. He also introduced Ricky Fields, Alabama Forestry, who explained an upcoming prescribed burn that will be taking place August 15-25.
2. Presentation by Vicki Pishna, HR Director, on the city's summer worker program. Ms. Pishna showed a slideshow of this year's summer worker program for students ages 14 and 15. This year's program had 32 participants. Ms. Pishna introduced three of the participants who spoke about their experience with the program.
3. Councilmember Boyd introduced Gary and Sheryl Lindsey, whose children are missionaries in Thailand and recently lost their house in a fire. Donations can be made through Orange Beach Methodist Church and Globe International.
4. Phillip West, Coastal Resources Director, recognized Jackie McGonigal, Wind and Water Learning Center Coordinator, who showed a slideshow of this year's sail camp youth program.

X. RECOGNITIONS

XI. UNFINISHED BUSINESS

Resolutions

1. Resolution adopting the rental agreement and fee schedule for the Orange Beach Event Center at the Wharf located at 4671 Wharf Parkway. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor.

XII. NEW BUSINESS

Resolutions

1. Resolution amending Resolution No. 23-063 authorizing the purchase of a Recorder Server for the Police Department Dispatch through General Services Administration (GSA) in the amount of \$73,725.50 to correct payee to Voice Products, Inc. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor.
2. Resolution appropriating funds to Gulf United Metro Business Organization, Inc. (GUMBO) for the 2023 Tourism Summit in the amount of \$12,500. **Motion made (Blalock/Boyd) to adopt the resolution.** Vote unanimous in favor.

3. Resolution to award the proposal for EMS Billing Services to EMS Management & Consultants, Inc. **Motion made (Silvers/Johnson) to adopt the resolution.** Vote unanimous in favor.
4. Resolution awarding the bid for Orange Beach/Gulf State Park/Gulf Shores Beach Restoration Project to Great Lakes Dredge & Dock Company, LLC, in an amount not to exceed \$11,694,176.36. **Motion made (Mitchell/Silvers) to adopt the resolution.** Vote unanimous in favor.
5. Resolution authorizing execution of a task order with Sawgrass Consulting, LLC, to provide additional professional services related to the construction of Fire Station No. 3 in an amount not to exceed \$38,000. **Motion made (Boyd/Johnson) to adopt the resolution.** Vote unanimous in favor.
6. Resolution authorizing the execution of a franchise agreement for Southern Light, LLC. **Motion made (Blalock/Mitchell) to adopt the resolution.** Vote unanimous in favor.
7. Resolution authorizing the execution of a software license agreement with Station Automation, Inc., dba PSTrax, for narcotics tracking software for the Fire Department. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor.

XIII. PUBLIC COMMENTS

None

XIV. ADJOURN

There being no further business to come before the council, motion made (Mitchell/Blalock) to adjourn. Vote unanimous in favor.

Time: 5:46 P.M.

APPROVED this the 5th day of September, 2023.

Renee Eberly
City Clerk

**MINUTES OF
COMMITTEE OF THE WHOLE MEETING
ORANGE BEACH CITY COUNCIL
AUGUST 1, 2023 – 5:46 P.M.
ORANGE BEACH COMMUNITY CENTER**

The Orange Beach City Council met to review potential items for the August 1, 2023, agenda.

The following members were present:

Mayor Tony Kennon
Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd

The following members were absent:

None

The following items were discussed:

1. Resolution awarding the bid for Baseball Field Turf Installation and Dugouts.
2. Resolution awarding the bid for the new Wildlife Center, Phase II Interior Buildout.
3. Resolution authorizing the execution of a professional services agreement with McCollough Architecture, Inc., for architectural services.
4. Resolution authorizing the purchase of Artificial Turf (Materials Only) for the Soccer/Football Field at the Sportsplex through Sourcewell in the amount of \$436,570.
5. Set a public hearing date for conditional use approval for Case No. 0801-CU-23, Money Bayou Storage Buildings at 4400 and 4402 Money Bayou Drive. Public hearing set for September 5, 2023.
6. Reminder: Public hearing for an appeal by Ike's Beach Service, Inc., of a business license denial on August 15, 2023.
7. Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0802-PUDA-23, Buena Vista on the Beach PUD Minor Modification, Covered Open Area Addition on August 15, 2023.

Public Comments:

None

There being no further business, the meeting adjourned.

Time: 5:49 P.M.

APPROVED this 5th day of September, 2023.

Renee Eberly
City Clerk

**MINUTES OF
ORANGE BEACH CITY COUNCIL
WORK SESSION
AUGUST 8, 2023 – 10:00 A.M.
COASTAL ARTS CENTER**

The Orange Beach City Council met on August 8, 2023, at 10:14 A.M. with Mayor Tony Kennon presiding.

The following members were present:

Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

The following members were absent:

None

The following items were discussed:

1. Council, employee, and public communications.
2. Canal Road project update.
3. Maintenance of median by The Wharf.
4. City facility signage and wayfinding project.
5. Public safety response to recent drowning .
6. Beachfront business operations.
7. Exotic animals ordinance and requests.
8. Bayou Road update.
9. Beaver Creek sidewalk update.
10. Shrimp Fest / Freedom Fest.
11. Board of Adjustment appointments.
12. Funding request from Pensacola and Perdido Bays Estuary Program.
13. Employee training proposal.
14. Christmas décor and lighting.
15. Municipal judge appointment.
16. Orange Beach in the news.

Councilmember Blalock left the meeting at 1:38 P.M.

17. Personnel succession planning.
18. Financial update.
19. School update.
20. Prebyterian church proposal.
21. Solis development construction laydown yard agreement with Gulf State Park.
22. Legal update.

Work Session
August 8, 2023
Page 2

There being no further business, the meeting adjourned.

Time: 2:00 P.M.

APPROVED this 5th day of September, 2023.

Renee Eberly
City Clerk



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Discuss appointment to the Gulf Shores & Orange Beach Tourism Board of Directors. (RE)

Background/Description: Susan Boggs' term is set to expire at the end of September. The GSOBT has requested Ms. Boggs' reappointment. Term length is four years.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 2023.08.04 Tourism Board - Reappointment Letter Boggs



**GULF SHORES &
ORANGE BEACH
TOURISM**

Alabama's White-Sand Beaches

August 4, 2023

The Honorable Tony Kennon
City Council Members
City of Orange Beach
P. O. Box 458
Orange Beach, Alabama 36561

RE: Gulf Shores & Orange Beach Tourism aka Alabama Gulf Coast Convention & Visitors Bureau
Susan Boggs' Term of Service

Dear Mayor Kennon and Council Members:

The term of Mrs. Susan Boggs on our Board of Directors is set to expire in September. She has very ably represented the Orange Beach non-accommodations industry on our Board of Directors since 2015. Mrs. Boggs' contributions to the Board have been numerous; she is an excellent example of the leadership that is crucial for positive guidance of our area's destination marketing efforts.

The Board of Directors would be very pleased to have Susan Boggs continue to assist the Board with her dynamic work towards accomplishing our vision for the area.

Your timely attention to this matter is greatly appreciated.

Best regards,

Glen Kaiser
Chairman, Board of Directors

BB/cv

cc: Mrs. Susan Boggs
Reel Surprise Charters
P. O. Box 1735
Orange Beach, AL 36561



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: Coastal Resources

Description of Topic: Resolution authorizing the execution of a cooperative agreement with the Alabama Department of Environmental Management (ADEM) for the city to provide permitting, regulating, monitoring, and inspection services and be reimbursed in an amount not to exceed \$37,950. (PW)

Background/Description: Renewal of annual agreement.

Action Options/Recommendation:

Source of Funding (if applicable): Reimbursement to Coastal Resources, \$37,950.

ATTACHMENTS:

1. 09-05-23 23-xxx Authorize Cooperative Agreement ADEM
2. Contract

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
COOPERATIVE AGREEMENT WITH THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM)
FOR THE CITY TO PROVIDE
PERMITTING, REGULATING, MONITORING, AND INSPECTION SERVICES
AND BE REIMBURSED IN AN AMOUNT NOT TO EXCEED \$37,950**

FINDINGS:

1. The City Council for the City of Orange Beach, Alabama, has reviewed the proposed agreement (attached Exhibit A) between the City of Orange Beach and the Alabama Department of Environmental Management (ADEM) whereby the City of Orange Beach shall provide permitting, regulating, monitoring, and inspection services to ADEM for reimbursement in an amount not to exceed \$37,950.
2. Council has determined that the provisions of the proposed agreement for permitting, regulating, monitoring, and inspection services are in the best interests of the City of Orange Beach.
3. The term of this agreement shall be for twelve (12) months commencing October 1, 2023, and ending September 30, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Council authorizes the Mayor and the City Clerk to execute and attest, respectively, the service contract between the City of Orange Beach and the Alabama Department of Environmental Management as an act for and on behalf of the City of Orange Beach subject to final review by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 6, 2022.

City Clerk

CONTRACTUAL AGREEMENT BETWEEN
CITY OF ORANGE BEACH
AND THE ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

This Agreement is entered into between City of Orange Beach (Contractor) and the Alabama Department of Environmental Management (Department). This Agreement will provide for Local assistance in permitting, regulating, monitoring and inspecting certain regulated activities within the Coastal Area.

The parties hereto agree as follows:

1. Scope of Services

The Contractor will provide services as set out in the Scope of Services, which is included with this Agreement as Attachment A and which is incorporated as if fully set out herein.

2. Payment

A. The Department agrees to reimburse the Contractor an amount not to exceed \$37,950 for the services performed under this Agreement. Unless otherwise specified in the work-plan, mileage, travel and per diem costs will be reimbursed in accordance with state law.

B. The Contractor shall submit invoices in triplicate not more than once per quarter to the Department for actual cost incurred. The final invoice shall be submitted within ninety (90) days of expiration of this Agreement.

C. In the case of non-governmental agencies, prior to the purchase of any items or the execution of any printing contracts under this agreement with a value less than \$1,000.00, one quote or attempt for a quote of outside costs, including but not limited to copying costs and freight terms, must be obtained. For items with a value from \$1,000.00 to \$3,000.00, two such quotes or attempts for quotes must be obtained. For items with a value from \$3,000.00 to \$7,499.00, three such quotes or attempts for quotes must be obtained. The purchase of any items or the execution of any contract shall comply with the Alabama Procurement Law Sections 41-16-50 et. Seq. of the Code of Alabama, as amended.

D. The Contractor agrees to provide \$37,950 in nonfederal funds or services on the project, in addition to the amount noted in subparagraph 2A. The contractor shall submit in triplicate, statements itemizing the expenditure of those matching funds.

3. Term of Agreement

All work performed under this Agreement shall begin on October 1, 2023, and shall terminate on September 30, 2024. This Agreement is conditioned upon the receipt of sufficient funds from the Alabama Legislature and/or the U. S. Environmental Protection Agency and is subject to termination in the event of proration of the fund from which payment under this Agreement is to be made. If the term of this Agreement extends beyond one fiscal year, this Agreement is subject to termination in the event that funds are not appropriated for the continued payment of the contract in subsequent fiscal years. This Agreement may be amended by the mutual written agreement of both parties.

4. Termination of Agreement for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the Department shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In that event, any finished or unfinished studies, reports or other work by the Contractor shall, at the option of the Department, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed under this Agreement.

5. Termination for Convenience of the Department

The Department may terminate this Agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination and under the same conditions as herein set forth for the Department, the Contractor may cancel this Agreement. In the event of cancellation, all finished or unfinished studies, reports or other work by the Contractor shall, at the option of the Department, become its property. If the Agreement is terminated by the Department as provided herein, the Contractor shall be paid for all work satisfactorily completed prior to termination.

6. Changes

The Department may, from time to time, require changes in the scope of services of the Contractor to be performed hereunder. Such changes, including any increases or decreases in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Department and the contractor shall be incorporated in written amendments to this Agreement.

7. Title VI and Equal Employment Opportunity

The Contractor will comply with Title VI of the Civil Rights Act of 1964 (88-352) and all requirements of the U. S. Environmental Protection Agency (hereinafter called "EPA") issued pursuant to that title, to the end that in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this contract.

There shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment, because of race, color, religion, sex, national origin, age or disability covered by the Americans with Disabilities Act. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor shall insert a similar provision in all subcontracts for services covered by this Agreement.

8. Interest of Members of the Department and Others

No officer, member or employee of the Department and no members of the Environmental Management Commission, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

9. Assignability

The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Department.

10. Findings Confidential

Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Agreement which the Department requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department, unless such confidentiality would be contrary to the law of the State of Alabama or the United States.

11. Acknowledgment

Videos, films, computer disks, printed information or other materials produced for dissemination under this agreement must include the Department's logo, prominently displayed, along with the following acknowledgment:

"This project was funded or partially funded by the Alabama Department of Environmental Management."

12. Reproducible Materials

Any printed information, photographs or art works delivered to the Department under this agreement shall be camera ready and/or computer ready as appropriate. The master tape of any video or audio productions will

be delivered to the Department in an immediately reproducible form. Any computer program generated under this agreement will be delivered to the Department in an original and immediately reproducible form.

13. Officials Not to Benefit

No member of or delegate to the Congress of the United States of America, and no resident commissioner, shall be admitted to any share or part hereof or to any benefit to arise herefrom.

14. Copyright

No reports, maps, or other documents or products produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the contractor.

15. Audits and Access to Records

The Contractor agrees to abide by the requirements of the federal Single Audit Act and OMB's Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (commonly called Uniform Guidance). When financial statements are prepared and an audit is performed as a result of OMB Uniform Guidance requirements the Contractor shall provide the Department with a copy of its audit report covering the period of this contract within thirty (30) days of receipt by the Contractor of the auditor's report.

If OMB Uniform Guidance is applicable the Contractor agrees that the comptroller General of the United States or any of his/her duly authorized representatives, the Secretary of Commerce or any of his/her duly authorized representatives, the Director of ADEM or any of his/her duly authorized representatives, and the Chief Examiner of the Department of Examiners of Public Accounts and any of his/her duly authorized representatives shall, until the expiration of three (3) years from the date of submission of the final financial report, have access to and the right to audit, examine, and make excerpts or transcripts from any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees to provide access to any or all documents, papers, records and directly pertinent books of the Contractor involving transaction related to this Agreement upon written request from the Director of ADEM.

16. Taxes

The Contractor is responsible for reporting and making payment of any applicable federal and state taxes which may be due as a result of payments received pursuant to this Agreement.

17. Contractor Not Entitled to Merit System Benefits

In the case of Non-State Agencies under no circumstances shall the Contractor or any of its employees be entitled to receive the benefits granted to State employees under the Merit System Act by reason of this Agreement.

18. Not to Constitute a Debt of the State/Settlement of Claims

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then the conflicting provision in the contract shall be deemed null and void. The contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

19. Alternative Dispute Resolution

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

20. Requisite Reviews and Approvals

City of Orange Beach acknowledges and understands that this contract is not effective until it has received all requisite state government approvals and City of Orange Beach shall not begin performing work under this contract until notified to do so by the Alabama Department of Environmental Management. City of Orange Beach is entitled to no compensation for work performed prior to the effective date of this contract.

21. Immigration Affirmation

“By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

22. Prohibition against Boycotting by Contractors

In compliance with Act 2016-312, the Contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

23. Suspension and Debarment

The Contractor certifies to the best of its knowledge and belief that it and the principals are in compliance with the requirements of 2 CFR 180.335 and understands that falsely representing this certification by accepting the terms and conditions of this contract may result in the rejection of this proposal or termination of the award.

24. No Funds for Lobbying Clause.

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

25. Economic Boycott

“In compliance with Ala. Act No. 2023-409, by signing this contract, Contractor provides written verification that Contractor, without violating controlling law or regulation, does not and will not, during the term of the contract engage in economic boycotts as the “economic boycott” is defined in Section 1 of the Act.”

City of Orange Beach

By: _____

Tony Kennon
Mayor, City of Orange Beach

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: _____

Lance R. LeFleur
Director

As to Legal Form

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on this the _____ day of _____, 2023.

ATTACHMENT A

SCOPE OF SERVICES

The City of Orange Beach (City) agrees to perform and carry out in an expedient, satisfactory and proper manner as determined by the Alabama Department of Environmental Management (Department), the services and administrative elements described below for the mutual benefit of the City and the Department. This contract is to assist the City's efforts to conduct building inspection services, review applications for construction activities and other related activities, and to assist the Department in the implementation and administration of the Alabama Coastal Area Management Plan (Management Program) and ADEM Division 8 Coastal Program rules. The City shall operate a delegated Coastal Area Management Program permitting program for construction activities on beaches and dunes as provided for under the ADEM Admin. Code 335-8-1-.12. The City shall operate this program in accordance with the Memorandum of Agreement, which was executed on February 4, 2022, between the City and the Department and as maybe updated with the mutual agreement of the City and the Department.

I. Consistency Reviews

- A. The City shall conduct reviews to insure that construction activities and other activities on Gulf-fronting beaches and dunes that are subject to ADEM Admin. Code 335-8-.08 (Construction on Beaches and Dunes) are conducted in compliance with the ADEM Division 8 Coastal Program rules and the appropriate City ordinances. The City shall conduct all reviews as provided in the ADEM Division 8 Coastal Program rules. The City shall not issue any permits inconsistent with ADEM Division 8 Coastal Program rules.

Upon conclusion of each Coastal Area Management Program permit application review, a copy of each issued Coastal Area Management Program permit or denial shall be submitted to the Department. Additionally, the following shall be maintained in the City's file:

1. A written recommendation over the signature of the Mayor or his designated official concerning issuance or denial of a permit or certification consistent with the ADEM Division 8 Coastal Program rules.
2. A copy of the complete application and any materials submitted by the applicant in support of the proposed activity.
3. A copy of all correspondence associated with the applications, including coordination letters, comment letters and final issued permit.
4. Proof of publication of a public notice as provided in Item C.
5. A copy of the transcript of any public hearing associated with the review.
6. Documentation that the review conducted included a review by the appropriate federal or state agency with responsibility for enforcing the state or federal statutes listed in ADEM Admin. Code 335-8-2-.01.
7. Documentation that the review conducted included an approved "Environmental Impact Natural Hazards Study" and the "Beach and Dune Enhancement Plan" submitted as a requirement of ADEM Admin. Code 335-8-2-.08(3)(d), or equivalent, if new rules are promulgated by ADEM.

8. Documentation that in the process of the review, that ADEM Admin. Code 335-8-1-.03, 335-8-1-.04, 335-8-1-.05, 335-8-1-.07, 335-8-1-.08, or equivalent, if new rules are promulgated by ADEM, were considered and complied with.
 9. In order to insure continued compliance with the ADEM Division 8 Coastal Program rules, each Coastal Area Management Program permit issued shall contain, at a minimum, the permit conditions listed in Attachment B of this contract.
- B. For the following activities conducted within the jurisdiction of the City, the City shall require the permit applicant to furnish documentation that the ADEM Division 8 Coastal Program rules or other ADEM regulations have been met prior to the issuance of a building permit:
1. All new commercial and residential developments located wholly or partially within the coastal area which are or will be greater than five (5) acres in size and have areas which are or could be delineated as wetlands or are adjacent to coastal waters or on properties intersected by the construction control line.
 2. Proposals to construct a new well or significantly alter an existing well in order to pump more than fifty (50) gallons of water per minute.
 3. Proposals for the construction of bulkheads, retaining wall, rip-rap or similar hardened erosion control structures along Gulf-fronting beaches and dunes.
 4. Any application for a permit that requires an "Environmental Impact and Natural Hazards Study" and/or a "Beach and Dune Enhancement Plan."
 5. Any application for a permit involving the dredging or filling of wetlands or water bottoms.
- C. The City shall issue a public notice for each Coastal Area Management Program permit application received which is determined to be subject to the permitting requirements of the ADEM Admin. Code 335-8-2-.08 and/or the equivalent City ordinance. Said public notice shall be published in a local paper of general circulation and shall provide for a public comment period of not less than thirty (30) days from date of publication of the notice. A copy of each public notice shall be submitted to the Department upon publication. All comments received from said notices and results of any public hearings resulting from said notices shall be considered by the City in making its coastal consistency determination and permit approval or denial.

II. Building Inspections

- A. ADEM supports the City who shall expedite building inspection services presently available in the Coastal Area to ensure that additions to structures, new structures, and reconstructions on properties within the City's jurisdiction are built according to relevant building codes, and local codes. Building inspections of projects within the Coastal Area involving wetlands fill or dredging, commercial developments, residential developments and subdivisions of property which are or will be greater than five (5) acres in size, the construction of bulkheads or other similar erosion control structures and projects impacting state water bottoms (including piers, boathouses and similar structures) shall be conducted to ensure that all structures are permitted or otherwise approved by the Department and/or that they are otherwise constructed consistent with the permit and/or other authorization issued by the Department.
- B. The definitions of Coastal Area, construction activities, structures, and other pertinent wording shall be defined by ADEM Administrative Code Rule 335-8-1-.02, or equivalent section if new rules are promulgated by ADEM.
- C. The City shall notify permit applicants that they are required to obtain an ADEM Construction Stormwater Discharge Permit for any land disturbing activities affecting greater than one (1) acre. Applicants shall contact ADEM's Mobile Branch Office.

III. Dune Protection

- A. The City agrees to patrol the beach and dune areas and to maintain posted signs in these areas to enforce Act 775, Acts of Alabama 1973, page 1184 (Protection of Sand Dunes), Act 971, Acts of Alabama 1973, page 1487 (Protection of Wild Sea Oats), Act 81-563, Acts of Alabama 1981, page 948 (vehicles on beaches and dunes), the provisions of ADEM Administrative Code R 335-8-2-08(3), R335-8-2-.08(6), and any dune and beach ordinances.
- B. The City shall maintain and erect appropriate signage as needed related to Act 971, Acts of Alabama 1973, page 1487 (Protection of Wild Sea Oats) and Act 81-563, Acts of Alabama 1981, page 948 (Vehicles on Beaches and Dunes).
- C. The City shall maintain a construction control line as approved by the Department and in conformance with ADEM Admin. Code 335-8-1-.02(p) and regulate activities associated with the construction control line through local ordinances which are at least as stringent as those found in the ADEM Division 8 Coastal Program rules, in particular R335-8-2-.08, or equivalent, if new rules are promulgated by the Department.
- D. The City shall notify the Department of any activities such as special exception uses, variances, zoning changes and replatting or resubdivision of any lots which involve properties intersecting the construction control line.
- E. The City may purchase sand-fencing and vegetation native to the Gulf-fronting beaches and dunes to enhance and stabilize public-owned beaches within the City's jurisdiction.

