



REGULAR COMMITTEE OF THE WHOLE MEETING AGENDA

I. Roll Call

II. Consideration of Previous Minutes

1. Work Session 10/03/2023
2. Regular Council Meeting 10/03/2023
3. Committee of the Whole 10/03/2023
4. Work Session 10/11/2023

III. Unfinished Business

Miscellaneous

Resolutions

Ordinances

IV. New Business

Miscellaneous

1. Reschedule Council Meeting on November 21, 2023, to November 14, 2023. (RE)

Resolutions

1. Resolution awarding the bid for Rosemary Dune Cabins. (PW/RE)
2. Resolution awarding the bid for a Softball and Baseball Field House. (GS/RE)
3. Resolution awarding the bid for an EBS Rotary Screw Blower Package for the Utilities Department. (JH/RE)
4. Resolution authorizing the execution of a professional services agreement with Lexipol, LLC, for the purpose of updating the Orange Beach Fire Department Policy Manual. (JS)

5. Resolution authorizing the sole source purchase of a Lifeguard Tower from Bausch Enterprises, Inc., for the Surf Rescue Division of the Fire Department in the amount of \$88,810. (JS)
6. Resolution authorizing execution of a performance agreement with the Garner C. Tampary Memorial Foundation, Inc., for the "Merry Memories Tinsel Trail" event. (MA)

Public Hearings

1. Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1104-PUDA-23, The Wharf PUD Minor Amendment, Culver's Restaurant (Architectural Amendment). (Suggested date 11/7/2023) (KA)

Ordinances

V. Public Comments

VI. Adjourn

**MINUTES OF
ORANGE BEACH CITY COUNCIL
WORK SESSION
OCTOBER 3, 2023 – 10:00 A.M.
COASTAL ARTS CENTER**

The Orange Beach City Council met on October 3, 2023, at 10:05 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. Municipal judge appointment.
2. State Park parking passes for Orange Beach residents.
3. Upcoming recognitions of citizens.
4. Council meeting schedule.

Councilmember Boyd stepped out of the meeting to take a call at 10:55 A.M.

5. Orange Beach Museum restoration project.
6. Danny Martin memorial.
7. Upcoming employee retirements.
8. Proposed ordinance regulating RV occupancy.
9. Naming of city beach.
10. Electronic signs.
11. Sea, Sand, and Stars facility summer operation.
12. Adult Fitness Center membership request.

Councilmember Boyd returned to the meeting at 11:50 A.M.

13. Regulating room rentals in an occupied residence.
14. Hope the Dolphin sculpture location.
15. Planning Commission vacancy.
16. New development in Orange Beach.
17. Drafted ordinance regulating styrofoam floating docks.
18. School athletic facility bid results.

Councilmember Silvers left the meeting at 1:55 P.M.

19. Southern Rapid Care employee clinic.

20. Succession plan update.

21. Request to purchase two new ambulances.

Mayor Kennon left the meeting at 2:14 P.M.

There being no further business, the meeting adjourned.

Time: 2:16 P.M.

APPROVED this 7th day of November, 2023.

Renee Eberly
City Clerk

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
OCTOBER 3, 2023 – 5:00 P.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:01 P.M.
- II. INVOCATION** Pastor Kim Vanbrimmer, Orange Beach Presbyterian 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/Silvers) to approve the agenda as written. Vote unanimous in favor.
Motion passed.

VI. CONSIDERATION OF PREVIOUS MINUTES

Regular Council Meeting 09/05/2023
Committee of the Whole 09/05/2023

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> | Property acquisition notice attached. |
| 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> | |

Councilmember Mitchell congratulated Jessica and Jonathan Langston on the Expect Excellence Performing Arts production of Junie B. Jones.

Mayor Kennon invited the public to attend the Freedom Fest this weekend.

Councilmember Silvers and Councilmember Boyd spoke about the upcoming Employee Appreciation Lunch and Employee Benefits Fair. They thanked city employees for a successful summer.

VIII. AUDITING OF ACCOUNTS

Motion made (Mitchell/Johnson) 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. **Motion passed. (6-0).**

Motion made (Mitchell/Boyd) 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. **Motion passed. (5-0-1).**

IX. PRESENTATIONS

X. RECOGNITIONS

1. Recognition of Brian Hester, retiring Fire Department Lieutenant. Chief Jeff Smith praised Lieutenant Hester and recognized his 17 years with Orange Beach and 28 year fire service career. Lieutenant Hester spoke in gratitude for his fellow fire service colleagues.

XI. UNFINISHED BUSINESS

Resolutions

1. Resolution awarding the bid for the new Wildlife Center, Phase II Interior Buildout, to Rolin Construction, Inc., in an amount not to exceed \$720,000. **Motion made (Silvers/Johnson) to postpone consideration until the next council meeting on October 17th.** Vote unanimous in favor. **Motion passed.**
2. Resolution authorizing a franchise for CrozzzzCabz, Inc., to operate a taxi service within the city limits and police jurisdiction of the City of Orange Beach. **Motion made (Mitchell/Silvers) to postpone consideration indefinitely.** Vote unanimous in favor. **Motion passed.**

XII. NEW BUSINESS

Miscellaneous

1. Approval of a Special Retail (More than 30 Days) Liquor License Application by Sun TRS Pandion Ridge LLC for Sun Outdoors Orange Beach. **Motion made (Mitchell/Silvers) to approve the liquor license.** Vote unanimous in favor. **Motion passed.**

Resolutions

1. Resolution awarding the bid for the Recreation Center Roof and Soffit Replacement to Dobson Sheet Metal & Roofing & Specialities, Inc., in an amount not to exceed \$791,000 and per unit pricing. **Motion made (Johnson/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
2. Resolution awarding the bid for 2023 Roadway Resurfacing to Arrington Curb & Excavation, Inc., in an amount not to exceed \$745,990. **Motion made (Silvers/Mitchell) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

3. Resolution authorizing the execution of a consulting agreement with The Andy Andrews Group for an employee training program. **Motion made (Boyd/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

Public Hearings

1. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0901-CU-23, McInnis Company Office and Storage.

