



COMMITTEE OF THE WHOLE MEETING AGENDA

I. ROLL CALL

II. CONSIDERATION OF PREVIOUS MINUTES

1. Work Session 10/25/2022
2. Regular Council Meeting 11/01/2022
3. Committee of the Whole 11/01/2022
4. Work Session 11/08/2022

III. PUBLIC COMMENTS/AGENDA ITEMS

IV. Unfinished Business

Miscellaneous

Resolutions

Ordinances

V. New Business

Miscellaneous

Resolutions

1. Resolution awarding the bid for Cross Lane Dune Walkover Post-Hurricane Sally Repairs. (NW/RE)
2. Resolution authorizing execution of a task order with Sawgrass Consulting to provide land surveying services for the subdivision of the Coastal Resources Office Property on Walker Avenue in an amount not to exceed \$3,500. (PW)
3. Resolution authorizing the execution of a Covenant of Purpose, Use and Ownership with the Gulf Coast Ecosystem Restoration Council for the Expansion of the Orange Beach Wildlife Rehabilitation and Education Program. (NW)
4. Resolution authorizing the renewal of the lease agreement with the Bear Point Civic Association for property located at the end of Mississippi Avenue. (PW/JL)

5. Resolution to provide commitment to develop the Orange Beach Stormwater Master Plan and ensure payment of the city share of funding as awarded by the Alabama Department of Conservation and Natural Resources through the RESTORE Act Water Quality Program. (WS/NW)
6. Resolution establishing fees for equipment rental at the City of Orange Beach Wind and Water Learning Center. (PW)
7. Resolution authorizing execution of a performance contract with Anne B. Gajda for golf instruction services. (JL)

Ordinances

1. Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1105-ZT-22, Zoning Text Amendments for Articles 4, 5, 8, 10, 12 & 15. (Suggested date 12/20/2022) (KA)

VI. Public Comments/Community Discussion

VII. Adjourn

For current information regarding times and date of meetings of the council and committee of the whole, call 980-info (980-4636) for a recorded message or **visit our web site at www.orangebeachal.gov**



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Administration

Description of Topic:

Work Session 10/25/2022

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Work Session 10/25/2022

**MINUTES OF
ORANGE BEACH CITY COUNCIL
WORK SESSION
OCTOBER 25, 2022 – 9:00 A.M.
COASTAL ARTS CENTER**

The Orange Beach City Council met on October 25, 2022, at 9:05 A.M. with Mayor Tony Kennon presiding.

The following members were present:

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

The following members were absent:

Councilmember Jeff Silvers

The following items were discussed:

1. Bridge negotiation update.
2. City Council travel policy.
3. Reimbursement of litigation fees.

Councilmember Mitchell recused herself at 9:57 A.M.

Councilmember Mitchell returned to the room at 10:24 A.M.

4. Live streaming of council meetings.
5. Bama Bayou/Wharf property development agreement.
6. City personnel restructuring.

Ford Handley, Finance Director, and Renee Eberly, City Clerk, were asked to leave the room at 10:51 A.M.

Ford and Renee returned to the room at 11:39 A.M.

7. FY2023 Budget.
 - a. Enterprise funds.
 - b. Capital projects and equipment.
 - c. Possible future capital projects.
 - d. Pay plan adjustments.
 - e. City personnel succession planning
8. Ongoing litigation.
9. Questions from Ono Island residents.

There being no further business, the meeting adjourned.

Time: 3:39 P.M.

APPROVED this 6th day of December, 2022.

Renee Eberly
City Clerk



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Administration

Description of Topic:

Regular Council Meeting 11/01/2022

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Regular Council Meeting 11/01/2022

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
NOVEMBER 1, 2022 – 5:00 P.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:02 P.M.
- II. INVOCATION** Councilmember Joni Blalock
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

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

Absent: Councilmember Jeff Silvers

V. CONSIDERATION OF AGENDA

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

VI. CONSIDERATION OF PREVIOUS MINUTES

Work Session	10/04/2022
Flood Damage Prevention Board	10/04/2022
Regular Council Meeting	10/04/2022
Committee of the Whole	10/04/2022

The reading was waived and minutes were approved as written.

VII. REPORTS OF OFFICERS/COMMITTEES

- | | |
|---|------------|
| A. <u>City Administrator</u> | No report. |
| B. <u>Director, Public Works – Tim Tucker</u> | No report. |
| C. <u>Director, Community Development – Kit Alexander</u> | No report. |
| D. <u>Chief, Police Department – Steve Brown</u> | No report. |
| E. <u>Chief, Fire Department – Mike Kimmerling</u> | No report. |
| F. <u>City Clerk – Renee Eberly</u> | No report. |
| G. <u>Director, Finance – Ford Handley</u> | No report. |
| H. <u>Parks & Recreation</u> | No report. |
| I. <u>Director, Utilities – Jeff Hartley</u> | No report. |
| J. <u>Director, Coastal Resources – Phillip West</u> | |
| Mr. West reported a successful Treats on the Trail event. | |
| K. <u>Librarian, Public Library – Meagan Bing</u> | No report. |
| L. <u>Director, Municipal Court – Renee Gardner</u> | No report. |
| M. <u>Director, Expect Excellence – Jonathan Langston</u> | No report. |
| N. <u>Mayor/Council</u> | |

Councilmember Boyd recognized the return of Allen McElroy, resident who has recently been going through some health struggles. Mr. McElroy thanked the Mayor and Council for their friendship.