IV. Monitoring (Surveillance)

- A. The City shall conduct monitoring activities to assist the Department in ensuring that uses previously reviewed or permitted, and those uses subject to the Management Program which have not been submitted for review, are carried out in a manner consistent with the appropriate City ordinances and the ADEM Admin. Code R 335-8-2-.08, or equivalent, if rules are promulgated by the Department.
- B. The City shall take authorized enforcement actions against violators and shall provide written notification to the Department upon detection of unauthorized activities.
- C. The City shall perform weekly monitoring along the beachfront property within its jurisdiction to ensure no unpermitted construction is taking place along the beaches of Alabama. This monitoring shall be performed from the seaward side of gulf-fronting structures. This monitoring may include water quality monitoring.
- D. The City shall notify the Department of any construction activities or uses that lie within its corporate limits or permitting jurisdiction which are of concern to the local unit of government or its citizens, and may be inconsistent with the Management Program. Such notification shall be addressed to the ADEM Coastal/Facility Section office.

V. Permit Information Center

- A. A Permit Information Center shall be established and maintained by the City in a central location to provide information on activities regulated by city, county, state and federal agencies. Persons proposing a use in the coastal area and the general public must be able to visit the Center and obtain general information on Coastal Zone Management, a determination of the permits needed, copies of necessary permit applications and assistance in filling out necessary forms.
- B. The City shall notify all other local departments, agencies and officials which have permitting authority in the City's jurisdiction of the construction control line and the specific requirements for construction and other activities which take place on property intersected by the construction control line.

VI. Personnel and Training

- A. The City shall hire sufficient personnel to accomplish the requirements of this Scope of Services, including permitting, inspections, monitoring, and other required duties. Said personnel shall be provided proper equipment to accomplish their duties, including a dedicated 4 wheel drive vehicle for beach and dune monitoring and inspections, and any other required equipment. Required vehicles and equipment may be purchased using funds provided under this Cooperative Agreement.
- B. The City shall conduct a training program for new personnel employed to carry out the services in (I.) through (V.) above.
 - 1. Personnel training must be conducted to ensure knowledge of (1) appropriate provisions of the Alabama Coastal Area Management Plan document, (2) appropriate state acts, (3) applicable federal laws, (4) ordinances, and (5) ADEM Division 8 Coastal Program rules.

2. A minimum of two hours of initial training and additional refresher training, as needed, must be provided for each employee.
3. A record of training conducted shall be maintained to document the subject matter, hours, dates, attendees and instructors.
4. Upon request, the Department will provide technical assistance in providing required training.

VII. Beach Cleanups

- A. The City shall conduct weekly beach and dune litter cleanups on all city-owned public beach sites. The City shall submit monthly progress reports regarding quantity or nature of litter removed from the beach sites. The City shall provide trash and recycling receptacles at all public access sites.
- B. The City shall assist the Alabama Department of Conservation and Natural Resources-State Lands Division-Coastal Section and the Department during coastal cleanups and Adopt-A-Beach activities, if requested to do so.

VIII. Reporting

- A. Copies of all public notices issued for Coastal Area Management Program permit applications subject to the permitting requirements of ADEM Admin. Code 335-8-2-.08 and/or the equivalent City ordinance shall be submitted to the Department within five (5) days of publication.
- B. A monthly progress report must be prepared by the City and submitted to the Department within thirty (30) days of the end of each month. This report shall include the following:
 1. Number and type of building inspections performed for projects on Gulf-fronting properties and for other projects within the Coastal Area.
 2. Number of building permit applications received for Gulf-fronting properties.
 3. The number of building permit applications received for Gulf-fronting properties which are subject to the permitting requirements of ADEM Admin. Code 335-8-2-.08, and/or equivalent City ordinance.
 4. Number of building permit issued for project on Gulf-fronting properties.
 5. Number of Coastal Area Management Program permits issued under ADEM Admin. Code 335-8-2-.08, and/or equivalent City ordinance.
 6. A copy of each Coastal Area Management Program permit issued under ADEM Admin. Code 335-8-2-.08, and/or equivalent City ordinance.
 7. Number of beach front monitoring patrols conducted including the number of miles of beach monitored during each patrol.

8. Number and type of coastal program violations and type of actions taken (spot correction, formal enforcement action, etc.).
9. A tally of the number of visitors to the permit information center.
10. A note on any changes in the program, such as the addition of new personnel for the monthly reporting period.

ATTACHMENT B

PERMIT CONDITIONS

1. The permittee bears full responsibility for the accurate determination of the location of the construction control line and the location of all structures on the property specified in this permit, and may be subject to administrative action for the construction of any structures constructed seaward of the construction control line.
2. Should cultural resources be encountered during project activities, all construction activities must cease and the permittee shall contact the Alabama Historical Commission immediately. This condition should be placed on the construction plans to ensure contractors are aware of it.
3. During construction activities, a copy of this permit must be kept on-site at all times and must be made available for inspection by the City, the Alabama Department of Environmental Management or its representative upon request.
4. This permit is conditioned upon continued compliance with the Alabama Coastal Management Program.
5. No construction materials or debris may be stored or placed seaward of the construction control line.
6. No sand shall be removed from the construction site. Any excess sand shall be placed in areas designated by the City, the Alabama Department of Environmental Management or its representative.
7. Unless specifically authorized by this permit, no equipment shall be operated seaward of the construction control line excepting that essential to the construction of dune walkovers, and pumping water to set pilings. All runoff water from the jetting of pilings shall be directed and contained landward of the CCL. The Permittee shall restore any disturbed areas seaward of the construction control line and outside the "footprint" of construction to pre-project conditions. All restoration work is subject to review and approval by the City, the Alabama Department of Environmental Management or its representative.
8. This permit does not relieve the applicant or permittee of the responsibility to comply with all applicable federal, state, county and municipal laws, rules or ordinances nor to obtain any other licenses or permits which may be required thereby.
9. Any fill materials used in undertaking the activities authorized by this permit shall be free of construction debris, rocks or other foreign matter and shall consist of sand which is similar to that existing on the site in both coloration and grain size. No clay materials may be used unless specifically approved by the City.
10. The permittee shall allow any duly authorized employee of the City, the Alabama Department of Environmental Management, or Attorney General or District Attorney to enter upon the premises associated with the project authorized by this permit for the purposes of ascertaining compliance with the terms and conditions of the permit and with the rules and regulations of the Alabama Department of Environmental Management.

11. This permit does not authorize any activity or result therefrom not specified herein, nor does this permit convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other rights or any infringement of federal, state, or local laws or regulations.
12. The permittee shall provide enclosed containers for refuse on the project site.
13. The permittee shall not commence construction of any house, building or other structure until the permittee has received a building permit from the appropriate local or county authority responsible for implementation of the National Flood Insurance Act of 1968, as amended, and regulations adopted thereunder.
14. The construction activities authorized by this permit shall commence within twelve (12) months of the date of issuance and shall be completed within thirty-six (36) months of the date of issuance of this permit. The permittee may request extensions by providing written notice to the City within sixty (60) days prior to the time limitations specified above. Upon such notice the City may require the submission of additional information and/or a new permit application and additional fees may be required.



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution adopting an amended Procurement Policy for the City of Orange Beach. (RE)

Background/Description: Updates to incorporate recent legislative changes to the Alabama State Bid Laws.

Action Options/Recommendation:

Source of Funding (if applicable): N/A

ATTACHMENTS:

1. 09-05-23 23-xxx Adopt Amended Purchasing Manual Procurement Policy
2. Procurement Policy 2023.08.15 Draft

RESOLUTION NO. 23-xxx

**A RESOLUTION ADOPTING AN AMENDED PROCUREMENT POLICY
FOR THE CITY OF ORANGE BEACH**

FINDINGS:

1. On February 5, 2019, the City Council adopted Resolution No. 19-020 adopting an amended Procurement Policy for the City of Orange Beach.
2. Acts 2023-135 and 2023-497 of the Regular Session of the Alabama Legislature made changes to the Alabama State Bid Laws effective as of September 1, 2023.
3. The City Council desires to revise the city's procurement policy to stay current, effective, and efficient.
4. The City Council has determined that the amended Procurement Policy is in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Procurement Policy for the City of Orange Beach is hereby amended to read as per the attached Exhibit A; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk



PURCHASING MANUAL: PROCUREMENT POLICIES & PROCEDURES

Adopted per Resolution No. 19-020 on February 5, 2019
Updated August 15, 2023

Renee Eberly, City Clerk / Procurement Officer

Table of Contents

Executive Summary.....	3
I. Introduction.....	4
II. General Guidelines	4
III. General Purchasing Procedures	5
IV. Purchasing Contracts.....	9
V. Emergency Purchases.....	9
VI. Procedure for Adding New Vendors.....	10
VII. Special Requests and Conditions.....	10
VIII. Professional Service Contracts/Agreements	11
IX. Procedure for Requisitions/Purchase Orders.....	11
X. Payment of Invoices	12
XI. Procedures for Sealed Bids.....	13
XII. Public Works Contracts	14
XIII. Maintenance, Rental, Lease, and Lease Purchase Contracts	16
XIV. Vehicle and Equipment Purchases	16
XV. Workers' Compensation Insurance Requirements for Vendors	17
XVI. Business License Requirements for Vendors.....	18
XVII. Partial Shipment Payment.....	18
XVIII. Prepayment Purchases.....	18
XIX. Recurring Contractual Charges.....	18
XX. Grant Administration.....	18
XXI. Promulgated Rules	19

Executive Summary

A general summary of approvals required for City expenditures are as follows:

➤ All Purchases

Employees must show City I.D. and confirm that the vendor is on the City's vendor list.

➤ All Purchases \$2,500 or more

A Purchase Requisition is required. All Purchase Requisitions require Department Head, Procurement Officer, Finance Director, and City Administrator approval. A Purchase Requisition is converted to a Purchase Order and issued a Purchase Order Number once it is fully approved.

➤ Purchases \$30,000 or more – Goods or Services

City Council approval required to award Sealed Bid (See Section XI). A Purchase Requisition with full approval through conversion to a Purchase Order Number is also required prior to placing the order.

➤ Purchases \$100,000 or more – Public Works Contracts Only

City Council approval required to award Sealed Bid (See Section XII). A Purchase Requisition is not required.

➤ Professional Service Contracts

City Council approval required.

EXCEPTIONS:

Budgeted items of a routine nature

Examples

- Compensation of officers and employees
- Payments of principal and interest on bond or warrant issues

I. Introduction

- A. The purpose of these purchasing policies and procedures is to establish a legal and orderly method of buying goods and services for the City of Orange Beach, Alabama ("City"). These policies and procedures shall apply to all City of Orange Beach employees, officers, officials, and agents when buying any goods or services for the City.
- B. By using these guidelines, the City hopes to achieve impartiality, integrity, and cost savings in the buying of goods and services. Another objective is to ensure that needed materials will be in sufficient supply so as to avoid any interruption in the delivery of services to the public.
- C. All purchasing records of the City will be open to inspection by any person, at all reasonable times and under reasonable regulations, except where prohibited or restricted by law.
- D. No officer or employee of the City shall be financially interested, either directly or indirectly, in any contract or purchase of any goods, materials, equipment, or contracted services furnished to or used by any Department, Board, or Agency of the City Government.

There are certain statutory exceptions to this State regulation pertaining only to a Class 7 or 8 Municipalities, such as Orange Beach (*Code of Alabama*, Section 11-43-12.1). In the event an elected official, employee, or board member offers to sell or submit a bid to the municipality for the sale of personal property or a contract for furnishing personal services, the said official, employee, or board member shall make full disclosure of his/her ownership or extent of ownership in the business organization with which he/she is associated. In the event the business organization is a partnership, the names, addresses, and percentage of ownership of all stockholders shall be disclosed. This required disclosure shall be made under oath of the elected official, employee, or board member in the original submission to the municipality and in like manner in any contract or agreement entered into with the municipality.

- E. No officer or employee of the City may accept or receive, directly or indirectly, money, entertainment, gift or any promise, obligation, or contract for future reward or compensation from any person, firm, or corporation to which any contract or purchase order may be awarded.
- F. The City Purchasing Authority shall be the Procurement Officer or, in his/her absence, the City Administrator. The City Purchasing Authority may authorize the purchase of items less than \$2,500 which have been approved in the budget by City Council. City Administrator approval is required for purchases greater than \$2,500 up to the limits set by the Alabama Competitive Bid Law (See Section XI, "Procedures for Sealed Bids").

II. General Guidelines

A. Authorized Purchases

All City employees may make purchases authorized by their Department Head on behalf of the City of Orange Beach. It is the Department Head's responsibility to ensure purchases are appropriate and within budget.

B. Price Comparisons

In all purchasing situations, except those governed by the State Bid Law, price comparisons are to be obtained from two to three vendors to ensure the City receives quality merchandise at the lowest

possible price. Purchases that are exceptions, as allowed by the State Bid Law, will not require price comparisons as described in this section.

The following buying limits for goods and services shall be used to determine how price comparisons are to be made:

<u>Amounts</u>	<u>Request</u>	<u>Method of Pricing</u>
All Goods and Services:		
\$0 – \$2,499.99	Verbal	Two verbal quotes recommended.
\$2,500 – \$29,999.99	Written	Three (3) written quotations on vendor letterhead required. Attach quotes to Requisition.
\$30,000 and above		Formal sealed bids (<i>Code of Alabama</i> , Section 41-16-20)
Public Works Contracts:		
\$2,500 – \$99,999.99	Written	Three (3) written quotations on vendor letterhead required. Attach quotes to Requisition.
\$100,000 and above	Written	Formal sealed bids (<i>Code of Alabama</i> , Section 39-2-2)

C. Unauthorized Purchases

Under normal working conditions within standard operating hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.), requisitions and purchase orders are to be completed prior to the purchase. Requisitions submitted with invoices attached will be considered unauthorized purchases. If you have made an unauthorized purchase, do not complete a requisition or call for a purchase order number – simply code the invoice for payment and submit a written explanation. The purchase will either be approved by the proper authority (i.e., if it was a reported emergency or deemed a justifiable obligation of the City) or it will be returned to the Department Head. Such unauthorized purchases may subject the employee and/or Department Head to discipline.

D. Related Party Purchases

Any purchase \$2,500 or greater charged to the City of Orange Beach and purchased from a company owned by a related party shall require two additional quotes before a P.O. Number may be assigned. A related party is defined as a City of Orange Beach employee, elected official, officer, board member or the spouse, child, parent, or sibling of the aforementioned.

III. General Purchasing Procedures

A. For purchases of \$0 – 2,499.99

1. Purchase can be made by any City employee. A City I.D. must be presented by the City employee. The City employee must confirm that the vendor is on the City's vendor list. If the vendor is not on the City's vendor list, refer to Section VI, "Procedure for Adding New Vendors".
2. The ticket or invoice for a purchase must be completed and submitted to the Finance Department as soon as possible. If the invoice is for the purchase of a fixed asset (refer to "Fixed

Assets Manual”), a copy of the invoice must be given to the Procurement Officer. To be complete, a ticket/invoice must have the following information:

- a. Vendor Name
- b. Charge Code
- c. Item Description
- d. Cost
- e. Signature and legibly printed name of the employee making the purchase
- f. Approval signature of the Department Head

B. For purchases of \$2,500 – \$29,999.99

\$2,500 – \$99,999.99 for Public Works Contracts

1. A Purchase Requisition must be initiated by the Department Head with the assistance of the Procurement Officer. State and City Annual Bids shall be used when applicable. Annual bids may be used in place of the quotation process. The contract number is to be written on the requisition if an annual bid is used. The buyer shall request price quotes from at least three vendors when possible, and list the quotations on the requisition. If three vendors are not available or if the purchase is repetitive, the buyer will note that fact on the requisition. All instances of Sole Source shall include complete documentation and a summary of any responses or lack of responses from like vendors unable to provide the item.
2. All quotation requests shall include the following:
 - a. Complete and detailed specifications including product and service information
 - b. Time frames for delivery and/or completion of service
 - c. All warranties on both products and service
 - d. Insurance limitations (liability and workers’ compensation)
 - e. Appropriate licenses
 - f. Specific price terms
 - g. Delivery type and cost
 - h. Signature and date by the sales representative

No quotes given verbally will be accepted. Invitations to quote shall be sent to all qualified vendors in the local area and who are listed in the bid file.

3. The Procurement Officer will verify established procedures are being followed. After approval by the Procurement Officer, the Requisition will be routed for review and approval via signature by the Finance Director, who verifies the requested purchase is authorized by the City Council by budget or resolution, and City Administrator. Inclusion of any item in the annual budget as a separate line item or included by description under a specific account number will constitute Council prior approval of a purchase once the budget resolution is adopted.
4. In cases where the established procedures are not being followed or the item is not budgeted, the Requisition will be routed to the City Administrator for approval and signature. Depending on the nature of the purchase, Council approval by resolution may also be required.

5. Once approved, the Requisition will be assigned a P.O. Number by the Procurement Officer or his/her designee. The buyer may then proceed with placing the order.
- C. For purchases of \$30,000 and above
- \$100,000 and above for Public Works contracts
1. The Competitive Bid Law is codified through Titles 39 and 41, *Code of Alabama, 1975*.
 - a. The Bid Laws have been interpreted by the Courts and by the State Attorney General's Office to mean that like items purchased by the entire City, totaling \$30,000 and above, must undergo the sealed bid process. (\$100,000 for Public Works Contracts)
 - b. Bidders may be required to furnish a bid bond on any contract totaling \$30,000 and above (\$100,000 for Public Works Contracts) provided that bonding is available for such services, equipment, or materials. (*Code of Alabama, Section 41-16-50(c)*)
 - c. Bond in a responsible sum for faithful performance of the contract with adequate surety may be required in an amount specified in the advertisement for bids. (*Code of Alabama, Section 41-16-58*)
 - d. For your convenience, the following exceptions allowed by the Competitive Bid Law are listed here:
 - Purchases of utility services where no competition exists or rates are fixed by law.
 - Purchases of insurance.
 - Purchases of election supplies. However, the purchase or lease of voting machines is not exempt from the bid law.
 - Contracts for services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part. ("Professional Services")
 - Contracts of employment in the regular civil service.
 - Purchases of products made or manufactured by the blind or visually handicapped under the direction or supervision of the Alabama Institute for the Deaf and Blind.
 - Purchases of maps or photographs from a federal agency.
 - Purchases of manuscripts, maps, books, pamphlets and periodicals.
 - The selection of paying agents and trustees for any security issued by a public body.
 - Professional service contracts for the codification and publication of the laws and ordinances of a county or municipality.
 - Contractual services and purchases of commodities for which there is only one vendor or supplier.
 - Contractual services or purchases of personal property, which by their very nature are impossible to award by competitive bidding.
 - Purchases of products where the price of such products is already regulated and established by state law.

- Contracts for furnishing of fiscal or financial advice or services.
- Contracts relating to industrial development.
- The purchase of equipment, supplies or materials needed, used and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system, or electric system, or any two or more thereof, that are owned by municipalities, counties or public corporations, boards or authorities that are agencies, departments or instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county, or a municipality.
- Repair of construction equipment and all vehicles for which parts or service is of a specialized nature.
- Contracts for computer programs and software applications.
- Contracts for services that aid in prevention and detection of criminal activity by law enforcement agencies and community-oriented policing programs.

Annual Bids, the State Bid List, and National Purchasing Cooperatives approved for municipal use by the State of Alabama are to be used whenever possible.

Note: The State bid should state, in writing, that the contract was let for the benefit of municipalities as well as the state. Purchase of items on State Bid List should reflect commodity number and State contract number. If the vendor cannot provide these numbers, it is not on the State Bid List. The City cannot purchase from Federal General Services Administration's (GSA) contracts but may use GSA prices for comparison. It is recommended that other prices be obtained when using the State Bid List or National Purchasing Cooperatives; their prices are not always the lowest.

Exception to Federal GSA: Police and Fire Departments can purchase items to be used for Homeland Security, and Schedule 70 contracts can be utilized for computers.

2. Purchases shall not be split in order to avoid the requirements of the bid laws.
3. Invitations to bid for items other than Public Works Contracts shall be prepared by the Procurement Officer. Engineers or Architects may be utilized in the preparation of bid documents for Public Works Contracts with the Procurement Officer's assistance and knowledge. Scheduled bid openings will normally be held on Thursdays at 11:00 AM. Bid openings will normally be held in the Council Chambers of City Hall unless an alternate place is designated and posted on the public bulletin board prior to the opening. The Procurement Officer may set special bid openings and change the location as he/she deems necessary.
4. All bids will be opened in a public meeting. A bid tabulation sheet will be prepared as bids are opened showing the items responded to appropriate bid amounts received.
5. The Procurement Officer or his/her designee is required to attend each bid opening. Department heads, other staff members, vendors, and the general public are invited and welcome to attend bid openings.
6. All bids will be time date stamped regardless of the time received. Any bid received after the appointed time of opening will be placed in the bid file, unopened, and retained by the City.

7. All bids, together with all documents pertaining to the bid or award of a contract, shall be retained and made part of a file or record for a period of seven (7) years, or as required by the Alabama State Records Retention Law.
8. At the bid openings, the City's representatives may question any bidder as to the validity of the bid; however, no one representing the City shall make any commitment to a bidder as to a purchase prior to the awarding by Council and the issuance of a Purchase Order or Contract.
9. City Council shall award the contract for all accepted sealed bids by resolution. Unit price, estimated quantity contracts may be awarded with an amount "not to exceed" identified. If the contract expenditure exceeds the "not to exceed" amount, a change order must be approved by resolution of the City Council.
10. In the event only one (1) bid is received, the City may reject the bid and negotiate the purchase provided the purchase price is lower than the bid price. The City may further reject any bid if the price is deemed excessive or the quality of the product or service does not meet the specification or is otherwise deemed nonconforming. Should the City solicit bids and receive none, the City may then negotiate a price with any vendor without soliciting bids a second time. The City reserves the right to reject any or all bids and to waive any informality.