Griffin Powell, Planner II, presented the case overview for a request of Conditional Use Approval for a two-phased expansion of an existing facility. The first phase consists of a 7,000-SF covered storage area attached to the rear side of the existing building, a 1,520-SF shed, and two mini warehouse buildings covering 12,500 SF. The second phase consists of a 6,000-SF commercial building and three mini warehouse buildings covering 25,000 SF. The property is located at 26830 and 26846 Canal Road in the General Business (GB) zoning district.

The applicant was present to answer questions from the Council.

There being no opposition, the public hearing adjourned.

Ordinances

1. First Reading – Ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0901-CU-23, McInnis Company Office and Storage. **Motion made (Silvers/Johnson) for unanimous consent to suspend the rules to allow for immediate consideration of this ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Motion passed. (6-0).** **Motion made (Silvers/Mitchell) to adopt the ordinance.** Roll call vote revealed: Silvers, aye; Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Motion passed. (6-0).**

XIII. PUBLIC COMMENTS

None

XIV. ADJOURN

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

Time: 5:22 P.M.

APPROVED this the 7th day of November, 2023.

Renee Eberly
City Clerk

**MINUTES OF
COMMITTEE OF THE WHOLE MEETING
ORANGE BEACH CITY COUNCIL
OCTOBER 3, 2023 – 5:22 P.M.
CITY HALL – COUNCIL CHAMBERS**

The Orange Beach City Council met to review potential items for the October 17, 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. Set a meeting for the Solid Waste Authority. Meeting set for October 17, 2023, at 4:45 P.M.
2. Discuss appointment of Municipal Judge.
3. Resolution awarding the bid for the Community Center Addition.
4. Resolution awarding the bid for Rosemary Dune Cabins.
5. Resolution awarding the bid for Trap and Skeet Machines.
6. Resolution awarding the bid for Football and Soccer Field Turf Installation.
7. Resolution authorizing a franchise renewal for "A" Ms. Mary Taxi Service LLC, dba A-1 Ms. Mary Taxi Service) to operate a taxi service within the city limits and police jurisdiction of the City of Orange Beach.
8. Resolution authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc., for engineering services.
9. Resolution authorizing the execution of a performance contract with Anne Gajda for golf instruction services.
10. Resolution authorizing the execution of two service agreements with the Safe Harbor Animal Coalition (SHAC) for the removal of feral cats from active beach mouse habitats.
11. Resolution adopting rental agreements and establishing a schedule of fees for the Coastal Arts Center.
12. Resolution authorizing the purchase of Chairs for the Event Center through the BuyBoard purchasing cooperative from MityLite Inc. in the amount of \$96,096.

Public Comments:

1. Allen McElroy, 4688 Walker Avenue, praised Ken Grimes on his service to Orange Beach.
2. Council recognized Bill and Pam Jeffries, Orange Beach citizens who are moving to be with their grandchildren, for their service and contributions to the City of Orange Beach through the years.

There being no further business, the meeting adjourned.

Time: 5:22 P.M.

APPROVED this 7th day of November, 2023.

Renee Eberly
City Clerk

**MINUTES OF
ORANGE BEACH CITY COUNCIL
WORK SESSION
OCTOBER 11, 2023 – 3:00 P.M.
CITY HALL – SOUTH CONFERENCE ROOM**

The Orange Beach City Council met on October 11, 2023, at 3:03 P.M. with Chairman Pro-Tem Jeff Boyd presiding.

The following members were present:

Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Annette Mitchell
Councilmember Joni Blalock
Councilmember Jeff Boyd

The following members were absent:

Mayor Tony Kennon

The following items were discussed:

1. School athletic complex capital construction project funding request.
2. Budget schedule.
3. Upcoming events.
4. Makos Academics, Arts & Athletics Club (MAAAC) fundraising.

There being no further business, the meeting adjourned.

Time: 5:19 P.M.

APPROVED this 7th day of November, 2023.

Renee Eberly
City Clerk



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Reschedule Council Meeting on November 21, 2023, to November 14, 2023. (RE)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution awarding the bid for Rosemary Dune Cabins. (PW/RE)

Background/Description: Bid opening scheduled for October 12, 2023. Review in process.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 2023-1013 Rosemary Dunes Cabins - Bid Tab

Project Name: **ROSEMARY DUNES CABINS**
Requisition No. **2023-1013**

Bid Date: **October 12, 2023**
Bid Opening Time: **2:30 PM**

Bidder's Name	Black Diamond Construction	MD Thomas Construction	Phil Harris Construction	Rolin Construction		
Alabama Contractor License No.	55854	39995	22381	46194		
Bond	✓	✓	✓ check	✓		
Affidavits	✓	✓	✓	✓		
Addenda Received	1,2,3 ✓	1,2,3 ✓	1,2,3 ✓	1,2,3 ✓		
Notes						
Bid Amount BASE BID	\$395,100.00	\$685,000.00	\$595,450.00	\$630,000.00		

OPENED BY:

TABULATED BY:

WITNESS BY:



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution awarding the bid for a Softball and Baseball Field House. (GS/RE)

Background/Description: Bid opening scheduled for November 2, 2023.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution awarding the bid for an EBS Rotary Screw Blower Package for the Utilities Department. (JH/RE)