Councilmember Blalock stated that tickets are available for the Toys 4 Kids charity fundraiser on November 5th hosted by the Wildflowers Boutique at the Perdido Beach Resort to raise funds for the Christian Service Center.

VIII. AUDITING OF ACCOUNTS

Motion made (Mitchell/Blalock) to certify that cash requirements with no related interests are within budget and appropriate for payment. Vote revealed: Johnson, aye; Mitchell, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Passed. (5-0).**

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

IX. PRESENTATIONS

X. RECOGNITIONS

XI. UNFINISHED BUSINESS

XII. NEW BUSINESS

Resolutions

1. Resolution authorizing the execution of a task order with McCollough Architecture, Inc., to provide professional services for a City Hall Building Addition in an amount not to exceed \$98,800. **Motion made (Mitchell/Blalock) to adopt the resolution.** Vote unanimous in favor.
2. Resolution authorizing the execution of an Auditing Services Agreement with Rivertree Systems, Inc. **Motion made (Blalock/Mitchell) to adopt the resolution.** Vote unanimous in favor.
3. Resolution authorizing execution of an amendment to the Enrollment Agreement with Blue Cross Blue Shield of Alabama to renew the employee health plan. **Motion made (Johnson/Boyd) to adopt the resolution.** Vote unanimous in favor.
4. Resolution appointing members to the Employees' Leave Bank Committee. **Motion made (Mitchell/Blalock) to postpone consideration of the resolution until the next council meeting.** Vote unanimous in favor.
5. Resolution authorizing the purchase of real property from Linda Laney and authorizing the Mayor to negotiate and execute a real estate purchase agreement and such other documents as may be required to close the transactions contemplated therein. **Motion made (Boyd/Mitchell) to adopt the resolution.** Vote unanimous in favor.
6. Resolution authorizing execution of a task order with GeoCon Engineering & Materials Testing, Inc., to provide a preliminary soil study for proposed Finance Building Improvements in an amount not to exceed \$3,760. **Motion made (Johnson/Blalock) to adopt the resolution.** Vote unanimous in favor.
7. Resolution authorizing execution of a task order with GeoCon Engineering & Materials Testing, Inc., to provide a preliminary soil study for a proposed Addition to City Hall in an amount not to exceed \$4,485. **Motion made (Blalock/Mitchell) 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 (Blalock/Boyd) to adjourn. Vote unanimous in favor.

Time: 5:10 P.M.

APPROVED this the 6th day of December, 2022.

Renee Eberly
City Clerk



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Administration

Description of Topic:

Committee of the Whole 11/01/2022

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Committee of the Whole 11/01/2022



COMMITTEE OF THE WHOLE MEETING AGENDA

I. ROLL CALL

II. CONSIDERATION OF PREVIOUS MINUTES

- | | |
|----------------------------|------------|
| 1. Solid Waste Authority | 10/18/2022 |
| 2. Regular Council Meeting | 10/18/2022 |
| 3. Committee of the Whole | 10/18/2022 |

III. UNFINISHED BUSINESS

IV. NEW BUSINESS

Resolutions

1. Resolution approving the Fiscal Year 2023 Budget for the City of Orange Beach, including the transfer or special revenue funds to general fund for special revenue fund projects. (FH)
2. Resolution accepting Webster Lane, Surrey Lane, and the sanitary sewer system located in the Shore Acres Subdivision as publicly owned for maintenance by the city. (KA)
3. Resolution authorizing the execution of a task order with Thompson Engineering, Inc., for redesign of Baseball Field Dugouts at the Sportsplex. (GS)

Ordinances

1. Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1006-PUD-22, Top Tier Water Sports PUD on November 15, 2022.
2. Reminder: Public hearing and first reading for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1008-PUDA-22, Pandion Ridge PUD Modification, Pandion Ridge Water Park on November 15, 2022.

V. PUBLIC COMMENTS

VI. ADJOURN

NEXT REGULAR COUNCIL MEETING:
TUESDAY, NOVEMBER 15, 2022, 5:00 P.M.



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Administration

Description of Topic:

Work Session 11/08/2022

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Work Session 11/08/2022

**MINUTES OF
ORANGE BEACH CITY COUNCIL
WORK SESSION
NOVEMBER 8, 2022 – 11:00 A.M.
COASTAL ARTS CENTER**

The Orange Beach City Council met on November 8, 2022, at 11:11 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. Christmas lighting proposal for Orange Beach Middle/High School and Performing Arts Center.
2. PUD requests by property owners adjacent to Turquoise Place.
3. School Board appointments.
4. Bama Bayou/Wharf property development agreement.
5. Stop loss insurance.
6. Coastal Arts Center pavilion proposal.
7. Personnel.
8. City Hall renovation.
9. Cost-Of-Living Adjustment vs. One-Time Payment for city employees.
10. CoastAL Beach Development update.
11. Logistics Division.
12. Alabama League of Municipalities event.
13. Men's healthcare clinic proposal.
14. Social media record keeping proposal.
15. Beach express bridge negotiation update.
16. Executive Session. **Motion made (Mitchell/Boyd) to enter into executive session.** Jamie Logan, City Attorney, stated that the purpose of the executive session was to discuss ongoing and threatened litigation. Mayor Kennon stated that the executive session would take approximate 15 minutes and that Council would not reconvene following the executive session. **Motion carried (6-0).** The executive session began at 2:23 P.M.

There being no further business, the meeting adjourned.

Time: 2:45 P.M.

APPROVED this 6th day of December, 2022.