IV. Purchasing Contracts

- A. Section 11-47-5, *Code of Alabama, 1975*, requires that all municipal contracts for personal property or services be in writing and authorized by City Council. Section 11-43-83, *Code of Alabama, 1975*, requires that such contracts be signed by the Mayor.
- B. Generally, where personal property, supplies, and equipment are purchased under bid law rules specifying model or type numbers, sizes, amounts, and prices, that document and the written offer to accept will constitute a written contract satisfying the requirements for a written contract. However, where services and labor are involved, a specially prepared contract outlining the scope of work, the price, cost, terms of payment, etc., shall be prepared and signed by both the contractor and the Mayor. It should be noted that change orders and supplemental contracts also require written contracts properly executed. These provisions are mandatory for all City employees and officers and may not be waived under any circumstance.

V. Emergency Purchases

- A. Emergency purchase of goods or services may be authorized by the Department Head or, in his/her absence, the Purchasing Authority when delivery is critical to the life, health, or comfort of the City and when normal purchasing procedures cannot be followed.
- B. For items within his/her purchasing range, the Supervisor must secure verbal approval from his/her Department Head before such emergency purchase and shall submit a written report to the Purchasing Authority via his/her Department Head within 24 hours after such emergency purchase. The report must set forth the nature of the emergency and a summary of the purchasing procedure used.

- C. The City Council has the authority to let contracts under the State Bid Law (purchases or contracts \$30,000 and above) to address circumstances that would likely cause harm to an individual or public property. Such contracts can only be let to the extent necessary to mitigate the harm threatened by the emergency circumstance. Such emergency must be declared in writing by the Department Head in advance; two or more written quotes must be provided to the Procurement Officer; and the City Council shall ratify the contract award based upon the justification provided by the Department Head. The Council Resolution must state (1) the nature of the circumstances, (2) the action to be taken, and (3) the reasons for taking the action.

VI. Procedure for Adding New Vendors

- A. No accounts may be opened on behalf of the City without following the procedures below. The assistance of the Procurement Officer or his/her designee should be utilized.
- B. Employees shall confirm whether or not a vendor is new with the Procurement Officer or his/her designee before making a purchase.
- C. If the vendor is located outside the City, the item being purchased or service being rendered should not be available within the City from a preferred local vendor.
- D. A Vendor Application Form with a signed W-9 must be completed and submitted to the Procurement Division before a vendor can be issued payment.

VII. Special Requests and Conditions

- A. No purchases shall be made unless the purchases are for budgeted items with available funds in the current year budget, or have been specifically approved by the Mayor or the City Administrator.
- B. Competitive pricing is not required if goods are available only through a single vendor, have uniform prices wherever bought, or are exceptions as defined in the State Bid Law. Sole source purchases shall be approved by the Purchasing Authority prior to purchase. Sole source purchases are extremely rare.
- C. For the purchase or lease of personal property only, a Baldwin County resident person, firm, or corporation whose bid is no more than five percent (5%) greater than the lowest bid, may be the successful bidder and the contract may be awarded to such Baldwin County resident vendor responsible bidder. A Baldwin County resident vendor is defined as one who has a place of business within Baldwin County. It is the policy of the City of Orange Beach to purchase from an Orange Beach resident vendor whenever possible. All other aspects defining local vendor preference shall be in accordance with State law (Act 2015-293).
- D. Vendors offering equal value at equal cost will be rotated on an equitable basis. Equal cost is to be determined by evaluation of such factors as price, delivery, service, operations, features, salvage, and life cycle costing, if applicable.

- E. All contract change orders, regardless of amount, shall be approved through resolution by the City Council.

VIII. Professional Service Contracts/Agreements

- A. Department Heads shall submit professional service contracts to City Council for approval.
- B. The Mayor shall be the signing authority on all professional service contracts.
- C. Professional service contracts must address professional errors and omission coverage. A Certificate of Insurance evidencing coverage must be provided to the City referencing the project name. Contact the Procurement Officer to determine appropriate coverage before executing any contracts or agreements.

IX. Procedure for Requisitions/Purchase Orders

- A. It shall be unlawful for any City employee to divide a purchase into separate parts to avoid a higher level of approval or to avoid competitive pricing. Any such partial contract shall be null and void and the offending City employee may be subjected to reprimand, suspension without pay, termination of employment, or any other disciplinary action as stated in the City of Orange Beach Personnel Policy.
- B. For purchases \$2,500 or more, a Purchase Requisition must be initiated by the Buyer. Three written quotes shall be obtained by the Buyer when possible and summarized on the requisition. The quotes shall be attached to the requisition. If quotations are absent, the buyer shall write an explanation on the requisition.
- C. All specifications and vendors' prices shall include freight charges F.O.B. (Freight On Board) Delivery to Orange Beach. All vendors should be advised at the time prices are obtained that freight charges quoted will be the maximum paid by the City, and under no circumstances will additional freight charges be paid.
- D. The incorporated municipalities of the State of Alabama are specifically exempted from the payment of Alabama Sales Tax on purchases of tangible personal property. Since a specific exemption is provided by law, a certificate of exemption is not needed (*Code of Alabama, 1975, Section 40-23-4(11)*, as amended). Tax exempt documentation may be requested from the Procurement Officer.
- E. Once a Purchase Requisition is submitted, it is approved as follows:
 - 1. Department Head – Verifies the purchase is appropriate and within budget.
 - 2. Procurement Officer – Verifies established procedures are being followed, and that the requisition has been filled out correctly.
 - 3. Finance Director – Verifies that the vendor has a current business license and is tax compliant, when applicable. Verifies the expenditure is approved by Council. Verifies there is available fund balance.

4. City Administrator – Approves requisition.
- F. Upon receipt of a fully approved requisition, the Procurement Officer or his/her designee will assign a P.O. Number, retain the original Requisition/Purchase Order, and distribute a copy of the Purchase Order to the requesting City employee who may then place the order with the vendor.

X. Payment of Invoices

- A. Good and/or services, together with the vendor's invoice, are delivered by the vendor to the Buyer who initiated the purchase requisition.
- B. Upon receipt of the goods or services, the Buyer shall make certain that the goods or services delivered comply with the terms of the purchase and are in good condition.
- C. If the provisions of the purchase have been met, the Buyer shall sign a receipt of delivery indicating the date and time of delivery on the vendor's invoice, which is retained. Buyer must be sure to sign and print name on the ticket and/or invoice.
- D. If a purchase is made and is specific to a project passed by resolution, the project name must be identified on invoice. When purchases made are to be reimbursed by a grant, the name of the grant and the amount to be charged must be plainly marked on the ticket, invoice, or purchase order.
- E. When purchases made are deemed to be reimbursable by FEMA, AEMA, or another agency because they are directly related to a hurricane or other disaster, the name of the disaster, physical location of where the purchase was used, a description of how the purchase was used, and the dollar amount shall be plainly marked on the ticket, invoice, or purchase order. This includes preliminary disaster purchases for protective measures as well as all expenditures incurred during and after the disaster, such as cleanup and damage repairs.
- F. The invoice shall be coded for payment and signed as approved by the Department Head. The entire account number being charged shall be plainly marked on the ticket, invoice, or purchase order. If the invoice is for the purchase of a fixed asset (refer to "Fixed Assets Manual"), a copy of the invoice must be given to the Procurement Officer. When applicable, Buyer shall ensure that the invoice does not exceed the purchase order. If an overage does occur, Buyer shall include written justification with the invoice. Repeat overages may subject the employee and/or Department Head to discipline.
- G. Invoices must be filled out completely and turned in to the Finance Department as soon as possible. Departments with excessive turnaround times will be referred to the City Administrator.
- H. The Finance Director informs the City Council at each regular council meeting of payments authorized by Department Heads and the City Clerk. The Finance Director prepares the payment check noting the vendor's invoice number. The check must be signed by any two of the following before issuance: the Mayor, City Administrator, City Clerk, Finance Director. A copy of the check is attached to the invoice and filed in the Finance Director's permanent files
- I. All vendors should be informed that the City issues checks twice per month.

XI. Procedures for Sealed Bids

(Purchases of \$30,000 and above; \$100,000 and above for Public Works Contracts)

All applicable public contracts for the City of Orange Beach must conform to the *Code of Alabama*, Title 41.

- A. The Procurement Policy should be reviewed on a regular basis to ensure compliance is maintained.
- B. The bid package shall clearly indicate the person to contact in cases when the vendor may have questions.
- C. The following sources should be utilized in developing bid specifications:
 - 1. NIGP (National Institute of Governmental Purchasing)
 - 2. State and/or Baldwin County
 - 3. Other municipalities
 - 4. Internal staff

The practice of having vendors participate in formulating the specifications should be avoided if possible. In cases where a vendor did participate in the preparation of the bid specifications, a pre-bid conference or similar review should be conducted to ensure that other vendors are able to fairly bid.

- D. The Bids must be received by U.S. Mail, Federal Express, etc., not later than the time and date for bid opening specified in the bid package. Walk-in bids are acceptable, but hand carried bids must be turned in at the City Hall front desk by the bid deadline. All bid packages shall be date/time stamped by the City Hall front desk attendant at the time they are turned in and logged. The City accepts no responsibility for the acceptability or receipt of walk-in bids.
- E. Bid advertisements shall be posted at City Hall and on the city website.
- F. There shall be no changes in the bid specifications starting 48 hours prior to the scheduled bid opening. This should be clearly indicated in the bid package. All bid inquiries should be directed only to the specific person(s) indicated to receive inquiries in the bid package. Answers to all inquiries shall be provided to all bidders via written addendum. All addenda shall be issued by either the Engineer/Architect or Procurement Officer for promulgation to vendors. All receptionists responsible for directing calls should be made aware of this by the Procurement Officer.
- G. Warranty information should always be included by the vendor as part of their sealed bid. This should be clearly stated in the bid package.
- H. Council approval is required to award sealed bids.
- I. Upon award, the successful bidder must become registered as a City Vendor. The successful bidder will be required to obtain an Orange Beach Business License if delivery trucks or business representatives operate within the City. Vendors are not required to obtain a business license if items are shipped through common carrier. Vendors shall be responsible for Use Taxes, if due, on

materials provided by the Vendor in accordance with Alabama Law and local City Ordinances. Contractors performing construction work on a project must obtain an Orange Beach Building Permit, but permit fees will be waived. Contractors shall do no work until Certificates of Insurance acceptable to the City have been filed and approved.

XII. Public Works Contracts

Section 39-2-1, *Code of Alabama 1975*, defines public works as:

“The construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvements to be constructed, repaired, renovated, or maintained on public property and paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.”

All public works projects involving a public expenditure of \$100,000 or more must be competitively bid. Public works projects less than \$100,000 are exempt from the regular bid law. Public works projects \$50,000 and above must still comply with the state requirement to possess a valid general contractor's license. The Procurement Officer should be consulted to determine if a project truly qualifies as a public works contract.

All Public Works Contracts for the City of Orange Beach must conform to the *Code of Alabama*, Title 39.

A. Licenses Required.

1. Any contractor performing any construction work for the City must possess all licenses and permits required by the City of Orange Beach. Any general contractor desiring to bid on any contract to construct any building, highway, sewer, grading, or any improvement or structure costing \$50,000 or more must possess a valid current general contractor's license issued by the State of Alabama. All bidders must include a current State of Alabama Contractor's License Number on the bid. No contract in the amount of \$50,000 or more shall be awarded to any contractor who is not a currently licensed Alabama General Contractor.
2. In addition to necessary state and local business and contractor's licenses, an out-of-state corporate contractor shall be registered to do business in Alabama by the Secretary of State. Proof of such qualification shall be provided to the Purchasing Authority at the time of business license fee payment. A card reflecting the State Certification Number shall be sufficient proof.

B. Plans and Specifications Required.

On any construction project costing \$100,000 or more, all engineering plans, specifications, and estimates shall be prepared by, and the construction executed under the direct supervision of, a professional engineer or registered architect.

C. Advertisement.

1. Any construction project costing \$100,000 or more shall be advertised on a bulletin board maintained at Orange Beach City Hall and posted on the city website
2. Invitations to bid may be e-mailed to all Alabama contractors on the City of Orange Beach bid list for projects of the type being bid or placed on the city website.

D. Bid Guaranties.

All bidders shall furnish a bid bond on any contract in excess of \$100,000 provided that bonding is available for the services, equipment, or materials. In cases where bonding is not available, a certified check payable to the City of Orange Beach will be required. The amount of the bond or certified check shall be for an amount not less than five percent (5%) for all Alabama contractors on the City of Orange Beach bid list for projects of the type being bid of the estimated cost or of the contractor's bid but not more than \$10,000 unless special circumstances require a greater amount.

E. Performance Bond and Labor and Material Payment Bond.

Any person, firm, or corporation entering into a contract with the City for the repair or construction of any public building, public work, highway, or bridge shall provide a performance bond equal to one hundred percent (100%) of the contract price and, in addition thereto, another bond with good and sufficient surety, payable to the City of Orange Beach in an amount required by the City of not less than fifty percent (50%) of the contract price, with the obligation that such contractor shall promptly make payments to all persons supplying him with labor, materials, or supplies and for the payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on said bond (*Code of Alabama*, Section 39-1-1(a)). The specifications may permit the alternative of an irrevocable letter of credit to be presented in place of a bond. Bonds are not required on contracts of less than \$100,000 by the *Code of Alabama*, Section 39-1-1, but a bonding requirement imposed by the City under *Code of Alabama*, Section 41-16-58 for contracts under \$100,000 would not be precluded.

F. Insurance Requirements for Contractors.

Any person, firm, or corporation entering into a contract with the City for the repair, maintenance, or construction of any public building, public work, highways, or bridges shall have Workers' Compensation and Comprehensive General Liability Insurance in an amount deemed appropriate by the City but never less than \$1,000,000 Combined Single Limit. The Certificate of Insurance shall name the City of Orange Beach as additional insured.

G. Preference to Resident Contractors.

1. A preference shall be given to Alabama contractors bidding on construction projects being funded by State, County, or City funds to the same extent preference is given to nonresident contractors in their home state.
2. Nonresident bidders must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in such nonresident bidders' state of domicile, as to the

preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that state in the letting of any or all public contracts.

3. A summary of this law shall be a part of the advertised specifications of all projects affected by this law.
- H. If a construction contract is funded in part by grant moneys, the applicable Federal or State administrative requirements shall control in any situation where the Municipal guidelines differ.
- I. All contract change orders in excess of \$5,000 shall be preapproved by resolution of the City Council. Change orders less than \$5,000 shall be ratified by Council.
- J. No specification for the use of sole source materials, products, systems, or services may be made unless there is compliance with *Code of Alabama*, Section 39-2-2(f).
- K. *Code of Alabama*, Sections 39-3-1 and 39-3-4, require the use of domestic materials, supplies, other products, and steel if these are available at reasonable and competitive prices and are not contrary to any sole source specifications implemented under Section 39-2-2(f). In the event the contractor breaches the agreement to use domestic products and domestic products are not used, there shall be a downward adjustment in the contract price equal to any realized savings or benefits to the contractor.

XIII. Maintenance, Rental, Lease, and Lease Purchase Contracts

- A. All contracts for leases, lease purchases, rental agreements or maintenance agreements must be submitted to the City Clerk, who will determine whether the document should be reviewed and approved by the City Attorney. Only the Mayor has the authority to sign contracts on behalf of the City.
- B. All leases, lease purchases, rental agreements or maintenance agreements are subject to bid laws if the amount equals or exceeds \$30,000.
- C. A lease purchase plan is an option available to the City to be used when deemed to be in the best interest of the City. A lease purchase agreement may not exceed a period of five (5) years.
- D. Contracts for purchases of personal property shall not be awarded for terms greater than three (3) years and contracts for contractual services shall not be awarded for terms greater than five (5) years.
- E. Lease purchase contracts for capital improvements and repairs to real property shall be let for periods not greater than ten (10) years.

XIV. Vehicle and Equipment Purchases

The following procedures should be used when making approved purchases of vehicles and/or equipment:

1. Present desired specifications to Fleet Manager for review. Be sure to include request for parts manual.
2. Discuss with Procurement Officer to determine whether the item should be purchased from the State Contract List, other approved contract, or if it should be competitively bid.
3. Buyer must inform Fleet Manager and Procurement Officer of which existing units are being replaced, or present proof of fleet increase approval.
4. Follow applicable purchasing procedures for competitive bid and/or requisition.
5. Place order when a P.O. Number has been issued.
6. Vehicle and equipment titles must be made out to the City of Orange Beach as follows:

Mailing address:
City of Orange Beach
PO Box 458
Orange Beach, AL 36561

Physical address:
City of Orange Beach
4099 Orange Beach Boulevard
Orange Beach, AL 36561
7. Received vehicles and equipment must be delivered directly to the Public Works Shop for an initial inspection prior to use.
8. Original title, a copy of invoice, and any additional documentation should be submitted upon item delivery to the Procurement Officer. The Procurement Officer will add new items to insurance and forward the title application to the Finance Director to apply for license plates when required. The Public Works Shop will issue the fuel card. The Procurement Officer will ensure the Master Vehicle and Equipment lists are updated.
9. Original invoice should be approved, coded, and submitted to Finance for payment.

XV. Workers' Compensation Insurance Requirements for Vendors

Vendors with more than four employees performing work or services on City property are required to provide proof of workers' compensation insurance prior to beginning work on City property.

Note: The State of Alabama requires businesses with more than four employees to have workers' compensation insurance coverage, but the City is required to pay for workers' compensation insurance coverage for all vendors who work on City property, even if they have four or less employees, if their proof of insurance is not on file. Proof of workers' compensation insurance for vendors performing work or services on City property should be obtained whenever possible.

XVI. Business License Requirements for Vendors

All vendors with a physical presence in the City of Orange Beach are required to have an Orange Beach Business License. This includes physically performing work within the City and delivery of goods by personnel and vendor-owned vehicles into City limits. Vendors using common carrier delivery methods such as FedEx and UPS are not required to obtain a business license.

XVII. Partial Shipment Payment

When a partial shipment is received and there will be delay in completing the order, the Department Head may authorize payment for those goods received. The person receiving the items should sign the receiving ticket certifying that the items have been received, and the Department Head shall then authorize payment against a valid invoice.

XVIII. Prepayment Purchases

On purchases of goods or services requiring prepayments, standard procurement procedures requiring the issuance of P.O. Numbers and completion of Purchasing Requisitions must be followed. An invoice for the prepayment must be issued by the vendor and standard procurement procedures for coding and submission of the invoice must be followed.

XIX. Recurring Contractual Charges

Payment of recurring monthly charges and reimbursement is an accounting procedure and not a purchasing procedure; therefore, no purchase order will be needed for these payments. Procedures for payment will be implemented by the Finance Department. Examples of these payments are automobile allowance, utility bills, debt services, and appropriations.

XX. Grant Administration

When making purchases with funding from multiple agencies, the strictest purchasing policy shall prevail. Most grants are heavily regulated by specific policies and operational procedures. It is important to know which purchasing rules and policies to follow and how to clarify and resolve any conflicts within those rules and policies. If there are areas of deficiency in the City policies, then the Federal and/or State policies and procedures must take precedence. All procurement of labor, services, or materials made with grant funds shall conform to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), State Bid Law (Code of Alabama, Title 41), and Public Works Law (Code of Alabama, Title 39).

XXI. Promulgated Rules

The Purchasing Authority may, with approval of the Mayor or City Administrator, promulgate any procedure(s) necessary for the implementation of this policy.