Background/Description: Bid opening scheduled for November 2, 2023.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing the execution of a professional services agreement with Lexipol, LLC, for the purpose of updating the Orange Beach Fire Department Policy Manual. (JS)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable): \$41,490, Sourcewell Contract, Fire Professional Services

ATTACHMENTS:

1. 11-07-23 23-xxx Authorize Professional Services Agreement Lexipol Fire Manual
2. 2023.10.12 Professional Services Agreement Lexipol Fire Manual

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT WITH
LEXIPOL, LLC, FOR THE PURPOSE OF
UPDATING THE ORANGE BEACH FIRE DEPARTMENT POLICY MANUAL**

FINDINGS:

1. The City of Orange Beach and Lexipol, LLC, have reached an agreement (attached Exhibit A) whereby Lexipol, LLC, will provide professional consulting services to the Orange Beach Fire Department for the purpose of updating the Orange Beach Fire Department Policy Manual.
2. 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.
3. The term of this agreement shall be for fourteen (14) 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 Lexipol, 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 7th DAY OF NOVEMBER, 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 November 7, 2023.

City Clerk



MASTER SERVICE AGREEMENT

Agency's Name: Orange Beach Fire & Rescue
Agency's Address: 25855 John Snook Dr
Orange Beach, Alabama 36561

Agency's Sourcewell Member ID: 83360

Attention: Jeff Smith

Sales Rep: Tony Farrell
Lexipol's Address: 2611 Internet Boulevard, Suite 100
Frisco, Texas 75034

Effective Date:

(to be completed by Lexipol upon receipt of signed Agreement)

This Master Service Agreement (the "Agreement") is entered into by and between Lexipol, LLC, a Delaware limited liability company ("Lexipol"), and the department, entity, or organization referenced above ("Agency"). This Agreement consists of:

- (a) this **Cover Sheet**
- (b) **Exhibit A** - Selected Services and Associated Fees
- (c) **Exhibit B** - Terms and Conditions of Service

This Agreement is entered into subject to the terms and conditions contained in **Sourcewell Contract Number 011822-LXP (the Sourcewell Contract)**. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions set forth in the Sourcewell Contract, the terms and conditions of the Sourcewell Contract shall control.

Each individual signing below represents and warrants that they have full and complete authority to bind the party on whose behalf they are signing to all terms and conditions contained in this Agreement.

Orange Beach Fire & Rescue

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Lexipol, LLC

Signature: _____

Print Name: _____

Title: _____

Date Signed: _____

Exhibit A

SELECTED SERVICES AND ASSOCIATED FEES

Agency is purchasing the following:

Annual Subscription & Cordico w/ Full Implementation

Initial Term: 11/1/2023 - 12/31/2024

QTY	DESCRIPTION	UNIT PRICE	SOURCEWELL DISC	DISC AMT	EXTENDED
1	Annual Fire Policy Manual & Daily Training Bulletins w/Supplemental Publication Service w/Fire Operations Procedures (14 Months)	USD 12,779.00	10%	USD 1,277.90	USD 11,501.10
1	CordicoFire Firefighter Wellness App (14 Months)	USD 14,999.00	10%	USD 1,499.90	USD 13,499.10
	Subscription Line Items Total			USD 2,777.80	USD 25,000.20
1	Fire Standard Policy Cross-Reference	USD 1,850.00	10%	USD 185.00	USD 1,665.00
1	Fire Tier I Implementation	USD 2,913.00	10%	USD 291.30	USD 2,621.70
1	Fire Tier II Implementation	USD 3,359.00	10%	USD 335.90	USD 3,023.10
1	Fire Tier III Implementation	USD 3,632.00	10%	USD 363.20	USD 3,268.80
1	Fire Tier IV Implementation	USD 3,276.00	10%	USD 327.60	USD 2,948.40
1	Fire Tier V Implementation	USD 3,292.00	10%	USD 329.20	USD 2,962.80
	One-Time Line Items Total			USD 1,832.20	USD 16,489.80
				USD 4,610.00	USD 41,490.00
Annual Subscription & Cordico w/ Full Implementation Sourcewell Discount:					USD 4,610.00
Annual Subscription & Cordico w/ Full Implementation TOTAL:					USD 41,490.00

*Fire pricing is based on 75 Fire Authorized Staff.

Discount Notes

10% Sourcewell

Notes

Wellness pricing includes all firefighters, admin employees, families, and retirees.

If contract is signed by Oct 31st, Lexipol will provide November and December at no additional cost.

Exhibit B
Terms and Conditions of Service

These Terms and Conditions of Service (the “Terms”) govern the rights and obligations of Lexipol and Agency under this Agreement. Lexipol and Agency may each be referred to herein as a “party” and collectively as the “parties.”

1. Definitions. Each of the following capitalized terms will have the meaning included in this Section 1. Other capitalized terms are defined within their respective sections, below.

1.1 “Agency” means the department, agency, office, organization, company, or other entity purchasing and/or otherwise subscribing to the Lexipol Services set forth in Exhibit A.

1.2 “Agency Data” means data, information, and content owned by Agency prior to the Effective Date, or which Agency provides during the Term of this Agreement for purposes of identifying authorized users, confirming agency or department information, or other purposes that are ancillary to receipt of the Service.

1.3 “Agreement” means the combination of the cover sheet (signature page); Exhibit A (“Selected Services and Associated Fees”); this Exhibit B; and any other documents attached hereto and expressly incorporated herein by reference.

1.4 “Effective Date” means the date specified on the cover sheet (signature page), or as otherwise expressly set forth and agreed upon by Lexipol and Agency in a writing and defined as the “Effective Date.”