Renee Eberly
City Clerk

ITEM 1.



COMMITTEE OF THE WHOLE MEETING NOVEMBER 15, 2022

Departments: No Department Selected

Description of Topic:

Resolution awarding the bid for Cross Lane Dune Walkover Post-Hurricane Sally Repairs.
(NW/RE)

Action Options/Recommendation:

Bid opening scheduled for December 1st.

Source of Funding (if applicable) :

ITEM 2.



COMMITTEE OF THE WHOLE MEETING NOVEMBER 15, 2022

Departments: Coastal Resources

Description of Topic:

Resolution authorizing execution of a task order with Sawgrass Consulting to provide land surveying services for the subdivision of the Coastal Resources Office Property on Walker Avenue in an amount not to exceed \$3,500. (PW)

Action Options/Recommendation:

This will include a metes and bounds legal description and exhibit drawing to be part of the Auburn University lease.

Source of Funding (if applicable) :

Coastal Resources Professional Fees.

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Task Order

RESOLUTION NO. 22-xxx

**A RESOLUTION AUTHORIZING EXECUTION OF A
TASK ORDER WITH SAWGRASS CONSULTING, LLC
TO PROVIDE LAND SURVEYING SERVICES FOR THE SUBDIVISION OF THE
COASTAL RESOURCES OFFICE PROPERTY ON WALKER AVENUE
IN AN AMOUNT NOT TO EXCEED \$3,500**

FINDINGS:

1. The Orange Beach City Council, by Resolution No. 20-220, adopted November 17, 2020, approved a contract with Sawgrass Consulting, LLC, to perform certain professional engineering and construction management 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 Coastal Resources Director has submitted the Task Order attached as Exhibit A for Council approval.
4. The proposed Task Order requires Sawgrass Consulting, LLC, to provide land surveying services for the subdivision of the Coastal Resources Office Property on Walker Avenue.
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 Sawgrass Consulting, 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 \$3,500 to Sawgrass Consulting, LLC to complete the Task Order as presented; and
3. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 6th DAY OF DECEMBER, 2022.

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. 22-xxx, which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk



30673 Sgt. E. I. "Boots" Thomas Drive, Spanish Fort, AL 36527
202 Government Street, Suite 225, Mobile, AL 36602
P: 251-544-7900
sawgrassllc.com

November 9, 2022

Phillip West
Coastal Resources Manager
City of Orange Beach
4697 Walker Avenue
Orange Beach, AL 36561

RE: City of Orange Beach/Auburn University Parcel – Coastal Resources Property

Dear Phillip:

Sawgrass Consulting, LLC (Sawgrass) is honored to provide you with our proposal to provide Land Surveying Services for the subdivision of the Coastal Resources Office Property on Walker Avenue and preparation of the lease exhibits and legal descriptions for the lease with Auburn University. Our scope of service fees are as follows:

- **2 Lot Minor Subdivision**

LUMP SUM \$3,500.00

Includes minor subdivision plat, legal descriptions and exhibits for lease documents with Auburn University.

Fees are based upon the agreed upon hourly rates in the Master Professional Services Agreement between the City of Orange Beach and Sawgrass. If you have any questions, please do not hesitate to contact me at 251.234.0229. Thanks again for the opportunity.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ercil E. Godwin', written over a horizontal line.

Ercil E. Godwin, PLS
Vice President

Tony Kennon
Mayor, City of Orange Beach



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Coastal Resources

Description of Topic:

Resolution authorizing the execution of a Covenant of Purpose, Use and Ownership with the Gulf Coast Ecosystem Restoration Council for the Expansion of the Orange Beach Wildlife Rehabilitation and Education Program. (NW)

Action Options/Recommendation:

The Restore Act SEP Sub-award agreement requires that this covenant be executed ensuring the City improves real property utilizing federal fund and therefore the federal interest in said project/improvements for the estimated useful life.

Source of Funding (if applicable) :

This is a Restore Act State Expenditure Plan funded project.

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Agreement

RESOLUTION NO. 22-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
COVENANT OF PURPOSE, USE AND OWNERSHIP WITH THE
GULF COAST ECOSYSTEM RESTORATION COUNCIL FOR THE EXPANSION OF THE
ORANGE BEACH WILDLIFE REHABILITATION AND EDUCATION PROGRAM**

FINDINGS:

1. The City of Orange Beach received a Notice of Award from the Alabama Department of Conservation and Natural Resources, acting as Administrative Agent for the Gulf Coast Ecosystem Restoration Council, offering RESTORE Act State Expenditure Plan financial assistance for the expansion of the Orange Beach Wildlife Rehabilitation and Education Program.
2. On October 4, 2022, City Council adopted Resolution No. 22-195 authorizing the execution of a Subaward Grant Agreement with the Alabama Department of Conservation and Natural Resources (ADCNR) agreeing to the provisions of the grant for the interior buildout of the Wildlife Center.
3. The Subaward Grant Agreement requires that, as stated in the Covenant of Purpose, Use and Ownership, the City holds title to the project property in trust for the public purposes of the project and not sell, transfer, convey, assign, mortgage or in any other manner encumber the property, or use the property for purposes other than as a wildlife center.
4. After having reviewed said Covenant (attached Exhibit A), 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 the Covenant in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the Gulf Coast Ecosystem Restoration Council, 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 6th DAY OF DECEMBER, 2022.