DRAFT

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT THREE
TO THE SUBAWARD GRANT AGREEMENT WITH THE
ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES FOR
THE RESTORE ACT STATE EXPENDITURE PLAN FUNDED
ORANGE BEACH NORTH SEWER FORCE MAIN SEWER UPGRADE PROJECT**

FINDINGS:

1. The purpose of this Agreement is for Alabama Department of Conservation and Natural Resources (ADCNR) to provide funding under the Resources and Ecosystem Sustainability, Tourism Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) State Expenditure Plan to the City of Orange Beach for the upgrade of the existing sanitary sewer force main located north of the Gulf Intracoastal Waterway.
2. The purpose of the project is to improve the capacity and integrity of an existing sanitary sewer force main located along the Foley Beach Express and Roscoe Road.
3. On May 19, 2020, City Council adopted Resolution No. 20-110 authorizing the execution of a Subaward Grant Agreement with ADCNR agreeing to the provisions of the grant for the project.
4. ADCNR will disperse funds to the City to carry out the scope of the project in an amount not to exceed a total of \$5,925,000.
5. The purpose of this amendment is to modify the project period of performance from the original date of March 29, 2024, to completion on September 30, 2023.
6. After having reviewed said agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute a grant agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the Alabama Department of Conservation and Natural Resources (ADCNR) as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk

1. DATE ISSUED MM/DD/YYYY 08/02/2023		1a. SUPERSEDES AWARD NOTICE dated 09/08/2022 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 87.052 - Spill Impact Component Project Grants			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. GNSSP20AL0004-01-03 Formerly		5. TYPE OF AWARD Other	
4a. FAIN GNSSP20AL0004		5a. ACTION TYPE Post Award Amendment	
6. PROJECT PERIOD MM/DD/YYYY From 10/01/2019		Through MM/DD/YYYY 09/30/2023	
7. BUDGET PERIOD MM/DD/YYYY From 10/01/2019		Through MM/DD/YYYY 09/30/2023	
8. TITLE OF PROJECT (OR PROGRAM) State Expenditure Plan #23: Orange Beach North Sewer Force Main Upgrade			

The Gulf Coast Ecosystem Restoration Council
RESTORE Council
Gulf Coast Ecosystem Restoration Council

500 Poydras Street
Suite 1117
New Orleans, LA 70130

NOTICE OF AWARD

AUTHORIZATION (Legislation/Regulations)
RESTORE Act, 33 U.S.C. 1321(t)(3) and 40 CFR Part 1800 - Spill
Impact Component

9a. GRANTEE NAME AND ADDRESS ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES 64 N Union St RM 458 Montgomery, AL 36130-3020	9b. GRANTEE PROJECT DIRECTOR Amy Hunter 64 N Union St RM 458 Montgomery, AL 36130-3020 Phone: 251-621-1216
10a. GRANTEE AUTHORIZING OFFICIAL Mr. Chris Blankenship 118 N. Royal Street Suite 603 Mobile, AL 36602 An authorized representative electronically signed the award on 08/02/2023	10b. FEDERAL PROJECT OFFICER Ms. Kathleen Baxter 500 Poydras St STE 1117 New Orleans, LA 70130-7305 Phone: 504-940-7709

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance) I Financial Assistance from the Federal Awarding Agency Only II Total project costs including grant funds and all other financial participation		12. AWARD COMPUTATION a. Amount of Federal Financial Assistance (from item 11m) 6,099,384.00 b. Less Unobligated Balance From Prior Budget Periods 0.00 c. Less Cumulative Prior Award(s) This Budget Period 6,099,384.00 d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION 0.00 13. Total Federal Funds Awarded to Date for Project Period 6,099,384.00																	
a. Salaries and Wages 35,428.00	b. Fringe Benefits 15,189.00	14. RECOMMENDED FUTURE SUPPORT (Subject to the availability of funds and satisfactory progress of the project): <table><tr><th>YEAR</th><th>TOTAL DIRECT COSTS</th><th>YEAR</th><th>TOTAL DIRECT COSTS</th></tr><tr><td>a. 2</td><td></td><td>d. 5</td><td></td></tr><tr><td>b. 3</td><td></td><td>e. 6</td><td></td></tr><tr><td>c. 4</td><td></td><td>f. 7</td><td></td></tr></table>		YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS	a. 2		d. 5		b. 3		e. 6		c. 4		f. 7	
YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS																
a. 2		d. 5																	
b. 3		e. 6																	
c. 4		f. 7																	
c. Total Personnel Costs 50,617.00	d. Equipment 0.00	15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES: a. DEDUCTION b. ADDITIONAL COSTS c. MATCHING d. OTHER RESEARCH (Add / Deduct Option) e. OTHER (See REMARKS) a																	
e. Supplies 100.00	f. Travel 527.00	16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING: a. The grant program legislation. b. The grant program regulations. c. This award notice including terms and conditions, if any, noted below under REMARKS. d. Federal administrative requirements, cost principles and audit requirements applicable to this grant. In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.																	
g. Construction 0.00	h. Other 0.00																		
i. Contractual 6,035,820.00	j. TOTAL DIRECT COSTS 6,087,064.00																		
k. INDIRECT COSTS 12,320.00																			
l. TOTAL APPROVED BUDGET 6,099,384.00																			
m. Federal Share 6,099,384.00																			
n. Non-Federal Share 0.00																			

REMARKS (Other Terms and Conditions Attached -
See next page



Yes



No

AUTHORIZING OFFICIAL:

Frederick Sutter, Deputy Executive Director
500 Poydras St Ste 1117
New Orleans, LA 70130-7305
Phone: 504-444-3511

Electronically Signed 08/02/2023

17.OBJ CLASS 41.0006	18a. VENDOR CODE 929933406	18b. EIN 636000619	19a. UEI WLNMNKHKF5T1	19b. DUNS 929933406	20. CONG. DIST. 02
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	AMT ACTION FIN ASST	APPROPRIATION	
21. a. SEP	b. GNSSP20AL0004	c. 6013 INFRA	d. \$0.00	e.	
22. a.	b.	c.	d.	e.	
23. a.	b.	c.	d.	e.	

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 2	DATE ISSUED 08/02/2023
GRANT NO. GNSSP20AL0004-01-03	

REMARKS:

This amendment revises the period of performance end date to 9/30/2023 for completion of scope of work.

The milestones were also updated to reflect the revised performance date.

All other terms and conditions of the award remain the same.

FY20: CatB 6013 Cost Pool: GCCSTAL000

CAM1: GCCGECONOMYX

CAM2: GCCMOBILEBAY

CAM3: GCCPCOMRESIL

AWARD ATTACHMENTS

ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES

GNSSP20AL0004-01-
03

1. Revised Reporting Schedule

REVISED REPORTING SCHEDULE		
Report Due	Reporting Period	Report Due Date
Financial Report	4/1/2020 – 9/30/2020	10/30/2020 (Received)
Financial Report	10/1/2020 – 3/31/2021	4/30/2021 (Received)
Performance Report	4/1/2020 – 3/31/2021	4/30/2021 (Received)
Financial and Performance Reports	4/1/2021 – 3/31/2022	5/30/2022 (Received)
Financial and Performance Reports	4/1/2022 – 3/31/2023	5/30/2023 (Received)
Final Financial and Performance Reports	4/1/2023 – 9/30/2023	1/28/2024

STATE OF ALABAMA

ADCNR Grant #: S1P23-OBSU

MONTGOMERY COUNTY

SUBAWARD GRANT AGREEMENT – AMENDMENT NO. 3

THIS SUBAWARD GRANT AGREEMENT, (“Agreement”) is made and entered into by and between the State of Alabama Department of Conservation and Natural Resources (hereinafter “ADCNR”) and the City of Orange Beach (hereinafter “Subrecipient”). Pursuant to this Agreement, ADCNR and Subrecipient (collectively hereinafter “Parties”) agree as follows:

1. **PROJECT PURPOSE AND IDENTITY:** The purpose of this Agreement is to provide funding under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (hereinafter “RESTORE Act”) to Subrecipient for implementation of the RESTORE Act Direct Component project titled “State Expenditure Plan #23: Orange Beach North Sewer Force Main Upgrade” (hereinafter “Project”). The purpose of this project is to construct approximately 8 miles of sewer force main from a point on Highway 180 in Orange Beach to an existing lift station on County Road 12, further described in the Federal Award GNSSP20AL0004-01-03. This Agreement between the Parties will be identified by the “ADCNR Grant Number” set forth above in the upper right corner of this Agreement. All invoices and other correspondence submitted to ADCNR in connection with this Agreement must be identified by said Grant Number.

This Amendment No. 3 is for an existing grant for the Alabama Department of Conservation and Natural Resources (ADCNR), Grant No. GNSSP20AL0004-01-03, Orange Beach North Sewer Force Main Upgrade Amendment No. 3. This amendment executes the following suite of actions:

- This amendment revises the period of performance end date to September 30, 2023 for completion of scope of work;
 - The milestones were also updated to reflect the revised performance date; and
 - All other terms & conditions of the award remain the same.
2. **FEDERAL AWARD INFORMATION:** The Project’s Financial Assistance Award (hereinafter “Federal Award”) in its entirety is hereby incorporated into this Agreement by reference. Information as to the Federal Award associated with the Project includes the following:
 - a. Federal Award Identification Number (FAIN): GNSSP20AL0004
 - b. Federal Award Period of Performance: 10/01/2019 to 09/30/2023
 - c. Total Amount of Federal Funds Obligated To Subrecipient: \$5,925,000.00
 - d. Subrecipient UEI: JKREAZH2DMF6
 - e. Total Amount of Federal Award: \$6,099,384.00
 - f. Name of Federal Awarding Agency: Gulf Coast Ecosystem Restoration Council (hereinafter “RESTORE Council”)
 - g. Pass-Through Entity & Awarding Official Contact Information:
Alabama Department of Conservation and Natural Resources
Commissioner Christopher M. Blankenship
64 N. Union Street; Suite 468
Montgomery, AL 36130
 - h. CFDA Number & Name: CFDA# 87.052 “Spill Impact Component Project Grants”
 - i. Indirect Cost Rate of Subrecipient: 0%

3. AGREEMENT FUNDING AMOUNT: ADCNR's funding commitment under this Agreement shall be within the budgetary limits as described herein and pursuant to the Federal Award and shall not exceed a total of five million nine hundred twenty-five thousand and xx/100 dollars (\$5,925,000.00).
4. PROJECT PERIOD: The period allowed for Project completion by the Subrecipient (hereinafter "Project Period") shall commence on October 1, 2019 and end on September 30, 2023.
5. AGREEMENT TERM: The term of this Agreement shall commence when the Agreement is executed by both Parties and end on September 30, 2023 (hereinafter "Agreement Term").
6. NOTICE: Contact information of Parties for purposes of providing notice pursuant to the terms of this Agreement are set forth below. In the event the designation of new contact information is necessary, such shall not require a formal amendment to this Agreement.

To ADCNR:

Alabama Department of Conservation and Natural Resources
Attn: Christopher M. Blankenship, Commissioner
64 N. Union St., Suite 468
Montgomery, AL 36130

With a copy to:

Dr. Amy Hunter
Deepwater Horizon Restoration Coordinator
Alabama Department of Conservation and Natural Resources
31115 Five Rivers Boulevard
Spanish Fort, AL 36527
Email: amy.hunter@dcnr.alabama.gov

To Subrecipient:

City of Orange Beach
Attn: Tony Kennon, Mayor
4099 Orange Beach Blvd.
Orange Beach, AL 36561

Nicole Woerner
Deputy Director | Coastal Resources
City of Orange Beach
P. O. Box 458
4697 Walker Avenue
Orange Beach, AL 36561
nwoerner@orangebeachal.gov

7. PARTIES REPRESENT THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS, ORAL AND WRITTEN, ALL PREVIOUS CONTRACTS, AGREEMENTS, NEGOTIATIONS AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.
8. DOCUMENTS: The documents which comprise this Agreement between ADCNR and the Subrecipient are:
 1. This Subaward Agreement;

2. The Amendment for the existing grant for the Alabama Department of Conservation and Natural Resources (ADCNR), Grant No. GNSSP20AL0004-01-03 and any RESTORE Council-specific Special Award Conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date entered below.

**STATE OF ALABAMA
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES**

Christopher M. Blankenship, Commissioner

Date: _____

CITY OF ORANGE BEACH

Tony Kennon, Mayor

Date: _____

AL-08/02/2023

Subrecipient Name: City of Orange Beach, UEI: JKREAZH2DMF6

Title of Grant Project: State Expenditure Plan #23: Orange Beach North Sewer Force Main Upgrade

Attachment
Federal Award Identification

The entity identified in this agreement is a subrecipient of a subaward, in accordance with 2 CFR 200.332. Be advised, the following information describes the Federal award and subaward:

(1) Federal Award Identification	
(i.) Subrecipient name	City of Orange Beach
(ii.) Subrecipient's unique entity identifier	UEI: JKREAZH2DMF6
(iii.) Federal Award Identification Number (FAIN);	GNSSP20AL0004
(iv.) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	08/02/2023
(v.) Subaward Period of Performance Start and End Date;	This agreement shall commence when it is executed by both Parties and end on September 30, 2023.
(vi.) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	\$5,925,000.00
(vii.) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	\$5,925,000.00
(viii.) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	\$5,925,000.00
(ix.) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	The purpose of this project is to construct approximately 8 miles of sewer force main from a point on Highway 180 in Orange Beach to an existing lift station on County Road 12.
(x.) Name of Federal awarding agency, Name of pass-through entity, and contact information for awarding official of the pass-through entity.	Gulf Coast Ecosystem Restoration Council, Alabama Department of Conservation and Natural Resources, Christopher M. Blankenship Chris.blankenship@dcnr.alabama.gov
(xi.) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	CFDA # 87.052 "Spill Impact Component Project Grants" - total Federal Award issued to ADCNR, which is registered in SAM with the UEI: <u>WLNMNKHKF5T1</u> is \$6,099,384.00.
(xii.) Identification of whether the award is R&D; and	This is not a R&D award.
(xiii.) Indirect cost rate for the Federal award (including if the de minimis rate if charged per §200.414 Indirect (F&A) costs).	The indirect cost rate for the Federal award is 24.09%.

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
SUBAWARD GRANT AGREEMENT WITH THE
NATIONAL FISH AND WILDLIFE FOUNDATION (NFWF)
FOR THE REMOVAL AND RECYCLING OF LARGE-SCALE MARINE DEBRIS
CAUSED BY HURRICANE SALLY IN THE AMOUNT OF \$367,959.44**

FINDINGS:

1. The purpose of this agreement is for the National Fish and Wildlife Foundation (NFWF) to provide funding to the City of Orange Beach to remove and recycle large-scale marine debris caused by Hurricane Sally.
2. The purpose of the project is to assess and monitor marine debris that resulted from Hurricane Sally by removing and recycling the debris, restoring habitat, and providing outreach focused on prevention and resilience.
3. NFWF will disperse funds to the City to carry out the scope of the project in an amount not to exceed a total of \$367,959.44.
4. After having reviewed said agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute a grant agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the National Fish and Wildlife Foundation (NFWF) as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk

	NATIONAL FISH AND WILDLIFE FOUNDATION GRANT AGREEMENT	1. NFWF PROPOSAL ID: 76849	2. NFWF GRANT ID: 0319.23.076849	
		3. UNIQUE ENTITY IDENTIFIER (UEI) JKREAZH2DMF6	4. INDIRECT COST RATE (REFERENCE LINE 17 for RATE TERMS) N/A	
5. SUBRECIPIENT TYPE State or Local Government		6. NFWF SUBRECIPIENT City of Orange Beach, Alabama		
7. NFWF SUBRECIPIENT CONTACT		8. NFWF GRANTS ADMINISTRATOR/NFWF CONTACT INFORMATION		
Phillip West City of Orange Beach, Alabama PO Box 458 Orange Beach, AL 36561 Tel: 251-981-1063 pwest@cityoforangebeach.com		Trina Davin National Fish and Wildlife Foundation 1133 15 th Street, N.W. Suite 1000 Washington, D.C. 20005 Tel: 202-857-0166 Fax: 202-857-0162 trina.davin@nfwf.org		
9. PROJECT TITLE Removing and Recycling Large-Scale Marine Debris Caused By Hurricane Sally in Orange Beach, AL				
10. PROJECT DESCRIPTION Remove 900,000 pounds of large-scale marine debris from the coastal habitats of Orange Beach, Alabama. Project will assess and monitor marine debris that resulted from Hurricane Sally, remove and recycle the debris, restore habitat, and provide outreach focused on prevention and resilience.				
11. PERIOD OF PERFORMANCE January 1, 2023 to December 31, 2025		12. TOTAL AWARD TO SUBRECIPIENT \$367,959.44		13. TOTAL FED. FUNDS \$367,959.44
14. TOTAL NON-FED. FUNDS N/A				
15. FEDERAL MATCH REQUIREMENT \$657,250		16. NON-FEDERAL MATCH REQUIREMENT N/A		
17. SUBRECIPIENT INDIRECT COST RATE TERMS The rate specified in Line 4 reflects that the Subrecipient has elected not to claim an indirect cost rate and that this election shall apply throughout the project's period of performance.				
18. TABLE OF CONTENTS				
SEC.	DESCRIPTION			
1	NFWF Agreement Administration			
2	NFWF Agreement Clauses			
3	Representations, Certifications, Obligations, and Other Statements – General			
4	Representations, Certifications, and Other Statements Relating to Federal Funds- General			
5	Representations, Certifications, and Other Statements Relating to Federal Funds – Funding Source Specific			
6	Other Representations, Certifications, Statements and Clauses			

19. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL							
A. FUNDING SOURCE (FS)	B. NFWF FS ID	C. FS AWARD DATE TO NFWF	D. FAIN	E. TOT FED. AWARD TO NFWF	F. TOT OBLG. TO SUBRECIPIENT	G. FS END DATE	H. CFDA
National Oceanic And Atmospheric Administration	FC.R536	07/28/2022	NA22NOS9990026	\$3,000,000.00	\$367,959.44	12/31/2026	11.999

20. NOTICE OF AWARD			
The National Fish and Wildlife Foundation (NFWF) agrees to provide the NFWF Award to the NFWF Subrecipient for the purpose of satisfactorily performing the Project described in a full proposal as identified on line 1 and incorporated into this Agreement by reference. The NFWF Award is provided on the condition that the NFWF Subrecipient agrees that it will raise and spend at least the amount listed on lines 15 and 16 in matching contributions on the Project, as applicable. The Project must be completed, with all NFWF funds and matching contributions spent, during the Period of Performance as set forth above. All items designated on the Cover Page and the Table of Contents are incorporated into this Agreement by reference herein. NFWF Subrecipient agrees to abide by all statutory or regulatory requirements, or obligations otherwise required by law. Subrecipient is obligated to notify NFWF if any of the information on the Cover Page changes in any way, whether material or immaterial.			
A. NAME AND TITLE OF AUTHORIZED SUBRECIPIENT SIGNER (Type or Print)		D. NAME AND TITLE OF NFWF AWARDING OFFICIAL Holly A. Bamford, PhD, Chief Conservation Officer	
B. SUBRECIPIENT BY	C. DATE	E. NATIONAL FISH AND WILDLIFE FOUNDATION BY	F. DATE
NFWF prohibits discrimination in all its programs and activities on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, personal appearance, citizen status, disability, sexual orientation, gender identity or expression, pregnancy, child birth or related medical conditions, family responsibilities, matriculation, genetic information, political or union affiliation, veteran status or any other status protected by applicable law ("Protected Categories"). In addition, NFWF prohibits retaliation against an individual who opposes an unlawful educational practice or policy or files a charge, testifies or participates in any complaint under Title VI. NFWF complies with all applicable federal, state and local laws in its commitment to being an equal opportunity provider and employer; accordingly, it is NFWF's policy to administer all employment actions, including but not limited to, recruiting, hiring, training, promoting, and payment of wages, without regard to any Protected Category(ies).			

See Reporting Schedule on the following page.

21. REPORTING DUE DATES/SUBRECIPIENT REPORTING SCHEDULE

Reporting Task	Task Due Date
Annual Financial Report	January 1, 2024
Interim Programmatic Report	January 1, 2024
Interim Programmatic Report	July 1, 2024
Annual Financial Report	January 1, 2025
Interim Programmatic Report	January 1, 2025
Interim Programmatic Report	July 1, 2025
Final Financial Report	March 31, 2026
Final Programmatic Report	March 31, 2026



SECTION 1 NFWF AGREEMENT ADMINISTRATION

1.1. Amendments.

During the life of the Project, the NFWF Subrecipient is required to immediately inform in writing the NFWF Grants Administrator of any changes in contact information, Key Personnel, scope of work, indirect cost rate, as well as any difficulties in completing the performance goals articulated in the Project description. NFWF Subrecipients must request an amendment from NFWF upon determination of a deviation from the original Grant Agreement as soon as such deviation is detected. NFWF reserves the right to approve, deny and/or negotiate any such request. Alternatively, NFWF may initiate an amendment if NFWF determines an amendment is necessary at any time. Amendment requests are to be submitted via NFWF's grants management system.

1.1.1. Budget Amendment Request.

If the NFWF Subrecipient determines that: 1) the amount of the budget is going to change in any one direct cost category by an amount that exceeds 10% of the Award, or 2) there is a need to increase indirect costs, the NFWF Subrecipient must seek prior written approval via an amendment request in NFWF's grants management system.

1.1.2. Extension of Performance Period.

If additional time is needed to complete the approved Project, the NFWF Subrecipient should contact the NFWF Grants Administrator at least 45 calendar days prior to the project period expiration date to initiate the no-cost extension request process in NFWF's grants management system. In addition, if there are overdue reports required, the NFWF Subrecipient must ensure that they are submitted along with or prior to submitting the no-cost extension request.

1.2. Matching Contributions.

Matching Contributions consist of cash, contributed goods and services, volunteer hours, and/or property raised and spent for the Project. Matching Contributions for the purposes of this Project must meet the following criteria: (1) Are verifiable from the NFWF Subrecipient's records; (2) Are not included as contributions for any other federal award; (3) Are necessary and reasonable for the accomplishment of project or program objectives; (4) Are allowable under OMB Cost Principles; (5) Are not paid by the U.S. Government under another federal award except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs when authorized by federal statute; (6) Are provided for in the approved budget when required by the federal awarding agency; (7) Are committed directly to the project and must be used within the period of performance as identified in this Agreement; (8) Otherwise conform to the law; and, (9) Are in compliance with the requirements of Section 3.3 of this Agreement concerning Compliance with Laws.

1.2.1. Documentation and Reporting of Matching Contributions.

The NFWF Subrecipient must retain supporting documentation, including detailed time records for contributed services, original receipts, appraisals of real property, and comparable rentals for other contributed property, at its place of business in the event of an audit of the NFWF Subrecipient as required by applicable federal regulations. The NFWF Subrecipient must report match progress in Payment Requests and Financial Reports.

1.2.2. Assessing Fair Market Value.

Fair market value of donated goods, services and property, including volunteer hours, shall be computed as outlined in §200.306 of 2 CFR Subtitle A, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (hereinafter “OMB Uniform Guidance”), regardless of whether this Agreement is federally funded.

1.3. Payment of Funds.

To be eligible to receive funds, NFWF Subrecipient must submit to NFWF (1) an original executed copy of this Agreement for the Project; (2) any due financial and programmatic reports; and (3) a complete and accurate Payment Request via NFWF’s grants management system. At any time, NFWF reserves the right to require submission of source documentation, including but not limited to timesheets, cash receipts, contracts or subaward agreements, for any costs where the NFWF Subrecipient is seeking reimbursement by NFWF. NFWF reserves the right to retain up to ten percent (10%) of funds until submission and acceptance of final reports.

1.3.1. Reimbursements.

NFWF Subrecipient may request funds on a reimbursable basis. Reimbursement requests must include expenditures to date and an explanation of any variance from the approved budget.

1.3.2. Advances.

NFWF Subrecipient may request advance payment of funds prior to expenditure provided that the NFWF Subrecipient: (1) demonstrates an immediate need for advance payment; (2) documents expenditure of advanced funds; 3) maintains written procedures that minimize the time elapsing between the transfer of funds and disbursement; and (4) has established appropriate financial management systems that meet the needs and standards for fund control and accountability. Approval of any advance payment of funds is made at the sole discretion of NFWF, based on an assessment of the NFWF Subrecipient’s needs.