1.5 “Initial Term” means the period commencing on the Effective Date and continuing for the length of time indicated on Exhibit A. If not so indicated, the default Initial Term is fourteen (14) months from the Effective Date.

1.6 “Lexipol Content” means all content in any format including but not limited to: written content, images, videos, data, information, and software multimedia provided by Lexipol and/or its licensors via the Services.

1.7 “Services” means all products and services, including but not limited to all software subscriptions, professional services, and ancillary support services, as may be offered by Lexipol and/or its affiliates from time to time.

2. Term; Renewal. This Agreement becomes enforceable upon signature by Agency’s authorized representative, with an Effective Date as indicated on the cover page. Unless expressly stated in the “Custom Agreement Terms” section of Exhibit A, this Agreement shall automatically renew in successive one-year periods (each, a “Renewal Term”) on first day of each calendar year (January 1st) unless a party provides written notice of non-renewal to the other party at least sixty (60) days prior to such renewal. The Initial Term and all Renewal Terms collectively comprise the “Term” of this Agreement.

3. Termination.

3.1 For Convenience; Non-Appropriation. This Agreement may be terminated at any time for convenience (including due to lack of appropriation of funds) upon sixty (60) days written notice.¹

3.2 For Cause. This Agreement may be terminated by either party, effective immediately, (a) in the event the other party fails to discharge any obligation, including payment obligations, or remedy any default hereunder for a period of more than thirty (30) calendar days after it has been provided written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

3.3 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, Agency’s access to Lexipol’s Services shall immediately cease unless Lexipol has, in its sole discretion, provided for their limited continuation. Termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration, including payment obligations.

¹ Note: fees paid for Online Services are not eligible for refund, proration, or offset in the event of Agency’s termination for convenience as Online Services are delivered in full as of the Effective Date. Fees pre-paid for Professional Services are eligible for refund, proration, or offset to the extent such Services have not been delivered or utilized by Agency.

4. **Fees; Invoicing.** Lexipol will invoice Agency at the commencement of the Initial Term and at the commencement of each Renewal Term. Agency agrees to remit payment within thirty (30) calendar days following receipt of Lexipol's invoice. Payments may be made electronically or by mailing a check to Lexipol at 2611 Internet Blvd, Ste. 100, Frisco, TX 75034 (Attn: Accounts Receivable). Lexipol reserves the right to increase fees for Renewal Terms. All fee amounts stated in Exhibit A are exclusive of taxes and similar fees now in force or enacted in the future. Agency is responsible for all third-party fees (e.g., wire fees, bank fees, credit card processing fees). Unless otherwise exempt, Agency is responsible for and will pay in full all taxes related to its receipt of Lexipol's Services, except for taxes based on Lexipol's net income.

5. **Terms of Service.** The following terms and conditions govern access to and use of Lexipol's Services:

5.1 **Online Services.** Lexipol's Online Services include all cloud-based services offered by Lexipol and its partners, affiliates, and licensors. Online Services include, without limitation, Lexipol's Knowledge Management System ("KMS") for policy, Learning Management System ("LMS")², GrantFinder, and Cordico wellness applications (collectively, the "Online Services"). Lexipol's Online Services are proprietary and, where applicable, protected under U.S. copyright, trademark, patent, and/or other applicable laws. By subscribing to Lexipol's Online Services, Agency receives a personal, limited, non-sublicensable and non-assignable license to access and use such Services in conformity with these Terms.

5.2 **Professional Services.** Lexipol's Professional Services include all Services that are not part of Lexipol's Online Services, and which require the professional expertise of Lexipol personnel and/or contractors, including implementation support for policy manuals, technical support for online learning, accreditation consulting, grant writing and consulting³, and projects requiring regular input from Lexipol's subject matter experts (collectively, "Professional Services"). Lexipol shall provide all Professional Services in accordance with industry best practices.

5.3 **Intellectual Property; License.** Lexipol's Services and all Lexipol Content are the proprietary intellectual property of Lexipol and/or its licensors, and are protected where applicable by copyright, trademark, and patent laws. Nothing contained in this Agreement or these Terms shall be construed as conferring any right of ownership or use to Lexipol's Services or Lexipol Content. Notwithstanding the foregoing, Agency may, in limited circumstances (e.g. creation, modification, and updating of Agency's policy manuals) create Derivative Works based on Lexipol's Content and shall retain a personal, non-commercial, non-sublicensable and non-assignable license to use such Derivative Works, including beyond the expiration or termination of this Agreement. "Derivative Works" include all work product based on or which incorporates any Lexipol Content, including any revision, modification, abridgement, condensation, expansion, compilation, or any other form in which Lexipol Content, or any portion thereof, is recast, transformed, or adapted. Agency acknowledges and agrees that Lexipol shall have no responsibility to update Lexipol Content used by Agency beyond the Term of this Agreement and shall have no liability whatsoever for Agency's creation or use of Derivative Works.

5.4 **Account Security.** Access to Lexipol's Services is personal and unique to Agency. Agency shall not assign or otherwise transfer any such rights to any other person or entity. Except as set forth herein, Agency remains responsible for maintaining the security and confidentiality of Agency's usernames and passwords and the security of Agency's accounts. Agency will immediately notify Lexipol if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's account or Agency's usernames and/or passwords.

5.5 **Agency Data.** Lexipol will use commercially reasonable efforts to ensure the security of all Agency Data. Lexipol's Services use the Secure Socket Layer (SSL) protocol, which encrypts information as it travels between Lexipol and Agency. However, data transmission on the internet is not always 100% secure and Lexipol cannot and does not warrant that information Agency transmits to or through Lexipol or the Services is 100% secure. Lexipol's use of Agency Data is limited to providing the Services, retaining records in the regular course of business, and complying with valid legal obligations.