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. 22-xxx, which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 15th day of November, 2022 (hereinafter referred to as the “Covenant”), by and between **City of Orange Beach, a municipal corporation**, whose address is **4099 Orange Beach Blvd** (hereinafter with its successors and assigns called “Subrecipient”); and the **GULF COAST ECOSYSTEM RESTORATION COUNCIL**, whose address is 500 Poydras Street, Suite 1117, New Orleans, LA 70130 (hereinafter with successors and assigns called “Council”).

RECITALS

WHEREAS, **THE ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, acting as the Administrative Agent for the ALABAMA GULF COAST RECOVERY COUNCIL**, (hereinafter called the “Recipient”) submitted an application to Council under the Oil Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf States Act (RESTORE Act; Title I, Subtitle F of Public Law 112-141) (hereinafter the “Act”); and

WHEREAS, by Notice of Award issued May 13, 2022, Council offered to Recipient a financial assistance award designated as Grant No. GNSSP22AL0043-01-00 (hereinafter called “Award”) in the amount of Four Hundred Seventy-Two Thousand two hundred fifty-five and 0/100 Dollars (\$472,255.00) (hereinafter called “Award Amount”), to assist in financing eligible real property activities (hereinafter called “Project”) and development pursued by the Subrecipient; and

WHEREAS, Recipient and Subrecipient executed a sub-award agreement No. S1P3-OBWC “State Expenditure Plan #3:Expansion of the Orange Beach Wildlife Rehabilitation and Education Program”, dated June 21, 2022, (hereinafter called “Subaward Agreement”) in the amount of Four Hundred Twenty-Four Thousand Four Hundred Fifty and 0/100 Dollars (\$424,450.00) federal funds where Recipient agreed to disburse Federal award funds to Subrecipient to implement the Project; and,

WHEREAS, to execute the Project, Subrecipient has acquired or improved the property described in Exhibit A, in whole or in part with funds made available through the Award. Exhibit “A” is attached hereto and incorporated herein (hereinafter called “Property”); and

WHEREAS, Recipient accepted the Award (together with all documents attached thereto or incorporated therein, the “Award Agreement”), thereby binding itself and making itself subject to the terms and conditions contained in the Award Agreement including, without limitation, the applicable requirements of 31 Code of Federal Regulations (C.F.R.) Part 34 and 2 C.F.R., Part 200, adopted by the Council at 2 C.F.R. 5900.101, as applicable; and

WHEREAS, in executing the Subaward Agreement, Subrecipient agreed to be subject to the terms and conditions contained in the Award Agreement including, without limitation, the applicable requirements of 31 C.F.R. Part 34 and 2 C.F.R., Part 200, as applicable; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides that Subrecipient holds title to the Property in trust for the public purposes of the Project, namely to use the Property for purposes of building out 2,368 square feet of building interior of a structure set aside in a city owned complex for the new Wildlife Center, further described in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), and

WHEREAS, under the authority of the Act, the Award Agreement, and the Sub-Award Agreement, Subrecipient may not use the Property for purposes other than Project Purposes and may not sell, transfer, convey, assign, mortgage or in any other manner encumber the Property without prior written approval from the Council, unless Council is repaid its Federal Interest in the Property, as defined and more particularly described herein; and such alienation and use being prohibited by 31 C.F.R. Part 34, as applicable, and the Award Agreement, without the prior written approval of the Council; and

WHEREAS, Subrecipient, as owner of all or part of the Property, agreed to record this Covenant in the Records of the Judge of Probate Court of Baldwin County, the appropriate office for the recording of public records affecting real property in the jurisdiction where the Property is located so as to constitute notice to all persons of the restrictions contained herein on title to and use of the Property for the benefit of the public purposes of the Project; and

WHEREAS, the Records of the Judge of Probate Court of Baldwin County Alabama located at 220 Courthouse Square, Bay Minette, Alabama 36507 is the proper office to record this Covenant.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by the Council and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both the Council and by the Subrecipient, Subrecipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is fifty (50) years from the date of project completion for the Project (hereinafter referred to as the "Estimated Useful Life"), a copy of which will be provided by the Subrecipient to Council. During the Estimated Useful Life of the project, the Subrecipient holds its interest in the Property in trust to carry out the public purposes of the Project.
2. Subrecipient agrees that, for the Estimated Useful Life of the Project, the Subrecipient will not sell, transfer, lease, convey, encumber, or mortgage any interest in the Property without

the Council's prior written approval, and the Subrecipient shall not use the Property for purposes other than the Project Purposes without the Council's prior written approval. Such approval may be conditioned, among other things, on Subrecipient's payment to the Council of the Federal Interest in the Property, calculated as the percentage of the current fair market value of the Property attributable to the Council's participation in the Project.

3. Subrecipient further covenants that, during the Estimated Useful Life of the Project, the Subrecipient will compensate the Federal Government for the Federal Interest in the Property in the event the Property is used for purposes other than Project Purposes, or is sold, leased, transferred, conveyed, encumbered, or mortgaged without the prior written approval of the Council.
4. Subrecipient further agrees that, as a condition to accepting the disbursement of any portion of the Award Amount from the Council, Subrecipient shall execute and place on record against the Property this Covenant and shall provide the Council and Recipient with evidence of such recordation. The Council will in its sole discretion determine whether this Covenant is satisfactory and may require an opinion of counsel for the Subrecipient that the Covenant is valid and enforceable according to its terms, that there is no lien or other encumbrance superior to the Covenant and that the Covenant has been properly recorded.
5. Subrecipient further agrees that whenever the Property is sold, leased, or otherwise conveyed, Subrecipient or the transferor shall add to the instrument of conveyance, pursuant to the authorization 2 C.F.R. 200.316, a Covenant of Purpose, Use and Ownership. The Council will, in its sole discretion, determine whether such covenant is satisfactory. In connection with any such transfer, the Council may require an opinion of counsel for the Subrecipient that the covenant is valid and enforceable according to its terms and has been properly recorded.
6. Subrecipient further agrees that property project will not be used in violation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the Americans with Disabilities Act (42 U.S.C. § 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which laws prohibit discrimination on the basis of race, religion, national origin, or disability.
7. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control and possession of or title to the Property given the Federal Interest expressed herein.
8. This Covenant shall be construed in a manner consistent with the terms and conditions of the Award and Subaward Agreements and applicable regulations; provided, however, that if