1.3.3. Interest.

Any interest earned in any one year on funds advanced to the NFWF Subrecipient that exceeds \$500 must be reported to NFWF, and the disposition of those funds negotiated with NFWF. Interest amounts up to \$500 per year may be retained by the NFWF Subrecipient for administrative expense.

1.4. Reports.

1.4.1. Interim Programmatic Reports.

The NFWF Subrecipient will submit interim programmatic reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The interim programmatic report shall consist of written statements of Project accomplishments and updated metric values since Project initiation, or since the last reporting period, and shall be submitted via NFWF's grants management system. NFWF may require specific formatting and/or additional information as appropriate.

1.4.2. Interim Financial Reports.

The NFWF Subrecipient will submit interim financial reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The interim financial report shall consist of financial information detailing cumulative expenditures made under this Project since Project initiation and shall be uploaded via NFWF's grants management system. NFWF may require specific formatting and/or additional information as appropriate.

1.4.3. Annual Financial Report.

The NFWF Subrecipient will submit annual financial reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, as may be amended at NFWF's sole discretion. The NFWF Subrecipient must enter a justification when there is a difference between the amount disbursed by NFWF and the amount expended by the grantee. Failure to submit an annual financial report in a timely manner will delay payment of submitted payment requests.

1.4.4. Final Reports.

Based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement, the NFWF Subrecipient will submit (1) a Final Financial Report accounting for all Project funds received, Project expenditures, and budget variances (if any) compared to the approved budget; (2) a Final Programmatic Report summarizing and documenting the accomplishments and metric values achieved during the Period of Performance; (3) copies of any publications, press releases and other appropriate products resulting from the Project; and (4) photographs as described in Section 1.4.3.1 below. The final reports and digital photo files should be uploaded via NFWF's grants management system. Any requests for extensions of final report submission dates must be made in writing to the NFWF Grants Administrator and approved by NFWF in advance. NFWF may require specific formatting and/or additional information as appropriate.

1.4.4.1. Photographs.

NFWF requests, as appropriate for the Project, a representative number of high-resolution (minimum 300 dpi) photographs depicting the Project (before-and-after images, images of species impacted, and/or images of staff/volunteers working on the Project). Photographs should be uploaded with the Final Programmatic Report

Page 6 of 27

via NFWF's grants management system as individual .jpg files. The FinalProgrammatic Report narrative should list each photograph, the date the photograph was taken, the location of the photographed image, caption, photo credit, and any other pertinent information (e.g., species, activity conducted) describing what the photograph is depicting. By uploading photographs to NFWF's grants management system the NFWF Subrecipient certifies that the photographs are unencumbered and that NFWF and Project Funders have a fully paid up non-exclusive, royalty-free, irrevocable, perpetual, worldwide license for posting of Final Reports and for any other purposes that NFWF or the Project Funder determines appropriate.

1.4.5. Significant Developments.

The NFWF Subrecipient shall report on events that may occur between the scheduled performance reporting dates that have a significant impact on the Project. Such reporting shall be made as soon as the following conditions become known:

1.4.5.1. Problems, delays, or adverse conditions which will materially impair the ability to meet the Project objective, including but not limited to the objective itself, its schedule and/or the budget. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the matter; and/or,

1.4.5.2. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

1.5. Reports and Payment Requests.

All reports, financial, programmatic, or otherwise, or payment requests under a federal award must be submitted by a representative of the NFWF Subrecipient who has the NFWF Subrecipient's full authority to render such reports and requests for payment and to provide required certifications as set forth in 2 CFR 200.415, as applicable.

1.6. Record Retention and Access.

1.6.1. Retention Requirements for Records.

NFWF Subrecipient shall maintain all records connected with this Agreement for a period of at least three (3) years following the latest end date of the funding source(s) referenced above in line 19. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL or the close-out of all pending matters or audits related to this Agreement, whichever is later. As funding source end dates may be extended over time, the NFWF Subrecipient will be notified of the most up-to-date record retention requirements upon closure of this Award. If any litigation, claim, or audit is started (irrespective of the NFWF Subrecipient's involvement in such matter) before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings or pending matters involving the records have been resolved and final action taken. NFWF shall notify NFWF Subrecipient if any such litigation, claim or audit takes place or if funding source end date(s) is extended so as to extend the retention period. Records for real property and equipment acquired

with federal funds must be retained for at least three (3) years following disposition of such real property. For awards solely funded with funding sources with "N/A" listed as the end date, NFWF Subrecipient shall maintain all records connected with this Agreement for a period of at least three (3) years following the date of final payment or the Period of Performance end date, whichever is later.

1.6.2. Access to Records.

NFWF or any of its authorized representatives shall have access to such records and financial statements upon request, as shall Inspectors General, the Comptroller General of the United States or any of their authorized representatives if the Funding Source or any funding entity (*i.e.*, a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

SECTION 2 NFWF AGREEMENT CLAUSES

2.1. Restrictions on Use of Funds.

The NFWF Subrecipient agrees that any funds provided by NFWF and all Matching Contributions will be expended only for the purposes and programs described in this Agreement. No funds provided by NFWF pursuant to this Agreement or Matching Contributions may be used to support litigation expenses, lobbying activities, or any other activities not authorized under this Agreement or otherwise unallowable under the Federal Cost Principles set forth in the OMB Uniform Guidance.

2.2. Assignment.

The NFWF Subrecipient may not assign this Agreement, in whole or in part, to any other individual or other legal entity without the prior written approval of NFWF.

2.3. Subawards and Contracts.

When making subawards or contracting, NFWF Subrecipient shall: (1) abide by all applicable granting and contracting procedures, including but not limited to those requirements of the OMB Uniform Guidance (2 C.F.R. Part 200); (2) ensure that all applicable federal, state and local requirements are properly flowed down to the subawardee or contractor, including but not limited to the applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200); and (3) ensure that such subaward or contracting complies with the requirements in Section 3.3 of this Agreement concerning Compliance with Laws. NFWF Subrecipient shall also include in any subaward or contract a similar provision to this, requiring the use of proper grant and contracting procedures and subsequent flow down of federal, state, and local requirements to lower-tiered subawardees and contractors.

2.4. Unexpended Funds.

Any funds provided by NFWF and held by the NFWF Subrecipient and not expended at the end of the Period of Performance will be returned to NFWF within ninety (90) days after the end of the Period of Performance.

2.5. Publicity, Acknowledgment of Support, and Disclaimers.

2.5.1. Publicity.

The NFWF Subrecipient gives NFWF the right and authority to publicize NFWF's financial support for this Agreement and the Project in press releases, publications, and other public communications.

2.5.2. Acknowledgment of Support.

The NFWF Subrecipient agrees to: (1) give appropriate credit to NFWF and any Funding Sources identified in this Agreement for their financial support in any and all press releases, publications, annual reports, signage, video credits, dedications, and other public communications regarding this Agreement or any of the project deliverables associated with this Agreement, subject to any terms and conditions as may be stated in Section 5 and Section 6 of this Agreement; and (2) include the disclaimer provided at Section 2.5.4.

Page 9 of 27

2.5.3. Logo Use.

The NFWF Subrecipient must obtain prior NFWF approval for the use relating to this Award of the NFWF logo or the logo or marks of any Funding Source.

2.5.4. Disclaimers.

Payments made to the NFWF Subrecipient under this Agreement do not by direct reference or by implication convey NFWF's endorsement nor the endorsement by any other entity that provides funds to the NFWF Subrecipient through this Agreement, including the U.S. Government, as applicable, for the Project. All information submitted for publication or other public releases of information regarding this Agreement shall carry the following disclaimer, which NFWF may revise at any time at its sole discretion:

For Projects funded in whole or part with federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government or the National Fish and Wildlife Foundation and its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government, or the National Fish and Wildlife Foundation or its funding sources."

For Projects not funded with federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions of the National Fish and Wildlife Foundation or its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation or its funding sources."

2.6. Posting of Final Reports.

The NFWF Subrecipient hereby acknowledges and consents for NFWF and any Funding Source identified in this Agreement to post its final programmatic reports and deliverables on their respective websites. In the event that the NFWF Subrecipient intends to claim that its final report contains material that does not have to be posted on such websites because it is protected from disclosure by statutory or regulatory provisions, the NFWF Subrecipient shall so notify NFWF and any Funding Source identified in this Agreement and clearly mark all such potentially protected materials as "PROTECTED," providing an accurate and complete citation to the statutory or regulatory source for such protection.

2.7. Website Links.

The NFWF Subrecipient agrees to permit NFWF to post a link on any or all NFWF websites to any websites created by the NFWF Subrecipient in connection with the Project.

2.8. Evaluation.

Throughout a program or business plan, NFWF engages in monitoring and evaluation to assess progress toward conservation goals and inform future decision-making. These efforts use both data collected by grantees as part of their NFWF grant as well as post-award project data collected by third-party entities commissioned to conduct a program evaluation. The NFWF Subrecipient agrees to cooperate with NFWF by providing timely responses to all reasonable requests for information

to assist in evaluating the accomplishments of the Project period of five (5) years after the project end date.

2.9. Intellectual Property.

Reports, materials, books, databases, monitoring data, maps and spatial data, audio/video, and other forms of intellectual property created using this grant may be copyrighted or otherwise legally protected by the NFWF Subrecipient or by the author. The NFWF Subrecipient agrees to provide to NFWF and any Funding Source identified in this Agreement a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use, publish, copy and alter the NFWF Subrecipient's intellectual property created using this award for non-commercial purposes in any media – whether now known or later devised – including posting such intellectual property on NFWF's or Funding Source websites and featuring in publications. NFWF retains the right to use project metrics and spatial data submitted by the NFWF Subrecipient to estimate societal benefits that result and to report these results to funding partners on a case-by-case basis as determined by NFWF. These may include but are not limited to: habitat and species response, species connectivity, water quality, water quantity, risk of detrimental events (e.g., wildfire, floods), carbon accounting (e.g., sequestration, avoided emissions), environmental justice, and diversity, equity, and inclusion.

2.10. System for Award Management (SAM) Registration.

The NFWF Subrecipient must maintain an active SAM registration at www.SAM.gov until the final financial report is submitted or final payment is received, whichever is later. If the NFWF Subrecipient's SAM registration expires during the required period, NFWF will suspend payment to the NFWF Subrecipient until the SAM registration is updated.

2.11. Arbitration.

All claims, disputes, and other matters in question arising out of, or relating to this Agreement, its interpretation or breach, shall be decided through arbitration by a person or persons mutually acceptable to both NFWF and the NFWF Subrecipient. Notice of the demand for arbitration shall be made within a reasonable time, not to exceed three years, after the claim, dispute, or other matter in question has arisen. The award rendered by the arbitrator or arbitrators shall be final. The terms of this provision will survive termination of this Agreement.

2.12. Indemnity.

The NFWF Subrecipient shall indemnify and hold harmless NFWF, any Funding Source identified in this Grant Agreement, their respective officers, directors, agents, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and expenses including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions or liabilities arising from or in connection with the Project. The terms of this provision will survive termination of this Agreement.

2.13. Insurance.

The NFWF Subrecipient agrees to obtain and maintain all appropriate and/or required insurance coverages against liability for injury to persons or property from any and all activities undertaken by the NFWF Subrecipient and associated with this Agreement in any way. NFWF reserves the right to require additional insurance limits and policies based on specific activities under this Agreement, that NFWF be named insured on all applicable insurance policies, and that the NFWF Subrecipient

provide a certificate of insurance and/or copies of applicable insurance policies as requested by NFWF. The terms of this provision will survive termination of this Agreement.

2.14. Choice of Law/Jurisdiction.

This Agreement shall be subject to and interpreted by the laws of the District of Columbia, without regard to choice of law principles. By entering into this Agreement, the NFWF Subrecipient agrees to submit to the exclusive jurisdiction of the courts of the District of Columbia. The terms of this provision will survive termination of this Agreement.

2.15. Stop Work.

NFWF may, at any time, by written order to the NFWF Subrecipient, require the NFWF Subrecipient to stop all, or any part, of the work called for by this Agreement for a period of 90 days after the order is delivered to the NFWF Subrecipient. The order shall be specifically identified as a stop-work order issued under this section. Upon receipt of the order, the NFWF Subrecipient shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to this Agreement covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop-work order is delivered to the NFWF Subrecipient, or within any extension of that period to which the parties shall have agreed, NFWF shall either cancel the stop-work order or terminate the Agreement under section 2.16.

2.16. Termination.

2.16.1. Upon the occurrence of any of the following enumerated circumstances, NFWF may terminate this Agreement, or any portion thereunder, upon receipt by the NFWF Subrecipient of NFWF's written notice of termination, or as otherwise specified in the notice of termination:

2.16.1.1. the NFWF Subrecipient is adjudged or becomes bankrupt or insolvent, is unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors; or,

2.16.1.2. the NFWF Subrecipient voluntarily or involuntarily undertakes to dissolve or wind up its affairs; or,

2.16.1.3. suspension or debarment by the Government of the NFWF Subrecipient; or,

2.16.1.4. any breach of the requirements set forth in Section 3.3 of this Agreement concerning Compliance with Laws; or,

2.16.1.5. NFWF learns that NFWF Subrecipient has an organizational conflict of interest, or any other conflict of interest, as determined in the sole discretion of NFWF, that NFWF believes, in its sole discretion, cannot be mitigated; or,

2.16.1.6. after written notice and a reasonable opportunity, the NFWF Subrecipient is unable to cure a perceived non-compliance with any material term (other than those enumerated at 2.16.1.1 – 2.16.1.5) of this Agreement. The cure

period shall be considered the timeframe specified by the Funding Source(s), if any, minus one (1) to five (5) days or as agreed upon by the Parties in writing, or if no time is specified by the Funding Source(s), ten (10) days or as otherwise agreed upon by the Parties. Within this time period the NFWF Subrecipient shall, as determined by NFWF, (a) satisfactorily demonstrate its compliance with the term(s) originally believed to be in non-compliance; or (b) NFWF, at its sole discretion, may determine that NFWF Subrecipient has satisfactorily demonstrated that reasonable progress has been made so as not to endanger performance under this Agreement; or,

2.16.1.7. if the Funding Source issues an early termination under the funding agreement(s) covering all or part of the Project at issue hereunder.

2.16.2. Either Party may terminate this Agreement by written notice to the other Party for any reason by providing thirty (30) days' prior written notice to the other Party.

2.16.3. In the event of termination of this Agreement prior to Project completion, the NFWF Subrecipient shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to wind down the Project cooperatively with NFWF, including but not limited to the following:

2.16.3.1. Stop any portion of the Project's work that is incomplete (unless work to be completed and a different date for termination of work are specified in NFWF's notice).

2.16.3.2. Place no further work orders or enter into any further subawards or contracts for materials, services, or facilities, except as necessary to complete work as specified in NFWF's notice.

2.16.3.3. Terminate all pending Project work orders, subawards, and contracts for work that has not yet commenced.

2.16.3.4. With the prior written consent of NFWF, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Project, including but not limited to reasonable settlements of any outstanding claims arising out of termination of Project work orders, subawards, and contracts. NFWF will reimburse the NFWF Subrecipient for non-cancelable allowable costs incurred by the NFWF Subrecipient prior to termination that cannot be mitigated. However, the foregoing is subject to the complete reimbursement of such costs by the Funding Source; accordingly, any amounts ultimately not paid, or which are recouped by the Funding Source, are subject to recoupment by NFWF.

2.16.3.5. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the NFWF Subrecipient under this Agreement, whether completed or in progress.

2.16.3.6. Return to NFWF any unobligated portion of the Award.

2.17. Entire Agreement.

These terms and conditions, including the Attachments hereto, constitute the entire agreement between the Parties relating to the Project described herein and supersede all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of a Party, which are not stated herein, shall be binding on said Party.

2.18. Severability.

Each provision of this Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

2.19. Interpretation and Construction.

2.19.1. This Agreement shall be interpreted as a unified contractual document with the Sections and the Attachments having equal effect, except in the event of any inconsistency between them. In the event of a conflict between any portion of this Agreement and another portion of this Grant Agreement, first the Sections will apply in the following order of precedence: 5, 4, 3, 1, 2 and 6, and then any supplemental attachments.

2.19.2. The title designations of the provisions to this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

2.19.3. Every right or remedy conferred by this Agreement upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed a selection.

2.19.4. The failure of NFWF to exercise any right or privilege granted hereunder or to insist upon the performance and/or compliance of any provision of this Agreement, a referenced contractual, statutory or regulatory term, or an Attachment hereto, shall not be construed as waiving any such right, privilege, or performance/compliance issue, and the same shall continue in full force and effect.

2.19.5. Notwithstanding any express statements regarding the continuation of an obligation beyond the expiration or termination of this Agreement, the rights and obligations of this Agreement, which by their nature extend beyond its expiration or termination, shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.

SECTION 3 REPRESENTATIONS, CERTIFICATIONS, OBLIGATIONS AND OTHER STATEMENTS – GENERAL

3.1. Binding Obligation.

By execution of this Agreement, NFWF Subrecipient represents and certifies that this Agreement has been duly executed by a representative of the NFWF Subrecipient with full authority to execute this Agreement and binds the NFWF Subrecipient to the terms hereof. After execution by the representative of the NFWF Subrecipient named on the signature page hereto, this Agreement represents the legal, valid, and binding obligation of the NFWF Subrecipient, enforceable against the NFWF Subrecipient in accordance with its terms.

3.2. Additional Support.

In making this Award, NFWF assumes no obligation to provide further funding or support to the NFWF Subrecipient beyond the terms stated in this Agreement.

3.3. Compliance with Laws.

3.3.1. In General.

By execution of this Agreement and through its continued performance hereunder, the NFWF Subrecipient represents, certifies and agrees that it is and shall continue to conduct all such activities in compliance with all applicable federal, state, and local laws, regulations, and ordinances and to secure all appropriate necessary public or private permits and consents. The terms of this provision will survive termination of this Agreement and must be flowed down to any and all contractors, subcontractors or subrecipients entered into by NFWF Subrecipient in the performance of this Agreement.

3.3.2. Compliance with Anti-Corruption Laws.

The NFWF Subrecipient represents, certifies and agrees to ensure that no payments have been or will be made or received by the NFWF Subrecipient in connection with this Agreement in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §dd-1 *et seq.*), or any other applicable anti-corruption laws or regulations (e.g., UK Bribery Act 2010) in the countries in which the NFWF Subrecipient performs under this Agreement.

3.3.3. Compliance with Anti-Terrorism Laws.

The NFWF Subrecipient represents, certifies and agrees not to provide material support or resources directly or indirectly to, or knowingly permit any funds provided by NFWF pursuant to this Agreement or Matching Contributions to be transferred to, any individual, corporation or other entity that the NFWF Subrecipient knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (1) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac; (2) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council at

Page 15 of 27

http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; (3) on the consolidated list maintained by the U.S. Department of Commerce at http://export.gov/ecr/eg_main_023148.asp, or (4) on such other list as NFWF may identify from time to time.

3.3.4. Compliance with Additional Laws and Restrictions.

The NFWF Subrecipient represents, certifies and agrees to ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, U.S. export controls, restrictive trade practices, boycotts, and all other economic sanctions or trade restrictions promulgated from time to time by means of statute, executive order, regulation or as administered by the U.S. Department of State, the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Bureau of Industry and Security, U.S. Department of Commerce.

3.4. Subrecipient Debarment and Suspensions.

By and through NFWF Subrecipient's execution of this Agreement, NFWF Subrecipient warrants and represents its initial and continued compliance that it is not listed on the General Services Administration's, government-wide System for Award Management Exclusions (SAM Exclusions), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement E.O.s 12549 (3 C.F.R., 1986 Comp., p. 189) and 12689 (3 C.F.R., 1989 Comp., p. 235), "Debarment and Suspension." The NFWF Subrecipient further provides that it shall not enter into any subaward, contract or other agreement using funds provided by NFWF with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions can be found at <https://www.sam.gov/portal/public/SAM/>.

3.5. Conflicts of Interest.

By execution of this Agreement, NFWF Subrecipient acknowledges that it is prohibited from using any Project funds received under this Agreement in a manner which may give rise to an apparent or actual conflict of interest, including organizational conflicts of interest, on the part of the NFWF Subrecipient. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of NFWF Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. An organizational conflict of interest is defined as a relationship that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. The NFWF Subrecipient represents and certifies that it has adopted a conflict of interest policy that, at a minimum, complies with the requirements of the OMB Uniform Guidance, and will comply with such policy in the use of any Project funds received under this Agreement. NFWF Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of NFWF Subrecipient. If NFWF Subrecipient becomes aware of any actual or potential conflict of interest or organizational conflict of interest, during the course of performance of this Agreement, NFWF Subrecipient will immediately notify NFWF in writing of such actual or potential conflict of interest, whether organizational or otherwise.

SECTION 4 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – GENERAL

4.1. If the Funding Source or any funding entity (*i.e.*, a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds, the NFWF Subrecipient must read and understand certain applicable federal regulations, including but not limited to, the following in Sections 4 and 5 of this Agreement as set forth herein.

The NFWF Subrecipient will need to understand and comply with the OMB Uniform Guidance (including related Supplements as may be applicable to a specific federal funding source(s), and Appendices as may be applicable), in addition to other applicable federal regulations. This includes, but is not limited to, the provisions of the Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the Act for the non-federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and System for Award Management and 2 CFR part 170 Reporting Subaward and Executive Compensation Information. The most recent version of the Electronic Code of Federal Regulations can be found at <https://www.ecfr.gov/>.

4.2. 2 CFR § 200 Subpart F Audits.

It is the responsibility of the NFWF Subrecipient to arrange for audits as required by 2 CFR Part 200, Subpart F – Audit Requirements. The NFWF Subrecipient shall notify NFWF in writing about 2 CFR Subpart F audit findings related to projects funded by NFWF pass-through funds. The NFWF Subrecipient understands that NFWF may require the NFWF Subrecipient to take corrective action measures in response to a deficiency identified during an audit.