6. **Confidentiality.** During the Term of this Agreement, each party may disclose information to the other party that would be reasonably considered confidential, including Agency Data (collectively, "Confidential Information"). The receiving party will: (a) limit disclosure of any such Confidential Information to the receiving party's authorized representatives; (b) advise its personnel and agents of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement; and (c) not disclose any Confidential Information to any third party unless expressly authorized by the disclosing party. A party may disclose Confidential Information pursuant to a valid governmental, judicial, or administrative order, subpoena, regulatory request, Freedom of

² LMS Services include, but are not limited to: PoliceOne Academy, FireRescue1 Academy, EMS1 Academy, Corrections1 Academy, and LocalGovU.

³ Agency is responsible for submitting all information reasonably required by Lexipol's grant writing team in a timely manner and always at least five (5) days prior to each grant application submission date. Agency is responsible submissions of final grant applications by grant deadlines. Failure to timely submit required materials to Lexipol's grant writing team will result in rollover of project fees to next grant application cycle, not a refund of fees. Requests for cancellation of grant writing services which have already begun will result in a 50% fee of the total value of the service.

Information Act (FOIA) request, Public Records Act (PRA) request, or equivalent, provided that the disclosing party promptly notifies, to the extent practicable, the other party in writing prior to such disclosure so that the other party may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this section by any of such party's personnel or agents. The parties may also disclose the fact that they are working together, including for promotional purposes, and include each other's name and logo(s) for such purposes.

7. Warranty. LEXIPOL WARRANTS THAT ITS SERVICES ARE PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS, THAT THEY SHALL BE FIT FOR THE PURPOSES SET FORTH HEREIN, AND THAT SUCH SERVICES SHALL NOT INFRINGE THE RIGHTS OR INTELLECTUAL PROPERTY OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, LEXIPOL'S SERVICES ARE PROVIDED "AS-IS" AND LEXIPOL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

8. Indemnification. Lexipol will indemnify, defend, and hold harmless Agency from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising directly and solely out of Lexipol's gross negligence or willful misconduct in providing Services pursuant to this Agreement. Agency shall likewise indemnify, defend, and hold Lexipol harmless from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty, or expense arising out of acts or omissions by Agency, Agency's personnel, or any party acting on Agency's behalf.

9. Limitation of Liability. Each party's cumulative liability resulting from any claims, demands, or actions arising out of or relating to this Agreement, the Services, or the use of any Lexipol Content shall not exceed the larger of: the aggregate amount of fees paid to Lexipol by Agency during the twelve-month period immediately prior to the assertion of such claim, demand, or action; or \$10,000.00. In no event shall either party be liable for any indirect, incidental, consequential, special, exemplary damages, or lost profits, even if such party has been advised of the possibility of such damages.

10. General Terms.

10.1 Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements with respect to the subject matter hereof. No representation, promise, or statement of intention has been made by either party that is not embodied herein. Terms and conditions set forth in any purchase order or other document that are inconsistent with or in addition to the terms and conditions set forth in this Agreement are rejected in their entirety and void, regardless of when received, without further action. No amendment, modification, or supplement to this Agreement shall be binding unless it is made in writing and signed by both parties.

10.2 General Interpretation. The terms of this Agreement have been chosen by the parties hereto to express their mutual intent. This Agreement shall be construed equally against each party without regard to any presumption or rule requiring construction against the party who drafted this Agreement or any portion thereof.

10.3 Invalidity of Provisions. Each provision contained in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Should any provision or portion thereof be held to be invalid or unenforceable, the parties agree that the reviewing authority should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

10.4 Compliance; Governing Law. Each party shall maintain compliance with all applicable laws, rules, regulations, and orders relating to its obligations pursuant to this Agreement. This Agreement shall be construed in accordance with, and governed by, the laws of the state in which Agency is located, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

10.5 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other. Notwithstanding the foregoing, this Agreement may be assumed by a party's successor in interest through merger, acquisition, or consolidation without additional notice or consent.

10.6 Waiver. Either party's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

10.7 Notices. Any notice required hereunder shall be in writing and shall be made by certified mail (postage prepaid) to known, authorized recipients at such address as each party may indicate from time to time. In addition, electronic mail (email) to established and authorized recipients is acceptable when acknowledged by the receiving party.



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing the sole source purchase of a Lifeguard Tower from Bausch Enterprises, Inc., for the Surf Rescue Division of the Fire Department in the amount of \$88,810. (JS)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 11-07-23 23-xxx Authorize Purchase Lifeguard Tower Fire Sole Source
2. 2023.10.12 Quote - Fire - Bausch Enterprises Lifeguard Tower
3. 2023.10.12 Sole Source Justification - Fire Lifeguard Tower
4. 2023.10.12 Sole Source Justification - Fire Lifeguard Tower

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING THE SOLE SOURCE PURCHASE OF A
LIFEGUARD TOWER FROM BAUSCH ENTERPRISES, INC., FOR THE
SURF RESCUE DIVISION OF THE FIRE DEPARTMENT
IN THE AMOUNT OF \$88,810**

FINDINGS:

1. The City of Orange Beach's Surf and Rescue Division of the Fire Department provides lifeguards and related services on the beaches that border the Gulf of Mexico within the City, on beaches outside the corporate limits pursuant to a contract with the State Department of Conservation and Natural Resources.
2. Lifeguards are tasked with working in a harsh work environment with outdoor elements of extreme heat, wind, rain, etc. All of these elements make it difficult for proper water observations to be conducted over an extended period of time. Fortified lifeguard towers provide a more sustainable work environment.
3. The Fire Department has identified the Perdido Pass/Alabama Point East area as being the most hazardous to swimmers and where a fortified lifeguard tower would be the most beneficial. This tower will be the only enclosed structure on the east side of the Perdido Pass that the City of Orange Beach owns and is modular so that it can be disassembled and moved for storage in tropical storm-level weather. Current lifeguard towers are made of wood and are built in house.
4. The City Attorney has advised that to qualify as a sole source under Alabama's bid laws, the goods or service offered must be unique; the uniqueness must be substantially related to the intended purpose, use and performance of the product; and there must be a showing that other, similar goods or services cannot perform the desired objectives.
5. Based on the foregoing, the Council finds that no other vendors offer substantially equivalent products that can accomplish the purpose of serving as a modular fortified lifeguard tower, and that the need for this lifeguard tower is critical to public health and safety.
6. Council concludes that the Department has met its burden of proof under the bid law to demonstrate that Bausch Enterprises, Inc., is the sole supplier of a modular fortified lifeguard tower meeting the Department's specifications and that the Department has acted in good faith in seeking alternate suppliers.

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

1. That the City Council for the City of Orange Beach, Alabama, hereby authorizes the sole source purchase of a Lifeguard Tower for the Fire Department;
2. That the Mayor is hereby authorized to approve payment to Bausch Enterprises, Inc., in the amount of \$88,810.00 for a Bausch "Zero" Watch Tower, per the quote dated September 11, 2023;
3. That the equipment as described in this Resolution is to be used only for official business of the City of Orange Beach; and
4. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 7th DAY OF NOVEMBER, 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 November 7, 2023.

City Clerk



Bausch Watch Tower Division



QUOTE

Bausch Enterprises Inc.
3171 SE Waaler Street
Stuart, FL 34997
772.220.6652

DATE: SEPTEMBER 11, 2023

EXPIRATION DATE: December 11, 2023

Brett Lesinger
Beach Safety Division Chief
City of Orange Beach Alabama
(251)747-1051

SALESPERSON	JOB	INSTALLATION METHODS	DELIVERY ESTIMATE	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Todd B.	28105 Perdido Bch. Blvd.	Crane or forklift needed for assembly & installation.	TBD	TBA	To be negotiated	TBD

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	Bausch "Zero" Watch Tower, standard package (please see attached description)	\$66,700	\$66,700
1	Delivery estimate to your site	\$3800	\$3800
2	Side ventilation hatches to open inward	included	N/C
1	Aluminum powder coated Board Box	\$3375	\$3375
1	Additional 12" Center skid	\$725	\$725
2	Additional Flag Receivers	\$55	\$110
1	Base Storage Enclosure with 2 Barn Doors	\$12,800	\$12,800
1	Bausch assistance with assembly and installation estimate	\$1300	\$1300
	Standard Package on Zero Tower		
	Marine grade aluminum construction		
	Embossed composite decking on 12' by 12' aluminum deck		

	Anodized Aluminum Railing upgrade			
	Three piece aluminum skinned roof with insulation			
	2-30" Aluminum doors with impact glass windows and SS handles			
	Three- 15 degree tint in glass impact windows with folding shutters (inside locking) 36" tall with 50 square feet of viewing area			
	2 ventilation hatches includes front vent / seat combination			
	2 side ventilation hatches below side windows			
	8 foot deck elevation			
	Exterior and interior walls powder coated white with clear ceramic coating on the exterior			
	Composite front counter			
	49 square foot floor plan with angled windows and walls for decreased glare			
	All stainless steel fasteners and 4 SS lifting eyes on shelter			
	Flag holder			
	Sits on two 12" wide aluminum skids with 4 towing eyes			
			SUBTOTAL	\$88,810
			SALES TAX	Exempt
			TOTAL	\$88,810

Quotation prepared by: Todd Bausch

To accept this quotation, sign here and return: _____

Date: _____

Thank you!





Bausch Watchtower Division



ZERO

Bausch Enterprises Inc.
3171 SE Waaler Street
Stuart, FL 34997
772.220.6652

2015-2016

Standard Features

Our “flagship” tower, this model is designed for dual occupation or for use as a control tower. The Zero comes standard with an eight foot height from the ground to the platform, and 49 square foot shelter space with room for two chairs and equipment. Deck will accommodate comfortable outdoor seating.

Additional Standard Features

- ❖ Modular aluminum construction is powder-coated white. A protective, ceramic coating is applied to the exterior for excellent durability in the marine environment.
- ❖ 12 x 12 platform composed of cellular, PVC decking material (available in several color options)
- ❖ 3, 15 degree windows are approximately 36” tall to offer 50 square feet of viewing area. Windows are tinted, tempered glass and available with folding, lockable shutters.
- ❖ 4 lifting hooks on each corner of shelter structure
- ❖ 2, 30” doors for entry on either side (no windows) with stainless hardware
- ❖ Front-access, aluminum low-angle stairs with diamond-plate surface
- ❖ 36” x 15” Front vent/seat combination
- ❖ 36” aft, locking wall vent
- ❖ 2, 8” wide skids
- ❖ Interior, front-facing composite counter top (may be configured to mount base radio)
- ❖ Fiberglass roof panels
- ❖ Tower flag receiver (mounted per customer specifications)
- ❖ Aluminum railing is 39” tall around platform and stairs

Options List:

- ❖ Full, ground-level storage with powder-coated, perforated aluminum panels and a 48” lockable “barn door”
- ❖ Additional skids per customer specification; 10 and 12 inch width options available.
- ❖ Door windows with security panels
- ❖ Additional, interior storage cabinets, shelving, and wall hooks for hanging equipment
- ❖ Additional flag receivers
- ❖ Board racks
- ❖ Board boxes
- ❖ Swivel, pedestal-style seating
- ❖ Anodized, aluminum rails
- ❖ Cup holders
- ❖ Powder-coated rails with various colors available
- ❖ Custom fabrication options per customer request

Artistic Customization is also Available

We are delighted to work closely with you to help you develop unique designs to include your logos, artwork, or other creative specifications. A range of colorful and artistic designs is possible in addition to the options above. Our original sketches are also available to help you find a creative, functional, and durable lifeguard tower. Please contact us to schedule an appointment to consult with a specialist.