there is a conflict, the terms and conditions of the Award and Subaward Agreements shall control.

IN WITNESS WHEREOF, a duly authorized officer of the Subrecipient has hereunto set his hand as the day and year first above. A completed duly recorded copy of this Covenant shall be forwarded to the Council.

SUBRECIPIENT: City of Orange Beach

By: _____

Printed Name: Tony Kennon

Title: Mayor

STATE OF ALABAMA:

COUNTY OF MONTGOMERY:

I, the undersigned Notary Public in and for said State, hereby certify that Tony Kennon, as Mayor of the City of Orange Beach, a City in the State of Alabama, is signed to the foregoing Covenant of Purpose, Use and Ownership and is known to me, acknowledged before me on this day that, being informed of the contents of such Covenant, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said agency.

Given under my hand and seal this ____ day of November 2022.

(NOTARIAL SEAL)

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT A
Legal Description of Property

2,368 square feet of building interior of a structure set aside in a city owned complex for the new Wildlife Center, further described in the Award Agreement currently located on the following parcel:

That parcel of land bounded by a line commencing at the Northeast corner of the Northwest Quarter of Section 12, Township 9 South, Range 4 East running thence South 792 feet, thence West 550 feet, thence North 792 feet, thence East 550 to the point of beginning, and being situated in Section 12, Township 9 South. Range 4 East, Together with the right of ingress and egress to said property, Baldwin County, Alabama.



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Administration

Description of Topic:

Resolution authorizing the renewal of the lease agreement with the Bear Point Civic Association for property located at the end of Mississippi Avenue. (PW/JL)

Action Options/Recommendation:

This gives the City permission to repair the park and rebuild the pier at Mississippi Avenue and FEMA will reimburse the City 90% of the cost of repair.

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Agreement

RESOLUTION NO. 22-xxx

**A RESOLUTION AUTHORIZING THE RENEWAL OF THE
LEASE AGREEMENT WITH THE BEAR POINT CIVIC ASSOCIATION
FOR PROPERTY LOCATED AT THE END OF MISSISSIPPI AVENUE**

FINDINGS:

1. The City and the Bear Point Civic Association, Inc. previously entered into a Lease Agreement dated May 1, 2007, for a portion of land located at the end of Mississippi Avenue for the purpose of creating a community park and a canoe trail stop.
2. The Lease Agreement expired and was renewed by Council Resolution No. 12-103, on August 21, 2012.
3. The renewal Lease Agreement has now expired, and the Council has determined that it is in the best interest of the City and its residents to renew the lease to expire on November 15, 2027, and thereafter, upon agreement of the parties, to be renewed every five (5) years.

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

1. That the Mayor and City Clerk are hereby authorized to execute and attest, respectively, the agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the Bear Point Civic Association, 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 upon its adoption.

ADOPTED THIS 6th DAY OF DECEMBER, 2022.

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. 22-xxx, which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk

STATE OF ALABAMA

COUNTY OF BALDWIN

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into on the undersigned date by the Bear Point Civic Association, Inc., an Alabama non-profit corporation, hereinafter Lessor, and the City of Orange Beach, an Alabama municipal corporation, hereinafter Lessee.

WITNESSETH:

1. Premises. Lessor hereby leases to Lessee, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated in the County of Baldwin, State of Alabama, and more particularly described in Exhibit A, attached hereto and incorporated herewith.

2. Term. The term of this Lease shall commence upon its approval by the City Council and expire November 15, 2027. Such lease term may be extended for additional terms of five (5) years each, by written notice from the Lessor to the Lessee. All terms and conditions of this Lease will remain in full force and effect during any extended lease term.

3. Rent. Lessee shall pay to Lessor the sum of One and No/100 Dollars (\$1.00) for each year as rent for the lease property, payable in advance. Rent shall be payable to the Lessor at the address specified for notices herein or at such other address as Lessor may from time to time designate in writing.

4. Early Termination. Lessee may terminate this Lease effective at any time on or after it commences by giving written notice to the Lessor at least thirty (30) days prior to the date that such termination shall become effective.

5. Property Taxes. Lessor remains solely responsible for the payment of any and all property taxes on the property.

6. Notices. All notices or correspondence provided for herein shall be effective only if made in writing, personally delivered with an executed acknowledgement of receipt, or deposited in the United States Mail, properly addressed, certified and postage prepaid as follows:

To Lessor:

Bear Point Civic Association, Inc.
Post Office Box 12
Orange Beach, Alabama 36561

To Lessee: City of Orange Beach, Alabama
Attn: City Clerk
Post Office Box 458
Orange Beach, Alabama 36561

Required Copy To: City of Orange Beach
Attn: City Attorney
Post Office Box 458
Orange Beach, Alabama 36561

Any notice shall be deemed delivered (i) five (5) days after the notice is mailed, or (ii) if personally delivered, when acknowledgement of receipt is signed, as provided above, or (iii) for any notice by overnight courier, the next business day after deposit with the courier. By written notice to the other, either party may change its own mailing address.