4.3. Real and Personal Property.

In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and intangible property acquired or improved with federal funds must be held in trust by the NFWF Subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the NFWF Subrecipient must comply with all use, reporting, and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship) and 200.329 (Reporting on real property), as applicable.

4.4. Mandatory Disclosure.

NFWF Subrecipient must disclose, in a timely manner, in writing to NFWF all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Failure to make required disclosures can result in any of the remedies described in this Agreement, including termination, and any remedies provided under law, including suspension or debarment by cognizant federal authorities.

4.5. Trafficking in Persons.

Pursuant to section 106(a) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g)) (codified at 2 C.F.R. Part 175), NFWF Subrecipient shall comply with the below provisions. Further, NFWF Subrecipient shall flow down these provisions in all subawards and contracts,

including a requirement that Subrecipients similarly flow down these provisions in all lower-tiered subawards and subcontracts. The provision is cited herein:

- I. Trafficking in persons.
 - a. *Provisions applicable to a recipient that is a private entity.*
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),".
 - b. *Provision applicable to a recipient other than a private entity.* We as the federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-
 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),".
 - c. *Provisions applicable to any recipient.*
 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

- ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
- 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. *Definitions.* For purposes of this award term:
 - 1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 - 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4.6. 41 United States Code (U.S.C.) 4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 U.S.C. 4712.

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

4.7. 41 USC §6306, Prohibition on Members of Congress Making Contracts with Federal Government.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed

Page 19 of 27

to extend to an award made to a corporation for the public's general benefit. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

4.8. Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.

(Sub)Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. NFWF Subrecipient shall flow down this provision in all subawards and contracts, including a requirement that subrecipients similarly flow down this provision in all lower-tiered subawards and subcontracts.

4.9. 43 CFR §18 New Restrictions on Lobbying.

By execution of this Agreement, the NFWF Subrecipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, and certifies to the following statements:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the NFWF Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

(c) The NFWF Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification, as represented by execution of this Agreement, is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. All liability arising from an erroneous representation shall be borne solely by the entity filing that representation and shall not be shared by any entity to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31 of the U.S. Code.

4.10. Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements.

The NFWF Subrecipient must not require their employees, subrecipients, or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees, subrecipients, or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information. The NFWF Subrecipient must notify their employees, subrecipients, or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

4.11. Drug-Free Workplace.

The NFWF Subrecipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 41 USC Chapter 81 Drug-Free Workplace.

4.12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. (Effective 8/13/2020)

As required by 2 CFR 200.216, the NFWF Subrecipient is prohibited from obligating or expending funds awarded under this Agreement to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, or any other company, including affiliates and subsidiaries, owned or controlled by the People's Republic of China, which are a substantial or essential component of any system, or as critical technology as part of any system. By and through the NFWF Subrecipient's execution of this Agreement, the NFWF Subrecipient warrants and represents that the NFWF Subrecipient will not obligate or expend funds awarded under this Agreement for "covered telecommunications equipment or services" (as this term is defined and this restriction is imposed under 2 CFR 200.216).

4.13. Domestic Preference for Procurements.

- a) Under this Agreement and in accordance with 2 C.F.R. § 200.322, the NFWF Subrecipient shall to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- b) For purposes of this agreement, the following definitions apply:
 - i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
 - ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

SECTION 5 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – FUNDING SOURCE SPECIFIC

NFWF Subrecipient acknowledges that when all or part of this Agreement is funded by a federal award that certain representations, certifications, and other statements relating to the use of such funds or performance of the Project may be necessary. These representations, certifications and other statements are set forth below. Unless otherwise stated in this Agreement, the execution and submission of this Agreement serves as affirmative acknowledgement of an agreement with the below representations, certifications, and other statements. Further, should circumstances of the NFWF Subrecipient change during the performance of this Agreement that would render one of these representations, certifications and/or other statements inaccurate, invalid or incorrect, the NFWF Subrecipient shall promptly notify NFWF of such change in circumstance. Finally, NFWF reserves the right to update and require subsequent acknowledgement of an agreement with new or revised representations, certifications, and other statements at no additional cost under this Agreement.

FC.R536

Department of Commerce (DOC) Compliance Requirements.

The NFWF Subrecipient must comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth in the Department of Commerce Financial Assistance Standard Terms and Conditions Dated November 12, 2020, available at http://www.osec.doc.gov/oam/grants_management/policy/. See 2 C.F.R. § 200.101(b)(1) (Applicability), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§200.331-333 (Subrecipient monitoring and management). Additionally, the NFWF Subrecipient must flow these requirements down to all subrecipients and contractors, including lower tier subrecipients.

Data Sharing Directive.

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

- a. Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are

to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata. Failure to perform quality control does not constitute an excuse not to share data. Data without QC are considered “experimental products” and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

- b. Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
- c. Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
- d. Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
- e. Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
- f. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <http://library.noaa.gov/repository> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

- g. Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

Scientific Integrity.

- a. *Maintaining Integrity.* The NFWF Subrecipient shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.
- b. *Peer Review.* The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
- c. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the NFWF Subrecipient and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <https://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
- d. *Primary Responsibility.* The NFWF Subrecipient shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the recipient shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
- e. By executing this grant, financial assistance award, or cooperative agreement the NFWF Subrecipient provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific integrity or scientific and research misconduct; and that it will comply with its own

administrative process for performing an inquiry, investigation, and reporting of such misconduct.

The NFWF Subrecipient shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

Invasive Species Control.

Pursuant to Executive Order # 13112, recipients of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. The NFWF Subrecipient is expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, the NFWF Subrecipient should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.

Communications and Acknowledgements.

The NFWF Subrecipient must collaborate with NFWF and the NOAA Marine Debris Program on outreach plans, events, products, and media coverage associated with the project. NOAA may require a preproduction review of project communications, for example publications, signage, social media, outreach and educational materials, and media plans, developed under this award. Please coordinate with NFWF regarding outreach plans and planned media releases. Outreach products produced under this award must acknowledge NOAA Marine Debris Program as a funding contributor, as appropriate. The NOAA logo may be used on certain outreach products, and recipients must allow NOAA Marine Debris Program an opportunity to review drafts of such products to determine whether the use of the NOAA logo is appropriate and consistent with agency guidance. Recipients should provide copies of final outreach products, website mentions, press materials, and photographs to NFWF or include them as attachments to final reports.

Written Safety Plan.

Safety is a critical consideration for marine debris removal project implementation. The NFWF Subrecipient must have a written safety plan for management of employees, contractors, and volunteers working on the project, as applicable. The plan should consider safety in and around project sites during and after project implementation, and take into account potential safety concerns with regard to the current and future use of the sites. The NFWF Subrecipient should ensure that a safety briefing is conducted for all project participants immediately prior to their involvement in hands-on removal activities under this award. The NFWF Subrecipient shall be responsible for exercising reasonable care and using best efforts to prevent accidents, injury or damage to all employees, contractors, persons and property, in and around the work site. All safety plans must be made available to NOAA upon request.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the NFWF Subrecipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the NFWF Subrecipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

NEPA Review Process.

The NFWF Subrecipient will not expend any funds for any on-the-ground removal or disposal activities until impacts for those activities have been assessed, and all required compliance documentation has been completed by NOAA. By accepting this award, the NFWF Subrecipient agrees to assist and cooperate with NOAA Marine Debris Program in the preparation of any outstanding Environmental Compliance documentation and completion of any pending Environmental Compliance documentation or consultations that are required under relevant environmental statutes such as the National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Conservation and Management Act, National Historic Preservation Act, Clean Water Act, and any others as needed.

SECTION 6 OTHER REPRESENTATIONS, CERTIFICATIONS, STATEMENTS AND CLAUSES

NFWF Subrecipient acknowledges that all or part of this Agreement may be funded by a non-federal source that requires certain representations, certifications, and other statements relating to the use of such funds or performance of the Project. These representations, certifications and other statements are set forth below. Unless otherwise stated in this Agreement, the execution and submission of this Agreement serves as affirmative acknowledgement of an agreement with the below representations, certifications, and other statements. Further, should circumstances of the NFWF Subrecipient change during the performance of this Agreement that would render one of these representations, certifications and/or other statements inaccurate, invalid or incorrect, the NFWF Subrecipient shall promptly notify NFWF of such change in circumstance. Finally, NFWF reserves the right to update and require subsequent acknowledgement of an agreement with new or revised representations, certifications, and other statements at no additional cost under this Agreement.

None.



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing the execution of a professional services agreement with Watermark Design Group, LLC, for architectural services. (RE)

Background/Description: Renewal of two-year agreement.

Action Options/Recommendation:

Source of Funding (if applicable): N/A, projects assigned through task order

ATTACHMENTS:

1. 09-05-23 23-xxx Authorize Professional Services Agreement Watermark Design Group
2. 2023.08.11 Professional Services Agreement Watermark Design Group

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT WITH
WATERMARK DESIGN GROUP, LLC
FOR ARCHITECTURAL SERVICES**

FINDINGS:

1. The professional services agreement with Watermark Design Group, LLC, adopted by Orange Beach City Council through Resolution No. 21-134 adopted June 15, 2021, has expired.
2. The City of Orange Beach and Watermark Design Group, LLC, have reached an agreement (attached Exhibit A) whereby Watermark Design Group, LLC, will provide architectural services for the City of Orange Beach.
3. The Agreement authorizes work to be assigned by one or more task orders approved from time to time by the City Council.
4. After having reviewed the agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.
5. The term of this agreement shall be for twenty-four (24) months from the date of adoption by the Orange Beach City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and Watermark Design Group, LLC, as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (hereinafter "Agreement") is made and entered into by and between the City of Orange Beach, an Alabama Municipal Corporation (hereinafter "City"), and Watermark Design Group, LLC (hereinafter "Contractor"), as follows:

WHEREAS, Contractor is engaged in the business of providing Architectural services;

WHEREAS, City desires to engage Contractor to provide said services upon the following terms and conditions;

NOW THEREFORE,

WITNESSETH:

City and Contractor, for and in consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the other, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, do hereby covenant and agree as follows:

I. SERVICES TO BE PERFORMED

Contractor agrees to perform Architectural Services, and to represent the City as requested as their Architectural Consultant on a variety of assigned project. Each project will be assigned to Contractor in the form of a written Task Order describing the scope of work. A copy of this Agreement shall be attached to each Task Order.

Contractor agrees to perform services that may include, but not be limited to, programming, planning, design, construction documents, construction administration, architectural consultation to the City as requested, and other services as requested.

II. COMPENSATION

Fees will be Lump Sum based on a percentage of the estimated construction cost for the scope of work. Percentage rates will be per the latest edition of the Alabama Division of Construction Management "Determination of Basic Fee or Basic Fee Rate for Design Professional Services".

Pre-design services for programming and Task Order scope definition and Additional Services after award of a Task Order that are outside of the defined scope of services will be negotiated based on the Contractors Schedule of Fees and Services (Attachment "A") and will not be performed prior to written consent of the City.

Completed work and reimbursable expenses will be invoiced to the City based on pre-determined milestones appropriate to the scope of work for a specific project (Task Order). Pre-design services will be invoiced on a monthly basis.

III. TERM OF AGREEMENT

Unless terminated earlier in accordance with the termination provisions of this Agreement, the term of this Agreement shall commence upon its adoption by the Orange Beach City Council and shall continue thereafter for twenty-four (24) months.

IV. GENERAL PROVISIONS

- A. Contractor agrees to permit at all reasonable times and places an audit of its books and records by City's duly authorized representatives.

- B. Notwithstanding any of the provisions of this Agreement, it is agreed that City has no financial interest in the business of Contractor and shall not be liable for any debts or obligations incurred by Contractor, nor shall City be deemed or construed to be a partner, joint venture or otherwise interested in the assets of Contractor, or in the sums earned or derived by Contractor, nor shall Contractor at any time or times use the name or credit of City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.
- C. Contractor shall act as a representative of the City, under the direct supervision of the City. Contractor shall have no authority to obligate the City in any way whatsoever. In the performance of his duties, the Contractor shall be deemed an independent contractor.
- D. Contractor acknowledges that its identity and peculiar capacity to provide the services described hereinabove constitute a material consideration for City's having entered into this Agreement. Therefore, Contractor shall not transfer or assign this Agreement or any of the rights or privileges granted herein without the prior written consent of City; which such consent shall be granted or denied solely at City's discretion.
- E. Contractor hereby agrees to comply strictly with all ordinances of the City of Orange Beach, Alabama, and the laws of the State of Alabama and of the United States while performing its obligations under the terms of this Agreement.
- F. Contractor agrees that upon the violation of any of the covenants and agreements herein contained, on account of any act or omission or commission of Contractor, City may, at its option, terminate and cancel this Agreement.
- G. Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 which provides that no person will be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin, or disability, in connection with federally funded programs.
- H. City may terminate this Agreement with or without cause at any time by giving written notice to Contractor of such termination (herein called a "Notice of Termination"), specifying the effective date thereof not less than thirty (30) calendar days before the effective date of the termination. Contractor shall have the right to terminate this Agreement by giving City written notice and remaining in service for a sufficient time to allow City to seek a suitable replacement. Should Contractor be terminated pursuant to the terms of this subpart, then this Agreement shall terminate on the last day of Contractor's current month of employment and City shall not be liable for any compensation beyond that date.
- I. Contractor agrees to indemnify and hold the City, its elected officials, officers, agents, and employees whole and harmless from all costs, liabilities and claims for damages of any kind arising in any way out of the negligent acts, errors or omissions of the contractor in performance of this Agreement and/or the activities of the Contractor, its principals, directors, agents, servants and employees in the performance of this Agreement, for which the City is alleged to be liable. In the event the City, through no fault of its own, is made a party to any lawsuit or legal proceeding arising from Contractor's activities under this Agreement, Contractor agrees to indemnify and hold the City harmless from all costs, including attorneys' fees and expenses, associated with same. This indemnification extends only to third party claims and actions filed against the City as a result of any negligent actions by the Contractor under this Agreement. This duty shall survive the termination of this contract.

- J. All notices of cancellation, requests, demands, or other communications shall be in writing and duly delivered to the following address for City at:

Renee Eberly, City Clerk
P.O. Box 458
Orange Beach, Alabama 36561

Copy to: City Attorney

And to Contractor at:

John A. McArthur, III
2970 Cottage Hill Road, Suite 200
Mobile, Alabama 36606

- K. This Agreement is the final expression of the agreement between the parties, and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or stipulations, either oral or written, not contained herein.
- L. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the party against whom enforcement is sought.
- M. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to any party.
- N. This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement shall be Baldwin County, Alabama.
- O. Contractor shall obtain, at its own expense, all necessary licenses, permits, insurance, authorization and assurances necessary in order to abide by the terms of this Agreement.

V. INSURANCE

For the term of this Agreement, the Contractor shall acquire and maintain in full force and effect the following liability and comprehensive insurance issued by a company licensed and qualified to do business in the State of Alabama, which such insurance shall name the City of Orange Beach as an additional insured, and shall attach to this contract, as proof thereof, a certificate of insurance issued by an agent licensed and qualified to do business in the State of Alabama:

Worker's Compensation – as required by State of Alabama law

General Liability Insurance – public liability including premises, products, complete operations and automobile comprehensive and liability, including owned, non-owned, and hired vehicles.

Either:

- (1) Bodily injury liability
\$250,000 each person
\$500,000 each occurrence

Property damage liability
\$100,000 each occurrence

Or,

(2) Bodily injury and property damage combined
\$500,000 per occurrence

Professional Errors and Omissions – coverage limits of \$3,000,000 each claim and policy aggregate, an extended discovery period to apply for at least two (2) years after work is accepted by the City of Orange Beach, and a deductible not to exceed \$10,000 for which the Contractor will remain solely responsible.

If the certificate of insurance referenced in this Agreement does not evidence insurance of owned vehicles, said certificate and this sentence shall evidence the Contractor's covenant that it does not own any vehicles and that it will not purchase or obtain any vehicles during the term of this Agreement.

Said certificate shall require that said insurance will not be altered or terminated unless City shall be given written notice of such alteration or termination delivered to City not less than thirty (30) days before the effective date of such alteration or termination.

VI. CONFIDENTIALITY

Contractor (including its employees, agents, subcontractors) acknowledges that all confidential business and personal information ("Protected Information") that it may obtain while performing services for the City, is deemed confidential and proprietary to the City. During Contractor's tenure with the City, Contractor agrees to use Protected Information only and strictly as required to perform its services on behalf of the City. Contractor will not disclose Protected Information to any person or entity without the prior written consent of the City and the written agreement of any third party. Contractor agrees to refer any request for public information or records to the City Clerk, who is the custodian of records for the City and is responsible for the disclosure of public records in accordance with the public records laws of the state. Contractor agrees that it will not duplicate or incorporate Protected Information into its own records or databases and that after the conclusion of its services to the City all Protected Information in the Contractor's possession will be turned over to the City. Contractor agrees not to disclose, use, transfer, or transmit the information to any person or entity for any purpose whatsoever. This includes records, passwords, access codes, manuals, statistics, software, audio/video recordings, or storage disks of any kind containing Protected Information.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the _____ day of _____, 2023.

CITY OF ORANGE BEACH, A Municipal Corporation

By: _____
Mayor Tony Kennon

ATTEST:

Renee Eberly, City Clerk

CONTRACTOR:

Watermark Design Group, LLC

By: _____
John A. McArthur, III

Its: President and Principal Architect

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tony Kennon and Renee Eberly, whose names as Mayor and City Clerk, respectively, of the City of Orange Beach, a Municipal Corporation, are signed to the foregoing agreement, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2023.

(SEAL)

Notary Public
State of Alabama At-Large
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned Notary Public, in and for said county in said state, hereby certify that John A. McArthur, III, whose name as President and Principal Architect of Watermark Design Group, an Alabama Limited Liability Company, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing agreement, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2023.

(SEAL)

Notary Public
State of Alabama At-Large
My Commission Expires: _____



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing execution of a task order with Watermark Design Group, LLC, to provide design, bid, and construction administration services for roof replacement at the Justice Center following the April 10, 2021, hailstorm in an amount not to exceed \$75,800. (GS)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 09-05-23 23-xxx Authorize Task Order Watermark Design Group Hail Damage Roof Justice Center
2. 2023.08.07 Task Order Watermark Design Group Justice Center Roof Replacement

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING EXECUTION OF A
TASK ORDER WITH WATERMARK DESIGN GROUP, LLC
TO PROVIDE DESIGN, BID, AND CONSTRUCTION ADMINISTRATION SERVICES FOR
ROOF REPLACEMENT AT THE JUSTICE CENTER
FOLLOWING THE APRIL 10, 2021, HAILSTORM
IN AN AMOUNT NOT TO EXCEED \$75,800**

FINDINGS:

1. The Orange Beach City Council, by Resolution No. 23-xxx, adopted September 5, 2023, approved a contract with Watermark Design Group, LLC, to perform certain professional architectural services (“the Contract”).
2. The Contract authorized work to be assigned by one or more task orders approved from time to time by the City Council.
3. The City’s Construction and Facilities Manager has submitted the Task Order attached as Exhibit A for Council approval.
4. The proposed Task Order requires Watermark Design Group, LLC, to provide services for design, preparation of documents for bidding, permitting and construction, and services for construction phase administration and observation for the purpose of replacing the Justice Center roof damaged by the hailstorm on April 10, 2021.
5. The scope of work described in the Task Order is authorized by the Contract and furthers public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the Task Order as presented to Council between the City of Orange Beach and Watermark Design Group, LLC, on behalf of the City of Orange Beach subject to final approval by the City Attorney;
2. That the City Council authorizes payment in an amount not to exceed \$75,800.00 to Watermark Design Group, LLC, to complete the Task Order as presented; and
3. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk

**CITY OF ORANGE BEACH ALABAMA
PERFORMANCE CONTRACT
ARCHITECTURAL SERVICES**

Exhibit A – Task Order 2023-07 Scope of Work and Fee Estimate

President, Principal Architect
Title

Date _____

Date _____

EXHIBIT A
CITY OF ORANGE BEACH ALABAMA
TASK ORDER NUMBER 2023-07
SCOPE OF WORK

SCOPE OF WORK:

At the request of the City of Orange Beach, this proposal is for roof replacement and new fascia designs for the ±27,700 square foot Justice Center buildings located at 4480 Orange Beach Blvd, Orange Beach, AL 36561. The design coordination and required documentation will be produced for permitting, bidding and construction of the roof replacements and exterior fascia for the facility. Bidding support, construction phase administration, and construction phase observation will be provided to assist the City in managing the project, reviewing the work for compliance with the documents, and close-out of the contract.

Specific tasks to be completed include:

1. Design/Document Preparation:

Drawings:

Drawings will be produced including demolition plans, renovation plans, and project specific details.

Project Manual:

A Project Manual will be produced including “Front End” Bidding and Contract requirements and technical specifications.

2. Submit design documents to the City of Orange Beach for review by staff and permit review. Coordinate as needed for approval of the Authority Having Jurisdiction.
3. Assist the City with distribution of documents to bidders, coordination of response to RFIs and clarifications, and receipt of bids.
4. Assist City with award and execution of the Construction Contract.
5. Construction Administration Services:
 - Coordination of regular Owner, Architect, Contractor (OAC) meetings and intermittent inspections as required to insure conformance with the Contract requirements.
 - Review submittals, shop drawings, pay applications.
 - Assist the City with project closeout.

FEE PROPOSAL

The cost for completing this Task Order shall be a Lump Sum, not to exceed the amount of **seventy-five thousand, eight hundred dollars and 00/100 (\$75,800.00)**.

The Fee will be Lump-Sum based on a percentage of the estimated construction cost for the scope of work with reduction considerations given for redundancy of documentation and services that will be common for all projects. Percentage rates will be based on the latest edition of the Alabama Division of Construction Management “Determination of Basic Fee or Basic Fee Rate for Design Professional Services” and adjusted as noted above.

Printing of documents for permitting and bidding will be charged as a reimbursable expense based on the schedule of fees and services that are included within Watermark’s approved Professional Services Agreement with the City.