Sole Source Justification

The good/service requested is restricted to one supplier for the reasons stated below:

1. Why is the acquisition restricted to this good/service/supplier?
To the best of our knowledge Bausch Enterprises Inc. (BEI) provides the only lifeguard towers in the world with a modular construction design, which allows the towers to be assembled and disassembled for logistical purposes.
2. Provide the background of events leading to this acquisition.
Lifeguards are tasked with working in a harsh work environment to include all outdoor elements of extreme heat, wind, rain, etc. All of these elements make it difficult for proper water observations to be conducted over an extended period of time. In a goal to reduce the number of drowning incidents that occur on our beachfront a fortified lifeguard tower would provide a more sustainable work environment. The tower would be placed at one of our more dangerous swimming areas The Perdido Pass/Alabama Point East. This tower would be the only enclosed structure on the east side of the Perdido Pass that the City of Orange Beach owns.
3. Describe the uniqueness of this acquisition. (Why was the good/service/supplier chosen?)
BEI has conducted business with several other lifeguard agencies and municipalities (Brevard County, Fort Lauderdale Fire Rescue, Clearwater Beach, and Pensacola Beach) in the southeast United states and has developed a solid reputation. The all aluminum and composite construction tower is fully customizable and is modular so that it can be assembled and dissembled for logistics of shipping or transport.
4. What are the consequences of not purchasing the goods/services or contracting with the proposed supplier?
The current lifeguard towers are made of wood and are built in house. They are not aesthetically pleasing and require constant maintenance to serve their designated purpose. The other know lifeguard tower manufacturers would have to be constructed on site by the company or delivered as one whole piece.
5. What market research was conducted to substantiate no competition, including evaluation of other items considered? (Provide a narrative of your efforts to identify other similar or appropriate goods/services, including a summary of how the department concluded that such alternatives are either inappropriate or unavailable. The names and addresses of suppliers contacted and the reasons for not considering them must be included or an explanation of why the survey or effort to identify other goods/services was not performed.)
Market Research was performed on two additional companies. Post & Beam is a company based out of Pompano Beach, FL that constructs lifeguard towers out of heavy timber. Contact Info: 1913A NW 40th Ct. Pompano Beach, FL 33064 E-mail: sales@bigbeams.com. Website: <https://www.bigbeams.com/lifeguard-towers/>. Industrial Design Research is a company based out of Laguna Beach, CA that constructs lifeguard towers out of fiberglass. Contact Info: 3203 Bern Ct., Laguna Beach, CA 92651 / Phone: (714) 420-0695 / email: indesre@sbcglobal.net Website: <http://www.surveyorlifeguardtowers.com/index.htm>.

Price Analysis

1. How was the price offered determined to be fair and reasonable? (Explain what the basis was for comparison and include cost analyses as applicable.)
Bausch Enterprises Inc. (BEI) provided us with multiple quotes to include customized options lists for additional specifications. Delivery and installation estimates were also provided but could not be exact until closer to the date of delivery. The BEI tower in comparison to the cost of an equal quality lifeguard tower is on par with other manufacturers.
2. Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.
Additional annual maintenance costs associated with the wooden towers would be avoided to include the cost of the materials and the cost of the employees hourly rate to work on it. This would allow time for other more pressing tasks to be handled. The BEI lifeguard tower is a modular construction design which allows the tower to be shipped at a much lower cost.

Submitted by (name & department): Brett Lesinger; Orange Beach Fire Department

Date: October 9, 2023

Return completed form to: City of Orange Beach – Procurement Division
reberly@orangebeachal.gov

Phone (772) 220-6652



Fax (772) 220-6653

Location: 3171 SE Waaler St., Stuart, FL 34997

Mailing: P.O. Box 326, Port Salerno, FL 34992

5/10/2023

To whom it may concern:

Bausch Enterprises, Inc. is the sole supplier of Bausch Watchtowers, the only aluminum lifeguard towers manufactured in the United States. To the best of our knowledge, these towers are the only in the world with a modular construction design, which allows the towers to be shipped at much lower costs and assembled on-site per customer specifications. The powder-coated, aluminum construction is also unique, requiring less maintenance in the marine environment than wood construction, and offering longevity over fiberglass.

Bausch Watchtowers are also the only lifeguard towers manufactured that can be constructed with the additional customizations many year-round beach patrols would prefer, such as an 8-foot ground-to-platform height, additional secured storage for equipment underneath the tower, anodized aluminum railings, and a choice of door widths to accommodate a wider range of equipment inside the tower.

If there are any additional questions regarding Bausch Watchtowers, please contact us anytime.

Sincerely,

A handwritten signature in dark ink, appearing to read "Todd Bausch". The signature is fluid and cursive, with the first name "Todd" being more prominent than the last name "Bausch".