7. Lessee Improvements. The purpose of this Lease is to enable the Lessee to use the property as a public recreational area and a stop on the City's Canoe Trail. Lessee agrees to maintain, at its sole cost and expense, the following improvements previously constructed by Lessee under the original lease agreement:

- a. Sod, trees, ground cover and other landscaping as necessary, sprinkler or other irrigation systems.
- b. The appropriate ADA compliant walkway to the pier, with appropriate handrails.
- c. The picnic table and pavilion with metal roofing.
- d. The sand area at the beach.
- e. The children's play area, with sand or other appropriate materials.
- f. The appropriate signage with information concerning the park, including regulations prohibiting vehicle access for launching of boats and jet skis, no glass containers, and any other public safety-related or other information signage deemed necessary by Lessee.
- g. The wooden privacy fencing.

Lessee additionally agrees that no advertising, commercial, or other private signage will be allowed on the property.

8. Use. Lessee shall use the premises for a public recreation area, including a stop for the City's Canoe Trail. Lessee may alter said use to any lawful purpose, upon the written consent of the Lessor, which consent shall not unreasonably be denied.

9. Compliance with Laws. Lessor represents and warrants to Lessee that, to the best of its knowledge, the current and proposed uses are in full compliance with applicable building codes, environmental zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. Lessee absolves Lessor of legal or other responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances listed above.

10. Hazardous Substances. Lessee shall have no liability or responsibility for toxic or hazardous materials or substances in existence in, on, or about the premises prior to Lessee's occupancy of the premises or which result from Lessor's acts or omissions, or which occur on any portion of the premises not occupied by Lessee, unless caused by Lessee, its agents, employees, invitees or guests. Lessor specifically warrants that at the time of execution of this Lease, there are no known areas in, on, or about the premises where hazardous or toxic materials or substances (including asbestos or PCBs) have been used stored or deposited. Lessee will comply with all applicable laws concerning the handling or discharge of hazardous materials.

11. Services, Utilities. Any necessary services and utilities will be furnished, and the cost borne by the Lessee.

12. Indemnification.

a. Lessor's Obligation. Lessor shall indemnify, defend and hold harmless Lessee, its officers, agents and employees from and against any claims, damages, costs, expenses or liabilities (collectively "Claims") arising out of or in any way connected with this Lease including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of Lessor, its officers, partners, agents or employees.

b. Lessee's Obligation. Lessee shall indemnify, defend and hold harmless Lessor, its officers, agents and employees from and against any claims, damages, costs, expenses or liabilities (collectively "Claims") arising out of or in any way connected with this Lease including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of Lessee, its officers, partners, agents or employees.

13. Insurance Requirements.

a. Lessee's Insurance. Lessee, at its sole cost and expense, shall insure its activities in connection with this Lease and obtain, keep in force, and maintain sufficient insurance for those purposes.

b. Lessor's Insurance. Lessor, at its sole cost and expense, shall insure its activities in connection with this Lease and obtain, keep in force, and maintain sufficient insurance for those purposes.

14. Waivers of Subrogation.

Lessor and Lessee hereby waive any right of recovery against the other due to loss of or damage to the property of either Lessor or Lessee when such loss or damage to the property arises out of an Act of God or any property peril, whether or not such peril has been insured, self-insured or non-insured.

15. Repair and Maintenance.

Lessee shall pay all costs and assume all risks in doing work, or in carrying out construction, maintenance, upkeep and landscaping on the property in accordance with this Lease.

16. Alterations, Mechanics' Liens.

a. Alterations. Lessee may perform structural alterations or improvements to the property in order to maintain and/or further enhance the safety and beauty of the property, without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

b. Condition at Termination. Lessee may remove any fixtures machinery and equipment installed on the property by Lessee upon termination of this Lease if Lessee is not then in default under this Lease and if Lessee repairs any damage to the property caused by such removal. Upon termination of this Lease Lessee shall return the property to the same condition as when delivered to Lessee, reasonable wear and tear, damage by casualty, and alterations approved by Lessor excepted.

c. Mechanics' Liens. The parties shall keep the property free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by the parties.

17. Assignment and Subletting.

Lessee shall not assign or sublet all or any portion of the property without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

18. Destruction. If the property is totally destroyed by fire or other casualty, either party may terminate this Lease by giving notice to the other party. If at any time the property is partially or totally destroyed, Lessee may terminate the lease by written notice to Lessor within thirty (30) days of the loss, if such loss is not covered by any insurance described herein. If such loss is covered or Lessee elects not to terminate even though the loss is not covered, Lessee must restore the improvements to substantially the same conditions as they were in immediately before destruction or as close as possible thereto provided Lessee has not terminated the Lease as provided herein.

19. Default by Lessee.

a. Default. If any of the following events occur, each such event shall constitute a material breach of this Lease and Lessor may, at its sole option, exercise any or all rights available to it under the laws of the State of Alabama:

(1) A default in the payment of rent when such default continues for a period of sixty (60) days after written notice; or

(2) Lessee fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of sixty (60) days after written notice thereof. If the nature of Lessee's obligation is such that more than sixty (60) days are required for performance, then Lessee shall not be in default of Lessee commences performance within such sixty (60) day period and thereafter diligently works to complete same.

b. Remedies. If this Lease terminates pursuant to a default by the Lessee hereunder, Lessor may immediately enter upon and repossess the property in accordance with applicable laws and cause any personal property of Lessee to be removed from the property and stored in any public warehouse at the risk and expense of the Lessee.