All work shall be performed in accordance with Watermark Design Professional Services Agreement with the City of Orange Beach.

End of Exhibit A



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing the execution of a task order with McCollough Architecture, Inc., to provide design services for an event pavilion at the Coastal Arts Center in an amount not to exceed \$13,500. (GS)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 09-05-23 23-xxx Authorize Task Order McCollough Architecture Coastal Arts Center Event Pavilion
2. 2023.08.03 Task Order McCollough Architecture Coastal Arts Event Pavilion

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
TASK ORDER WITH MCCOLLOUGH ARCHITECTURE, INC.
TO PROVIDE DESIGN SERVICES FOR AN
EVENT PAVILION AT THE COASTAL ARTS CENTER
IN AN AMOUNT NOT TO EXCEED \$13,500**

FINDINGS:

1. The Orange Beach City Council, by Resolution No. 23-xxx adopted August 15, 2023, approved a contract with McCollough Architecture, Inc., to perform certain architectural services (“the Contract”).
2. The Contract authorized work to be assigned by one or more task orders approved from time to time by the City Council.
3. The Construction and Facilities Manager has submitted a task order (attached Exhibit A) for Council approval.
4. The proposed Task Order requires McCollough Architecture, Inc., to provide design services for an event pavilion at the Coastal Arts Center.
5. The scope of work described in the Task Order is authorized by the Contract and furthers public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Mayor is hereby authorized to execute the Task Order as presented to Council between the City of Orange Beach and McCollough Architecture, Inc., on behalf of the City of Orange Beach subject to final approval by the City Attorney;
2. That the City Council authorizes payment in an amount not to exceed \$13,500.00 to McCollough Architecture, Inc., to complete the Task Order as presented; and
3. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk



TASK ORDER AUTHORIZATION

TASK ORDER NO. 21

CITY OF ORANGE BEACH - PERFORMANCE CONTRACT

ARCHITECTURAL SERVICES

This Task Order is for the Architectural Services for the new Coastal Arts Wedding Venue for the City of Orange Beach, Alabama. This is based on the attached sketches and will be located at the Orange Beach Coastal Art Center. The estimated cost of construction is undetermined at this time.

The cost for completing this work shall be a lump sum fee of **\$13,500.00**.

The following exhibits are made part of this Task Order and are attached here to:

Exhibit A - Scope of Work

Exhibit B - Man-Hour/Fee Estimate

OFFERED BY CONSULTANT

Sted McCollough
Representative's Printed Name

McCollough Architecture
Firm Name


Signature
Title

2023.08.03
Date

RECOMMENDED FOR APPROVAL

Signature

Title

Date

APPROVED BY CITY OF ORANGE BEACH

Signature

Title

Date



EXHIBIT A

TASK ORDER NO. 21

CITY OF ORANGE BEACH, ALABAMA

SCOPE OF WORK:

This Task Order is for the Architectural Services for the Coastal Arts Wedding Venue for the City of Orange Beach Alabama.

SPECIFIC TASKS TO BE COMPLETED INCLUDE:

- Conceptual High Resolution Renderings for Advertisement
- Design Development of Drawings
- Construction Drawings including Structural, Plumbing and Electrical Engineering

PRELIMINARY SCHEDULE

- Conceptual High Resolution Renderings – 5 Days
- Design Development of Drawings – 10 Days
- Construction Drawings including Structural Engineering and Electrical Engineering – 20 Days

***NOTE: Numerous items outside of the control of the architect and engineer can greatly affect the overall schedule. Schedule will be adjusted for time required for City reviews; input; and approvals.**

END OF EXHIBIT A



EXHIBIT B

CITY OF ORANGE BEACH, ALABAMA

TASK ORDER NO. 21

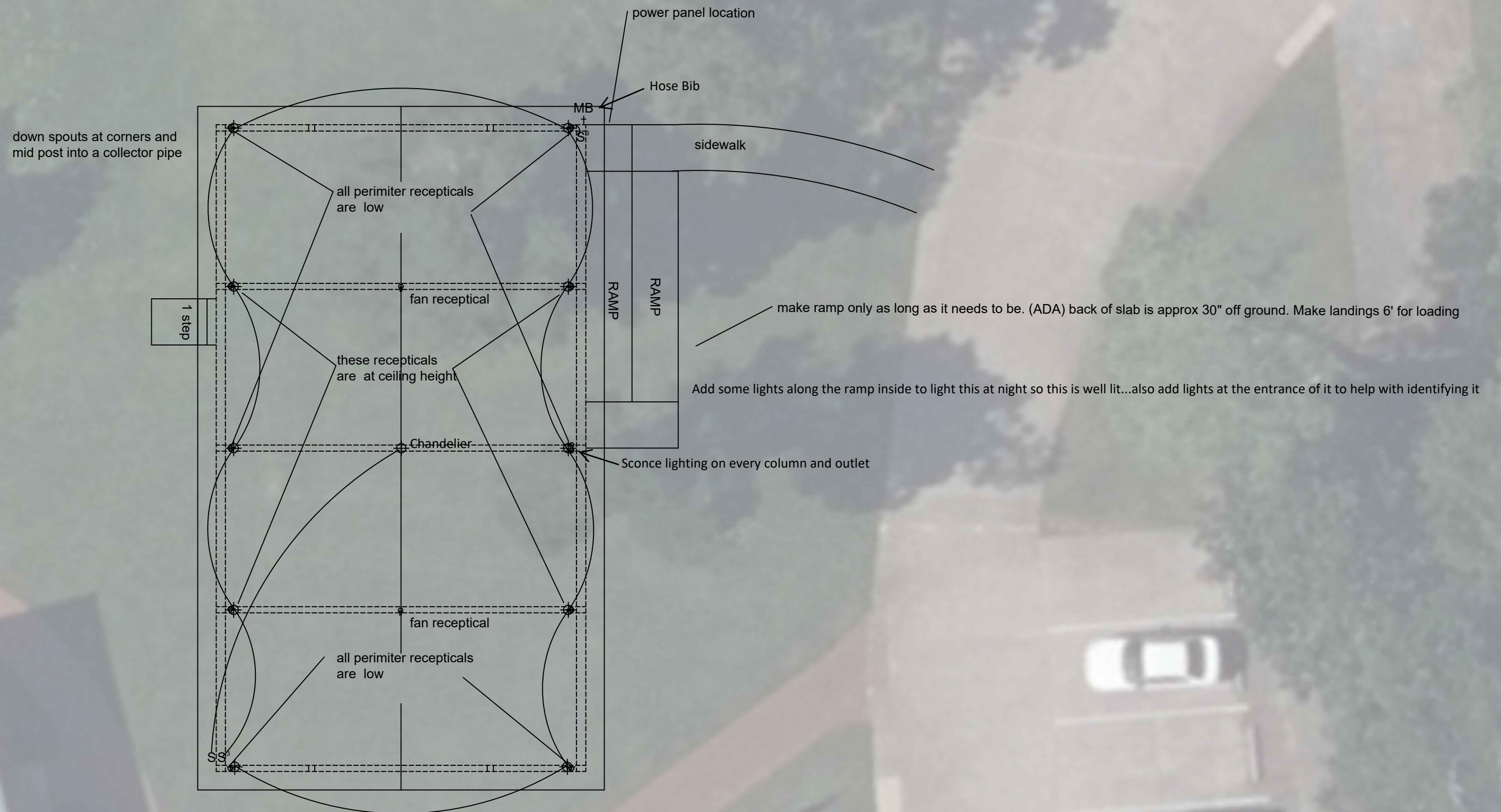
MAN – HOUR RATES FOR ADDITIONAL SERVICES (IF NEEDED)

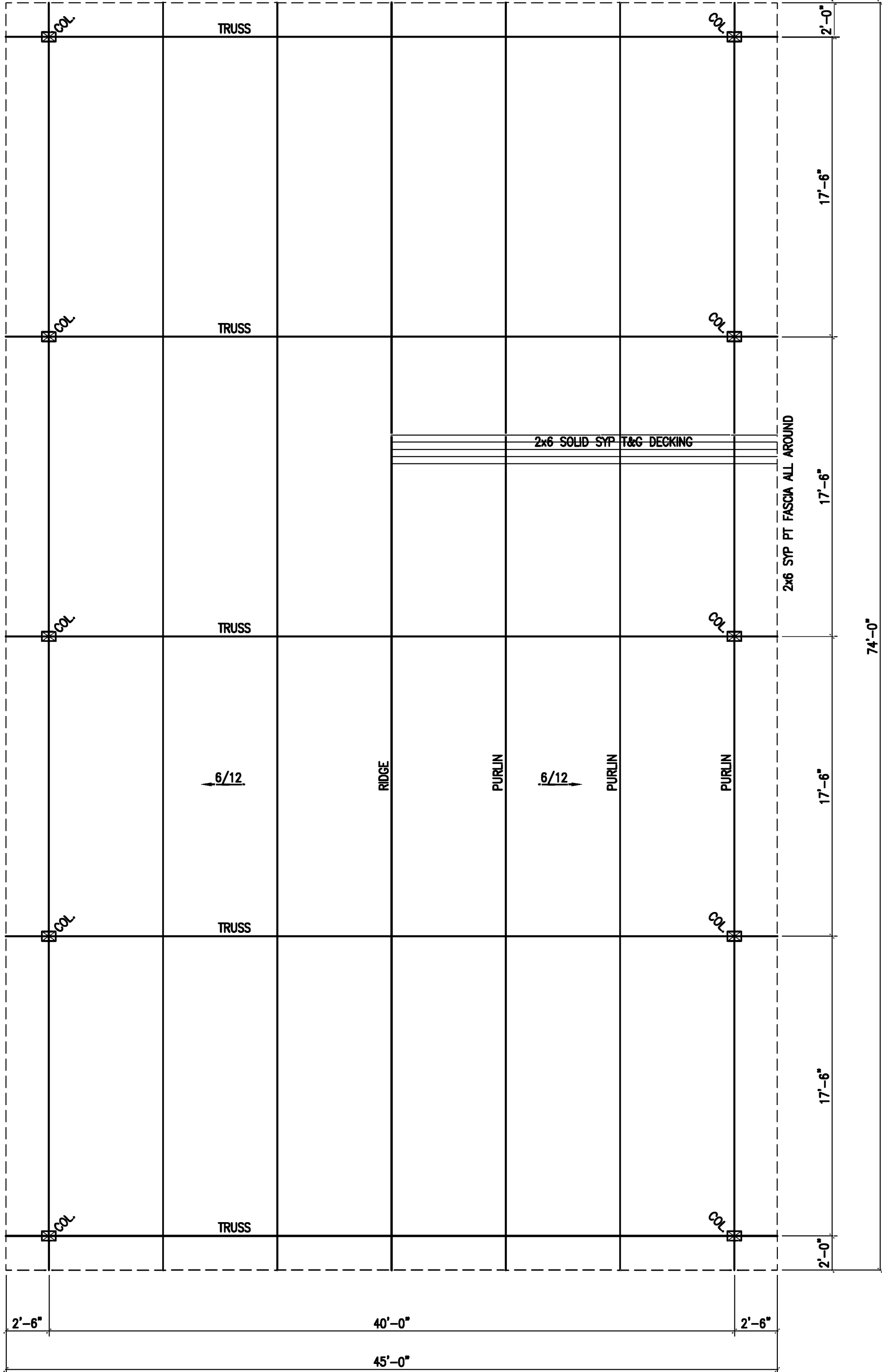
CLASSIFICATION:	HOURLY RATE:
Principal Architect	\$200.00
Architect	\$150.00
CAD Operator	\$85.00
Project Manager	\$100.00
Clerical	\$30.00
Engineering	(Cost plus 15%)
Landscape Architect	(Cost plus 15%)

PHASES AND PAYMENT:

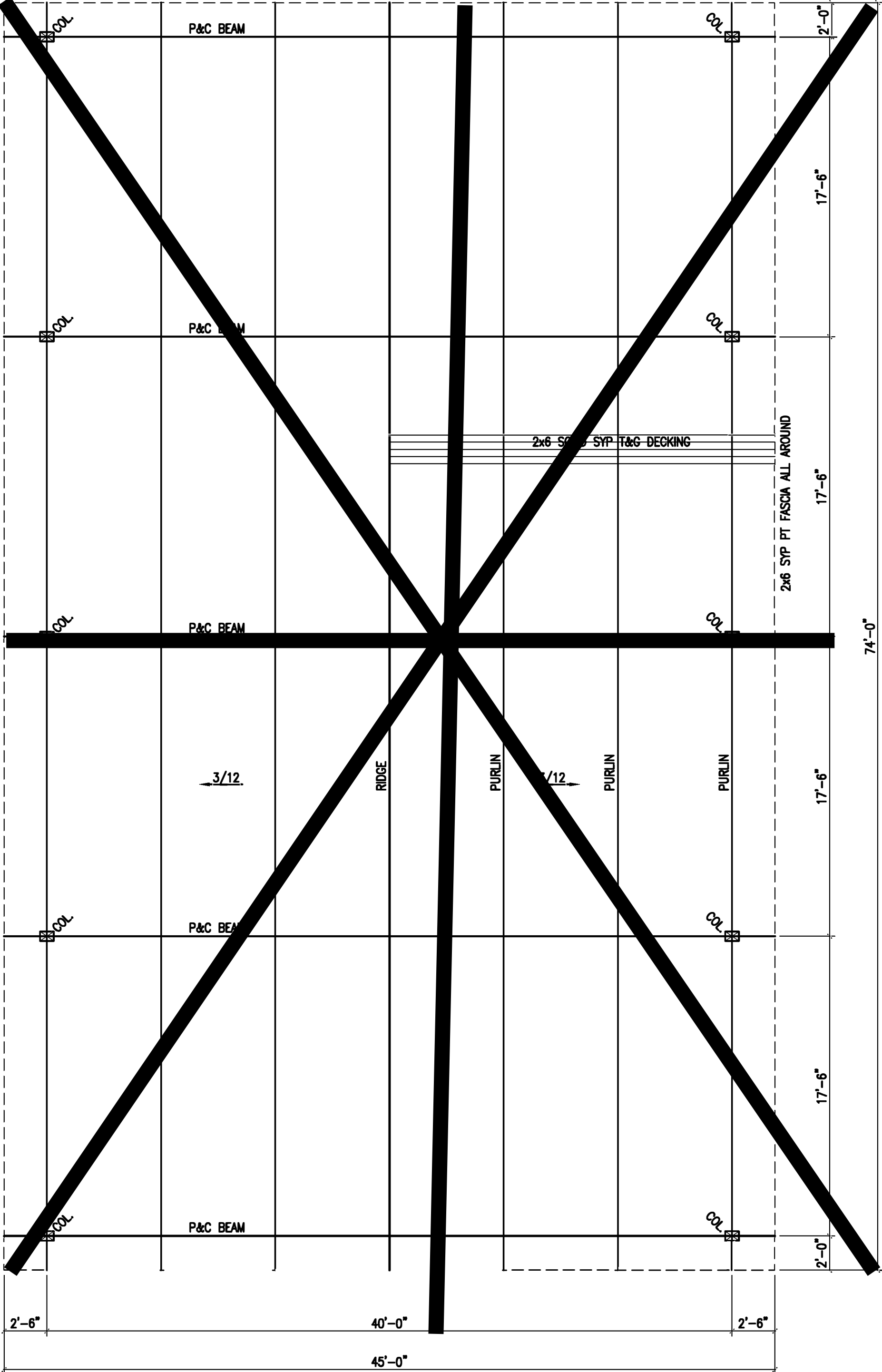
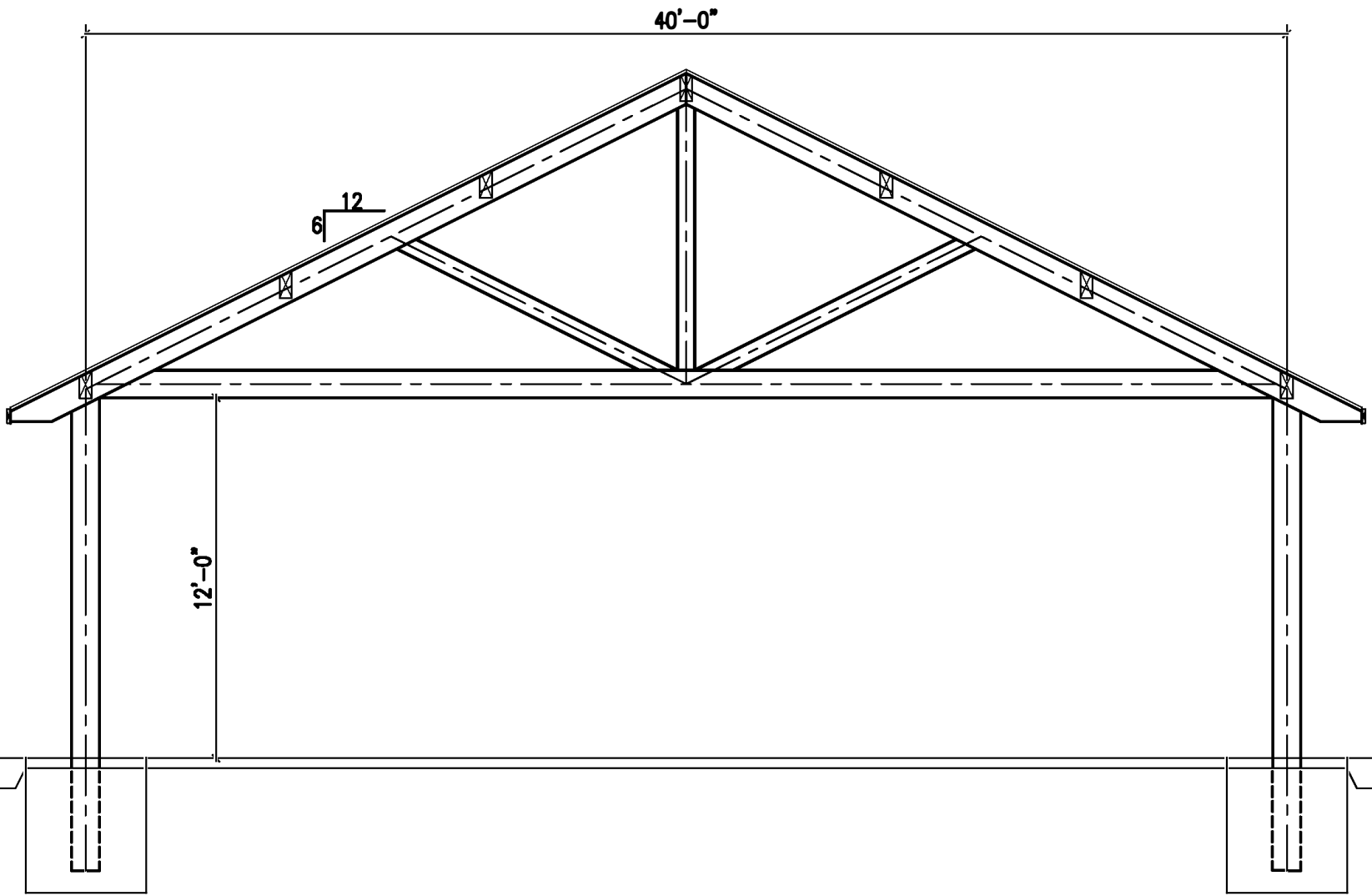
- Conceptual High-Resolution Renderings for Advertisement
- Design Development of Drawings – 1,600.00
- Construction Drawings including Structural Engineering, Plumbing Engineering and Electrical Engineering – \$7,400.00
- Bidding/Negotiations – \$800.00
- Project Manual – \$1,500.00
- Construction Administration: \$2,200.00

END OF EXHIBIT B

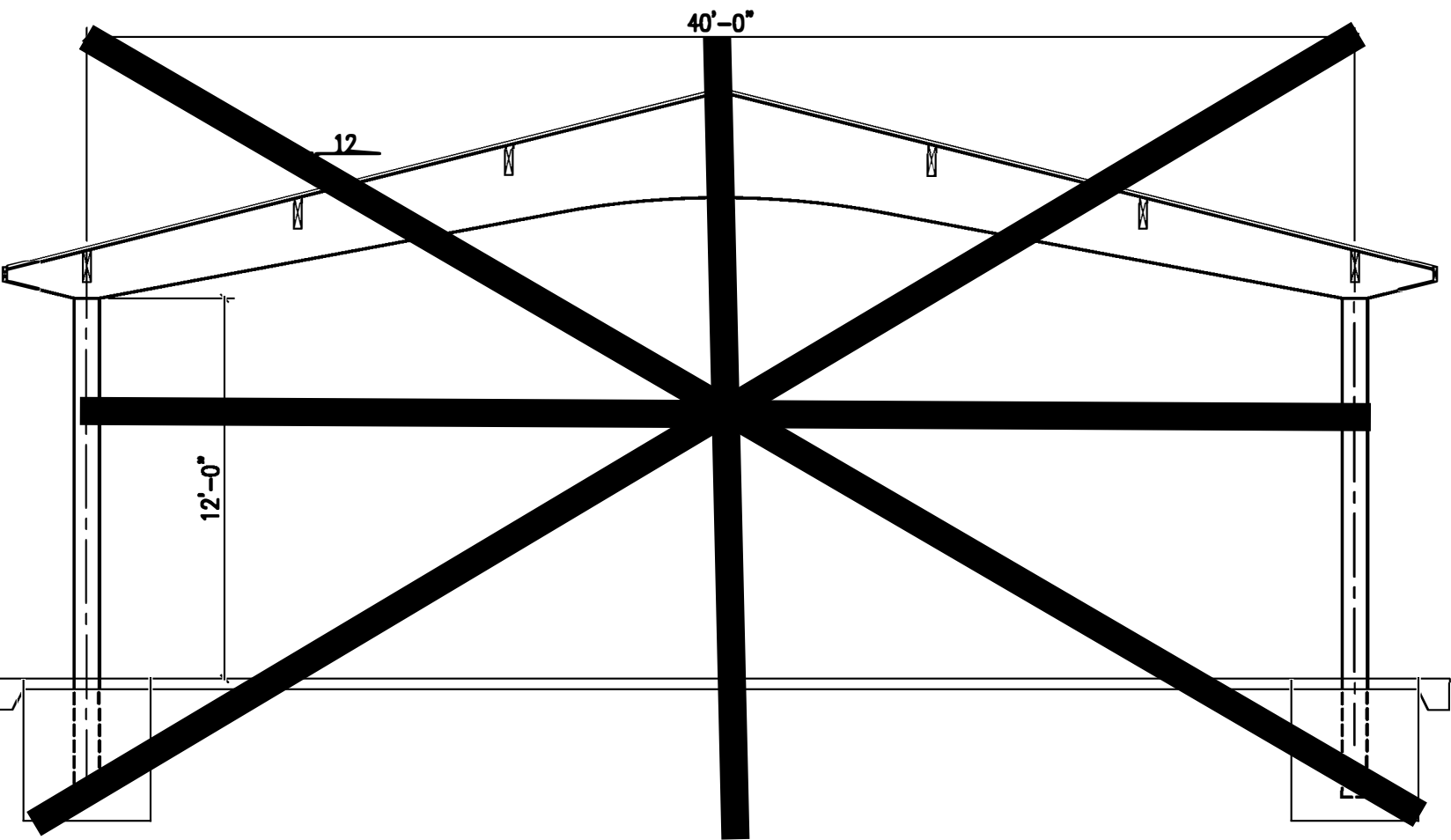




OPTION 1 - GLULAM FRAMING PLAN 3/16" = 1'-0"