Todd Bausch
President



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: City Clerk

Description of Topic: Resolution authorizing execution of a performance agreement with the Garner C. Tampary Memorial Foundation, Inc., for the "Merry Memories Tinsel Trail" event. (MA)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 11-07-23 23-xxx Authorize Performance Agreement Garner Tampary Memorial Foundation Tinsel Trail Event
2. 2023.10.12 Performance Agreement Tinsel Trail Garner Tampary Foundation

RESOLUTION NO. 23-xxx

**A RESOLUTION AUTHORIZING EXECUTION OF A
PERFORMANCE AGREEMENT WITH THE
GARNER C. TAMPARY MEMORIAL FOUNDATION, INC.
FOR THE “MERRY MEMORIES TINSEL TRAIL” EVENT**

FINDINGS:

1. The City wishes to engage the Garner C. Tampary Memorial Foundation, Inc., an Alabama non-profit corporation (Contractor) to provide the “Merry Memories Tinsel Trail” event on the lawn at the Orange Beach Art Center and Orange Beach Waterfront Park for the City’s holiday season and to advertise and promote the City. The event will be open to the public and will bring economic benefit to local businesses as well as have a general positive impact on the community as a recreational holiday themed and family friendly 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, and a public purpose is served.
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 November 18-December 30, 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 the Garner C. Tampary Memorial Foundation, Inc., 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 7th DAY OF NOVEMBER, 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 November 7, 2023.

City Clerk

PERFORMANCE AGREEMENT

This Performance Agreement is entered into between the City of Orange Beach, Alabama, a municipal corporation (“the City”) and Garner C. Tampary Memorial Foundation, Inc., an Alabama non-profit corporation (“the Contractor”).

WHEREAS, the Contractor is an organization with the mission to raise awareness and advocate for public safety, specifically seatbelt safety;

WHEREAS, the Gulf Coast and the City are the location of many events that have a significant positive impact on the City and its citizens;

WHEREAS, during the Thanksgiving and Christmas holiday season, the City and its citizens and visitors participate in a number of community-wide holiday events;

WHEREAS, the Contractor and the City wish to have an event entitled Merry Memories Tinsel Trail (“the Event”);

WHEREAS, the Event is expected to draw support and participation from local citizens and businesses as well as draw visitors and guests to the City, which will stimulate the local economy thru increased revenues for businesses, the City, and the Gulf Coast as well as have a general positive impact on the morale of the community;

WHEREAS, the Contractor will hold the Event from November 24, 2023-December 25, 2023, on the lawn at the Orange Beach Art Center and a portion of Orange Beach Waterfront Park;

WHEREAS, the City wishes to engage Contractor to promote the City and the Alabama Gulf Coast through this Event;

NOW, THEREFORE, the parties agree as follows:

WITNESSETH:

That the City and the Contractor, for and 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, does hereby covenant and agree as follows:

1. The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.
2. Contractor agrees that it will provide the services as set out above, and more particularly described below. The City agrees to provide certain in-kind services described below to support the event upon approval of the City Council;
3. Contractor agrees that it will provide all information required by the City, including more specifically:
 - a. A description of the event;
 - b. Photographs of the event to evidence community participation 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 experiences, such as Facebook, Twitter, or other social media sites;

- 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.
4. The City will provide the following in-kind services:
 - a. Use of the Arts Center lawn and a portion of Orange Beach Waterfront Park for the setup, duration and cleanup period of the event;
 - b. Electricity and necessary wiring;
 - c. Barricades in an amount needed for public safety and parking control.
5. Contractor shall:
 - a. Provide and set up live trees for the "Merry Memories Tinsel Trail" event between November 18-24, 2023;
 - b. Advertise the event and the City as a destination location for holiday vacations and visits;
 - c. Operate the event open to the public and free of charge from November 24-December 25, 2023;
 - d. Locate the event in the portion of the Orange Beach Arts Center lawn and Orange Beach Waterfront Park most visible to Canal Road, as set out in the diagram attached hereto as Exhibit "A", in order to provide a festive holiday scene to passersby;
 - e. Execute and comply with the Arts Center rental agreement attached hereto as Exhibit "B", for rental of the outdoor grounds;
 - f. Clean up and removal of trees and other event item between December 26-December 30, 2023.
6. This Agreement shall be effective from November 18, 2023 and will expire on December 30, 2023, upon approval of the Agreement by the City Council. The City shall have the right to immediately terminate this Agreement, with or without notice or cause, should Contractor breach any of its obligation under this Agreement. The City's right to enforce such obligations survive the expiration or termination of this Agreement.
7. 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 not longer be obligated or required to provide such in-kind services.
8. Contractor agrees to indemnify and hold harmless the City, its officials, agents, employees, departments, and representatives 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 work done, duties or obligations performed by Contractor pursuant to this Agreement, including any 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.
9. 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.

10. 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.
11. 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.
12. 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.
13. Contractor agrees that upon violation of the covenants and agreements herein contained, on account of any act or omission or commission of the Contractor, City may, at its option, terminate and cancel this Agreement.
14. 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.
15. 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.
16. 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. Mark Tampary
26560 Magnolia Avenue
Orange Beach, Alabama 36561

17. 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.

18. 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.
19. 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.
20. 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.
21. 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.

Dated this _____ day of _____, 2023.

CITY OF ORANGE BEACH, ALABAMA
A Municipal Corporation

By: _____
Tony Kennon, Mayor

ATTEST:

Renee Eberly, City Clerk

GARNER C. TAMPARY MEMORIAL
FOUNDATION, INC.

By: _____
Mark Tampary
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 Mark Tampary, as President of the Garner C. Tampary Memorial Foundation, Inc., 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: _____



**REGULAR COMMITTEE OF THE WHOLE MEETING
OCTOBER 17, 2023**

Departments: Community Development

Description of Topic: Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1104-PUDA-23, The Wharf PUD Minor Amendment, Culver's Restaurant (Architectural Amendment). (Suggested date 11/7/2023) (KA)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None