OPTION 2 - GLULAM FRAMING PLAN 3/16" = 1'-0"



			PROJECT <u>WEDDING VENUE</u>		STRUCTURAL WOOD SYSTEMS A DIVISION OF HARRISON INDUSTRIES P.O. BOX 250 GREENVILLE, ALABAMA 36037	
			LOCATION <u>ORANGE BEACH, FLORIDA</u>			
			ARCHITECT			
			ENGINEER			
DATE	REVISIONS	BY	WHOM	CUSTOMER		PHONE: 334 / 382-6534
THESE DRAWINGS ARE THE COPYRIGHTED PROPERTY OF STRUCTURAL WOOD SYSTEMS AND MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PROJECT				DRAWN BY <u>E.F.</u> DATE <u>1/12/23</u>		FAX : 334 / 382-4260
				CHECKED BY _____ DATE _____		JOB NO. <u>1400-14-23</u>
						SHEET NO. <u>1</u> OF <u>1</u>



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution appropriating funds to the Orange Beach Board of Education to support city school system operations in an amount not to exceed \$2,808,503. (FH)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 09-05-23 23-xxx Appropriate Funds OBBOE City School System Operations

RESOLUTION NO. 23-xxx

**A RESOLUTION APPROPRIATING FUNDS
TO THE ORANGE BEACH BOARD OF EDUCATION
TO SUPPORT CITY SCHOOL SYSTEM OPERATIONS
IN AN AMOUNT NOT TO EXCEED \$2,808,503**

FINDINGS:

1. Orange Beach Board of Education (OBBOE) is seeking funding for continuing costs related to the new school system.
2. Orange Beach City Council has determined that funding the continuing operational cost as requested serves a public purpose that is in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Council appropriates a sum not to exceed One Million and Seven Hundred Forty-Three Thousand Two Hundred and Sixty-Six Dollars (\$1,743,266.00) to the Orange Beach Board of Education for the purpose of funding daily operations of the city school system; and One Million Sixty-Five Thousand Two Hundred Thirty-Seven Dollars (\$1,065,237.00) for capital expenditures relating to buildings and transportation.
2. That this Resolution shall become effective immediately upon adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing execution of a performance agreement with McLean Motor Sports Productions, LLC, for the "Bama Coast Cruisin'" event as part of the 2023 Freedom Fest. (JL)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable): Admin Operating, Exhibits & Promotions, \$5,000

ATTACHMENTS:

1. 09-05-23 23-xxx Authorize Performance Agreement McLean Motor Sports Productions Bama Coast Cruisin Freedom Fest
2. 2023.08.11 Performance Agreement McLean Motor Sports Productions Bama Coast Cruise Freedom Fest

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING EXECUTION OF A
PERFORMANCE AGREEMENT WITH MCLEAN MOTOR SPORTS PRODUCTIONS, LLC
FOR THE “BAMA COAST CRUISIN’” EVENT AS PART OF THE 2023 FREEDOM FEST**

FINDINGS:

1. The City wishes to engage McLean Motor Sports Productions, LLC, an Alabama limited liability company, (Contractor) to provide an anchor car show entitled “Bama Coast Cruisin’” for the City’s fall Orange Beach Freedom Fest event and to advertise and promote the City and the Alabama Gulf Coast through this Event as part of Freedom Fest. The anchor event will bring economic growth to local businesses and support Freedom Fest. The anchor event will provide family friendly entertainment and an economic benefit to the City. The City will provide \$5,000 to support the event.
2. After having reviewed the performance agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.
3. The term of this agreement shall be effective on and after its adoption by the City Council and execution by the Mayor, and shall continue in full force and effect through the completion of the event being held on or about October 6-8, 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Council authorizes the Mayor and City Clerk to execute and attest, respectively, the Performance Agreement (attached Exhibit A) in substantially the form and of substantially the content now before the Council between the City of Orange Beach and McLean Motor Sports Productions, LLC, as an act for and on behalf of the City of Orange Beach, subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, which was duly and legally adopted at a regular meeting of the City Council on September 5, 2023.

City Clerk

PERFORMANCE AGREEMENT

This Performance Agreement is entered into by and between the City of Orange Beach, Alabama, an Alabama Class 8 municipal corporation (“the City”) and McLean Motor Sports Productions, LLC, an Alabama limited liability corporation (“the Contractor”).

1. The Contractor is an Alabama based organization whose primary business is producing and promoting car shows. The Contractor is the only Alabama based company providing this service.
2. The Gulf Coast is the location of many events that have a significant positive economic impact on the City and its businesses, while promoting a family friendly environment.
3. The Contractor agrees to have a fall event entitled Bama Coast Cruisin’ in the City of Orange Beach (“the Event”) during the Orange Beach Freedom Fest, which event is expected to draw support and participation from local citizens and businesses, as well as draw visitors and guests to the City, stimulating the local economy thru increased revenues for businesses, the City, and the Gulf Coast. The Contractor currently hosts a successful spring event titled “Bama Coast Cruisin’”. This fall event is further expected to enhance the success of the Orange Beach Freedom Fest for the general wellbeing of the local community after the summer tourist season.
4. The City wishes to engage Contractor to provide this anchor event to the City’s fall Freedom Fest event, stimulate economic growth in a slow fall tourist season, enhance the wellbeing and quality of life of local citizens, and to advertise and promote the City and the Alabama Gulf Coast through this Event as part of Freedom Fest.

NOW, THEREFORE:

5. In consideration of the mutual covenants and agreements hereinafter set forth to be kept and performed by the Contractor, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the City and the Contractor covenant and agree as follows:

Contractor’s Obligations

6. Contractor agrees to host the Bama Coast Cruise Event at the Orange Beach Event Center and the Wharf properties on or about October 6-8, 2023, during and in conjunction with the Orange Beach Freedom Fest. Contractor shall obtain, at its own expense, all necessary licenses, permits, insurance, authorizations and assurances necessary in order to abide by the terms of this Agreement.
7. Contractor shall submit to the City the following information:
 - a. A description of the event;
 - b. Photographs of the event that include photographs of the crowds in attendance, entertainment, booths, and any other activities;
 - c. Screen shots that display the use of social media, including but not limited to blogs, “likes”, and comments or reviews on visitor and local citizen experiences, such as Facebook, Twitter, or other social media sites, copies of flyers, magazine or print ads;
 - d. Materials that support the effectiveness of the City’s support of this event, including estimates of the number of attendees at the event, the number of visitors to the City, the impact of the event on visitor spending, the impact of the event on hotel or other lodging occupancies, or other economic or tourism impacts on the City directly attributed to the event.

City's Obligation

8. The City will pay Contractor \$5,000 for services provided to organize and manage the Bama Coast Cruisin' car show as an anchor event to the Orange Beach Freedom Fest.

Terms

9. This Agreement shall be effective on and after its adoption by the City Council and execution by the Mayor and shall continue in full force and effect through the completion of the event. Contractor's obligation to document the event as required by paragraph 7 shall survive the expiration or termination of this Agreement.
10. Notwithstanding anything written herein to the contrary, all commitments made herein by the City are subject to the discretion of the City. If at any time the City determines that a public need arises that requires the denial or withdrawal of any in-kind service, then the City shall no longer be obligated or required to provide such in-kind services.
11. Indemnification: Contractor agrees to indemnify and hold harmless the City, its elected officials, agents, servants and employees, from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind which arise from, or which are in any way related to the event, including any reasonable attorneys' fees, expenses or costs incurred by the City as a result of any enforcement of compliance with this Agreement or defending any actions or claims related in any way to this Agreement. This provision shall survive the expiration or termination of this Agreement.
12. No Joint Venture: Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest in the business of the Contractor, and shall not be liable for any debts or obligations incurred by Contractor, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of the Contractor, or sums earned or derived by the Contractor, nor shall Contractor at any time or times use the name or credit of the City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.
13. Independent Contractor. Contractor, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense, as the City may from time-to-time request, to indicate that it is an independent contractor. City does not and will not assume any responsibility for the means by which or manner in which services by the Contractor, provided for herein, are performed, but on the contrary, the Contractor shall be wholly responsible therefore.
14. Agreement not Assignable. Contractor acknowledges that its identity and peculiar capacity to provide the services described hereinabove constitute a material consideration for the City's having entered in this Agreement. Therefore, Contractor shall not transfer or assign this contract or the license or any of the rights or privileges granted herein, without the prior written consent of the City, which such consent shall be granted or denied solely at the City's discretion.
15. Compliance with Law. Contractor hereby agrees to strictly comply with all ordinances of the City and the laws of the State of Alabama and of the United States while performing its obligations under the terms of this Agreement.
16. Non-Discrimination. Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or disability, in connection with this Event.
17. Insurance. Contractor shall maintain in full force and effect, liability and comprehensive insurance coverage for the Event, a copy of the certificate of insurance naming the City as an

additional insured, being attached hereto. Said insurance coverage will not be altered or terminated without 30 days prior written notice to the City.

18. Notices. All notices of cancellation, requests, demands or other communications shall be in writing and duly delivered to the following addresses:

To the City:

City Clerk
City of Orange Beach
Post Office Box 458
Orange Beach, Alabama 36561

With a required copy to:

City Attorney
City of Orange Beach
Post Office Box 458
Orange Beach, Alabama 36561

To the Contractor:

Mr. Adam McLean
President
McLean Motor Sports Productions, LLC
322 Bradford Circle
Trussville, Alabama 35173

19. Final Agreement. This Agreement is the final expression of the agreement between the parties, and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not contained herein.
20. Modifications. Any alterations, variations, modifications or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the party against whom enforcement is sought.
21. Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to any party.
22. Law Governing. This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement shall be Baldwin County, Alabama.

Dated this _____ day of _____, 2023.

CITY OF ORANGE BEACH, ALABAMA
A Municipal Corporation

By: _____
Tony Kennon, Mayor

ATTEST:

Renee Eberly, City Clerk

MCLEAN MOTOR SPORTS PRODUCTIONS, LLC

By: _____
Adam McLean, President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tony Kennon and Renee Eberly, Mayor and City Clerk respectively, of the City of Orange Beach, an Alabama municipal corporation, whose names are signed to the foregoing agreement, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal this the ____ day of _____, 2023.

(SEAL)

Notary Public, State of Alabama
My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said County in said State, hereby certify that Adam McLean, as President of McLean Motor Sports Production, LLC, whose name is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the ____ day of _____, 2023.

(SEAL)

Notary Public, State of Alabama
My Commission Expires: _____



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Set a public hearing date to consider business license revocation of Super Salt Life LLC for charter boat "Southern Belle". (Suggested date 9/5/2023) (JL)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: Community Development

Description of Topic:

Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0801-CU-23, Money Bayou Storage Buildings at 4400 and 4402 Money Bayou Drive Conditional Use Approval on September 5, 2023.

Background/Description: Engineering Design Group, on behalf of SPI Properties LLC, requests recommendation to the City Council for approval of **Conditional Use** to construct a storage unit facility covering more than 12,800 square feet along with an office area covering about 1,900 square feet. The property is located at 4400 and 4402 Money Bayou Drive in the General Business (GB) zoning district.

Action Options/Recommendation:

Source of Funding (if applicable): N/A

ATTACHMENTS:

None



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Ordinance amending Chapter 10, Article II, Section 10-28 of the Code of Ordinances of the City of Orange Beach, Alabama, to ban exotic animals and provide regulations for sheltering by agents of recognized wildlife associations and zoos. (JL)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 2023-xxxx Amd Ch 10 Art II Sec 10-28 Exotic Animals

ORDINANCE NO. 2023-xxxx

**AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, SECTION 10-28
OF THE CODE OF ORDINANCES OF THE CITY OF ORANGE BEACH, ALABAMA
TO BAN EXOTIC ANIMALS AND PROVIDE REGULATIONS FOR SHELTERING BY
AGENTS OF RECOGNIZED WILDLIFE ASSOCIATIONS AND ZOOS**

FINDINGS:

1. The City Council of the City of Orange Beach, Alabama passed Ordinance No. 2011-1128 on or around March 1, 2011, establishing regulations for the presence of exotic animals within the City. This ordinance is codified at section 10-28 of the Code of Ordinances of the City of Orange Beach, Alabama.
2. Exotic animals are wild animals by nature and pose an inherent danger to the public, especially when not cared for by a trained professional.
3. The City has dealt with multiple instances of exotic animals being kept in conditions unclean and/or unsafe for both the animals and their owners. Improper confinement of these animals can lead to health hazards for any party within the vicinity (e.g. owners, neighbors, passers-by). Exotic animals are not only dangerous due to the risk of biting or attack, but often carry diseases that can be transmitted to humans.
4. In an effort to protect and promote the safety and welfare of our residents and visitors as well as these exotic animals and their species, the City Council has determined it is necessary to ban exotic animals within the City of Orange Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That Section 10-28 of the Code of Ordinances of the City of Orange Beach, Alabama is hereby amended to read as follows:
 - (a) It shall be unlawful for anyone to own, harbor, possess, or permit any exotic animal within the City of Orange Beach, Alabama.
 - (b) Agents of Registered or Licensed wildlife associations or zoos may be granted an exception to this prohibition by the City of Orange Beach Animal Control Officer upon written request to the Animal Control Officer to shelter or possess any exotic animal within the City of Orange Beach. The Agent shall provide information regarding the animal such as breed, name, age, weight, sex, vaccination status, veterinarian, if the animal requires outside time, an emergency contact, safety measures, known dangers to the public, and where the animal will be located. The Animal Control Officer may request other information if deemed necessary. Any exceptions granted shall be in the complete discretion of the Orange Beach Animal Control based upon information granted herein and upon finding that the public purpose in sheltering the animal outweighs potential danger to the public.
 - (c) This Ordinance shall not apply to employees or agents of the City of Orange Beach possessing or sheltering exotic animals in their official capacity.
2. **SEVERABILITY.** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part of this Ordinance shall not affect the validity of the remaining parts to this Ordinance.
3. **EFFECTIVE DATE.** That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2023-xxxx**
was posted on _____ in the following three

(3) public places:

Orange Beach City Hall _____

Orange Beach Post Office _____

Orange Beach Public Library _____

Renee Eberly, City Clerk



**COMMITTEE OF THE WHOLE MEETING
AUGUST 15, 2023**

Departments: City Clerk

Description of Topic: Ordinance amending Chapter 2, Article II, Division 2, Section 2-40(b) of the Code of Ordinances of the City of Orange Beach, Alabama, to establish an electronic meeting policy for City Council. (JL)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 2023-xxxx Amd Ch 2 Art II Div 2 Sec 2-40 City Council Electronic Meeting Policy

ORDINANCE NO. 2023-xxxx

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE II, DIVISION 2, SECTION 2-40(b)
OF THE CODE OF ORDINANCES OF THE CITY OF ORANGE BEACH, ALABAMA
TO ESTABLISH AN ELECTRONIC MEETING POLICY FOR CITY COUNCIL**

FINDINGS:

1. The City Council of the City of Orange Beach, Alabama passed Ordinance No. 2022-1418 on or about July 26, 2022 stating all meetings of the City Council will be held in person except as allowed by state law.
2. Alabama Code §36-25A-5.2 allows entities of municipalities (i.e. City Council) to allow electronic participation in meetings under certain circumstances, provided the municipality has adopted an Electronic Meeting Policy.
3. The City Council has determined it is necessary to adopt an Electronic Meeting Policy in order to allow electronic participation by members who would otherwise not be able to attend due to illness.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That Chapter 2, Article II, Section 2-40(b) of the Code of Ordinances of the City of Orange Beach, Alabama is hereby amended to read as follows:

(b) Electronic proceedings.

- (1) *Purpose and applicability.* It is the policy of the City of Orange Beach that individual members of the City Council may participate in Council meetings by electronic means as permitted by Alabama Code §36-25A-5.2 up to two times per calendar year. All proceedings pursuant to this policy shall be performed in accordance with Alabama Code 36-25A-5.2 as may hereafter be amended. This policy shall apply to the entire City Council membership without regard to the identity of the member requesting remote participation or the matters to be considered or voted on at the meeting.
- (2) *Quorum required.* The City Council may consider a request for participation by electronic communication means only if a quorum of the City Council is physically present at the central or physical meeting location, and there is an arrangement for all participants to hear one another at the same time.
- (3) *Permissible reasons for electronic participation.* Participation by a Council member in a meeting by electronic communication means shall only be allowed if the Council member is unable to be physically present due to an illness. For purposes of this section, “illness” means sickness, disease or other physical condition that causes a Council member to face significant difficulties attending a Council meeting in person and/or endangers the health the subject member or of those physically present.
- (4) *Approval process.* No Council member may participate in a meeting by electronic communication means unless the Council member requests and the Council approves the participation in accordance with this policy.
 - i. A Council member may request to participate in a Council meeting by electronic communication means if the Council member notifies the Mayor and the City Clerk on or before the day of the meeting that the Council member is unable to attend due to illness.

- ii. The Council member must also notify the City Clerk of the remote location from which the Council member would participate by electronic communication means.
 - iii. At the meeting, the City Clerk shall announce the information received from the Council member requesting electronic attendance. If the Council member's request is in all respects compliant with this policy, then any quorum of the Council members physically assembled at the central or physical meeting location shall make a motion to approve or disapprove the absent Council member's request. A roll call vote shall be taken.
 - iv. Upon approval of Council member's participation by electronic communication means, the Council member shall be allowed to fully participate in the meeting by electronic communication means in all respects except for establishment of a quorum.
 - v. If the Council member's participation by electronic communication means is approved, the City Clerk shall record in the meeting minutes: (i) the motion; (ii) the vote thereon; (iii) the specific nature of the illness or medical condition; (iv) the remote location from which the Council member participates in the meeting; (v) the method of electronic communication being utilized for participation.
 - vi. If the Council member's participation by electronic communication means is disapproved, whether by adoption of a motion to disapprove or rejection of a motion to approve, the City Clerk shall record in the meeting minutes: (i) the motion; (ii) the vote thereon; (iii) the specific nature of the illness or medical condition; (iv) the remote location from which the Council member would participate in the meeting; (v) the method of electronic communication to be utilized for participation; and (vi) the specific aspect of this policy that would be violated by the Council member's proposed participation by electronic communication means, as summarized by a quorum of the Council members physically present.
- (5) *Approval.* Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Alabama Open Meetings Act.
- (6) *Location.* The location where the quorum is present and each remote location from which a Council member participates must have two-way audio with each other's location during the entire meeting. Each participant's voice must be clearly audible to each other participant and, during the open portion of the meeting, to members of the public in attendance at the location where the quorum is present. The audio signals perceptible by members of the public at the location where the quorum of the members are present must be of sufficient quality so that members of the public can hear the voice of each participant in the open portion of the meeting.
- (7) *Requirements of electronic system.* Any electronic communications system utilized must allow all of the participating members—whether they are physically in the central location or in remote location(s)—to simultaneously communicate with one another and the public. The City Clerk shall arrange for the acquisition and installation of all appropriate equipment, communications systems and software as shall be necessary to comply with the provisions of this section. Acceptable means of electronic communications include telephone (speaker phone) or by video or audio teleconferencing means, such as Zoom, GoToMeeting, GoToWebinar, Webex, Microsoft Teams, Google Hangout or any other similar platform approved by the City Administrator which is clear, uninterrupted and allows two-way communication for the participating Council members.

- (8) *Notice of Meeting.* If a Council member is participating in a meeting of the City Council by electronic communication means as authorized by this section, the City Council shall ensure that means of access to the electronic communication is published in the same manner as the notice of the meeting is published pursuant to Chapter 25A of Title 36 of the Code of Alabama.
 - (9) *Voting.* Any vote taken at a meeting utilizing the equipment contemplated in this section shall be taken as a roll call vote that allows each participant to vote individually in a manner audible to all persons participating or present at the physical location where the quorum is present.
 - (10) *Interruption of electronic communication.* If the electronic communication means fail or are in any way interrupted during a meeting otherwise in compliance with this section, that failure shall not be grounds to challenge any action taken during the meeting.
 - (11) *Implementation of policy.* At least forty-five (45) days shall lapse between the adoption of this policy and the first meeting that the City Council uses electronic means of communication as authorized by this section.
 - (12) *No reimbursement of expenses.* A Council member participating in a meeting by electronic communication means as provided by this section may not claim any form of fee or reimbursement of expenses relating to that meeting, including mileage.
2. That all ordinances, resolutions or parts in conflict with this ordinance, to the extent of such conflict, are hereby repealed to the extent in conflict hereof; and
 3. That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 5th DAY OF SEPTEMBER, 2023.

Renee Eberly
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2023-xxxx**
was posted on _____ in the following three

(3) public places:

Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____

Renee Eberly, City Clerk