20. Holding Over. If Lessee remains in possession of the Property after the Lease Term or any Extended Term, this Lease shall automatically be extended on a yearly basis at the annual rent applicable to the last month of the Lease Term or Extended Term. All other terms and conditions shall remain in full force and effect.

21. Waiver. The waiver by Lessor or Lessee of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, nor shall either party's consent to any breach of any term, covenant or condition be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

22. Quiet Possession. As long as the Lessee keeps and performs the covenants in this Lease, Lessee shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the property, without suit, trouble, or hindrance from Lessor or any person claiming under Lessor.

23. Subordination. This Lease shall be subject and subordinated to the lien of any mortgages and deeds of trust which are hereafter placed against the Lessor's interest or estate in the Property provided that the mortgagee or beneficiary under such mortgage or deed of trust shall agree in writing that, in the event of a foreclosure of same or of any other such action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be barred, terminated, cut off, or foreclosed, nor will the rights and possession of Lessee hereunder be disturbed if Lessee shall not then be in default under the terms of this Lease, and Lessee shall attorn to the purchaser at such foreclosure, sale or other action or proceeding, provided that such purchaser shall assume the obligations of Lessor hereunder. The foregoing subordination shall be

effective without the necessity of having any further instruments executed by Lessee, but Lessee shall nonetheless execute, upon demand, such further instruments evidencing such subordination as may be reasonably requested by Lessor or any mortgagee or beneficiary.

24. Estoppel Certificate. Within thirty (30) days of written notice of one party to the other, each will execute, acknowledge, and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the Lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

25. Miscellaneous Provisions.

a. No Amendments. No amendment of this Lease shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on either of the parties hereto.

b. Time of the Essence. Time is of the essence of each term and provision of this Lease.

c. Binding Effect. Subject to any provision herein restricting assignment or subletting by the Lessee. This Lease shall bind the parties their personal representatives, successors, and assigns.

d. Invalidity. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision herein.

e. Warranty of Authority. If Lessor is a corporation, the person executing this Lease on behalf of the Lessor hereby covenants and warrants that Lessor is a duly authorized and existing corporation and that he/she is duly authorized to execute this Lease on behalf of said corporation.

f. Addendum. In the event of conflict between this Lease and any Addendum or Exhibit attached hereto, the provisions of such Addendum or Exhibit shall control.

CITY OF ORANGE BEACH, ALABAMA
Lessee

By: _____
Tony Kennon, Mayor

Attest:

Renee Eberly, City Clerk

BEAR POINT CIVIC ASSOCIATION, INC.
Lessor

By: _____
Its: President

Attest:

Its: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned notary public in and for said county and state, hereby certify that _____, whose name as President of the Bear Point Civic Association, Inc., Inc., an Alabama Non-Profit Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the said conveyance, he/she, 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 official seal on this ____ day of _____, 2022.

NOTARY PUBLIC, STATE OF ALABAMA
My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, do 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 instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation, on the day same bears date.

Given under my hand and official seal on this ____ day of _____, 2022.

NOTARY PUBLIC, STATE OF ALABAMA
My Commission Expires: _____



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Coastal Resources

Description of Topic:

Resolution to provide commitment to develop the Orange Beach Stormwater Master Plan and ensure payment of the city share of funding as awarded by the Alabama Department of Conservation and Natural Resources through the RESTORE Act Water Quality Program. (WS/NW)

Action Options/Recommendation:

The Orange Beach Stormwater Master Plan Project proposes development of a drainage basin study of the Bear Point Drainage that will map existing stormwater conveyance infrastructure, model current and future storm event scenarios to identify areas of flooding concern and develop best management practices to improve stormwater attenuation and treatment. The intent of the study is to enhance resiliency in these areas by identifying, planning and implementing projects that will benefit the residents and the city and also better fortify the City's infrastructure in these areas to better withstand the effects of short- and long-term sea level rise. This project will complement efforts to expand regional stormwater management planning. Once implemented, these projects will improve community resilience.

Source of Funding (if applicable) :

Total project is \$250,000. RESTORE will fund 75% (\$187,500) and the City will fund 25% (\$62,500).

ATTACHMENTS:

- Description
- ▣ Resolution

RESOLUTION NO. 22-xxx

**A RESOLUTION TO PROVIDE COMMITMENT TO DEVELOP THE
ORANGE BEACH STORMWATER MASTER PLAN AND
ENSURE PAYMENT OF THE CITY SHARE OF FUNDING AS AWARDED BY THE
ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
THROUGH THE RESTORE ACT WATER QUALITY PROGRAM**

FINDINGS:

1. Alabama, through the Alabama Department of Conservation and Natural Resources (ADCNR), requested funding for the Coastal Alabama Regional Water Quality Program.
2. The program will support the primary RESTORE Comprehensive Plan goal to restore water quality and quantity. The program and projects included for implementation may include, but are not limited to: planning related work (e.g., project prioritization and selection, engineering and design (E&D), and permitting and compliance activities), construction of or upgrades to stormwater and wastewater management systems, low impact development/green infrastructure activities, and septic to sewer conversions.
3. The Coastal Alabama Regional Water Quality Program was approved for funding in 2021 by the federal Gulf Coast Ecosystem Restoration Council as part of its funded priorities list.
4. The Alabama Department of Conservation and Natural Resources solicited project applications for the next round of funding.
5. The City of Orange Beach Stormwater Master Plan Project proposes development of a drainage basin study of the Bear Point Drainage that will map existing stormwater conveyance infrastructure, model current and future storm event scenarios to identify areas of flooding concern and develop best management practices to improve stormwater attenuation and treatment.
6. In order for approval to be granted by the Alabama Department of Conservation & Natural Resources, a commitment must be provided by the City to develop the plan and ensure payment of the city 25% share of costs as represented in the grant request for funding of \$250,000 total.
7. The City of Orange Beach commits to providing \$62,500 in city funds to complete the project.
8. City Council has determined that development of a Stormwater Master Plan provides a positive benefit to the welfare of the general public.

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

1. That upon notification by the Alabama Department of Conservation and Natural Resources that funds have been awarded to the City for the development of the Orange Beach Stormwater Master Plan as represented in the grant request for funding, the City of Orange Beach shall develop a drainage basin study and provide payment for the city share of the professional engineering activities and costs; and
2. That this Resolution shall become effective upon its adoption.

ADOPTED THIS 6th DAY OF DECEMBER, 2022.

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. 22-xxx , which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: Coastal Resources

Description of Topic:

Resolution establishing fees for equipment rental at the City of Orange Beach Wind and Water Learning Center. (PW)

Action Options/Recommendation:

A resolution establishing fees for equipment rental at the City of Orange Beach Wind and Water Learning Center. There have been numerous requests for kayak, sailboat, and paddleboard rentals at the W&WLC from Orange Beach locals and tourists, alike. The W&WLC currently has 23 kayaks, eight Sunfish, and nine Optimist sailboats in good condition with all of the associated rigging and gear necessary to paddle or sail them. There have been numerous requests for kayak, sailboat, and paddleboard rentals at the W&WLC from Orange Beach locals and tourists, alike. The W&WLC currently has 23 kayaks, eight Sunfish, and nine Optimist sailboats in good condition with all of the associated rigging and gear necessary to paddle or sail them.

Source of Funding (if applicable) :

None.

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Proposal

RESOLUTION NO. 22-xxx

**A RESOLUTION ESTABLISHING FEES FOR EQUIPMENT RENTAL AT THE
ORANGE BEACH WIND AND WATER LEARNING CENTER**

FINDINGS:

1. The Orange Beach City Council finds it to be in the best interest of the City of Orange Beach to adopt by resolution this schedule of fees for the Orange Beach Wind and Water Learning Center.

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

1. That the following fees are hereby established and shall be required to be paid to the City of Orange Beach for the use of the Orange Beach Wind and Water Learning Center with the condition that to be eligible for Wind & Water Learning Center equipment rentals, individuals must be 18 years or older, provide a government issued photo ID, pass an annual skills assessment, and be knowledgeable of boating rights of way and marine channel markers:

Kayak and Stand Up Paddleboard Rental Rate

Standard	\$25 per hour, \$65 per half day, \$45 5pm - sunset
City Employee	\$15 per hour, \$55 per half day, \$35 5pm - sunset

Sunfish Rental Rate

Standard	\$40 per hour, \$85 per half day, \$55 5pm - sunset
City Employee	\$30 per hour, \$75 per half day, \$45 5pm - sunset

Skills Assessment Fee (required for any new renter)

Kayaks and Stand Up Paddleboard	\$40 standard / \$30 city employee
Sunfish	\$60 standard / \$50 city employee

Skills Assessment Review Fee (required annually for established renters)

Kayaks and Stand Up Paddleboard	\$20 standard / \$10 city employee
Sunfish	\$40 standard / \$30 city employee

2. That renters shall be required to sign a waiver of liability, wear a USCG approved Type III PFD and carry a communication device at all times while on the water; and
3. That this resolution shall become effective immediately upon adoption.

ADOPTED THIS 6th DAY OF DECEMBER, 2022.

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. 22-xxx, which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk

Overview of equipment rental program:

There have been numerous requests for kayak, sailboat, and paddleboard rentals at the W&WLC from Orange Beach locals and tourists, alike. The W&WLC currently has 23 kayaks, eight Sunfish, and nine Optimist sailboats in good condition with all of the associated rigging and gear necessary to paddle or sail them.

I propose that an equipment rental program be created in tandem with an on-the-water skills assessment (specific to the equipment requested) that will be mandatory for any person wishing to rent kayaks or sailboats. Failure to pass the skills assessment will prevent the person from renting equipment that they are not competent in handling. A signed Waiver of Liability, use of a USCG approved Type III personal floatation device at all times while on the water, and possession of a functioning communication device on board the rental (marine radio / cell phone) will be required by all renters.

Equipment rentals will be limited to the days and hours that W&WLC staff are on-site and available to support renters with basic first aid, capsize recovery, and/or towing from a motorized support boat. Water and air temperatures will be taken into account along with the renter's cold water gear for the associated temperatures to ensure the safety of the person in the event of a capsize. June - July months will be excluded for rentals, unless the W&WLC has a designated, qualified staff person and motorized support boat outside of Sail Camp staff and motorized support boat fleet. This is to ensure the availability of safety equipment and staff support for all program participants (Sail Camp AND renters) at the W&WLC. Major summer holidays will also be excluded from rentals.

Paddling and sailing areas for any renter will be limited to south of the ICW. Crossing the ICW is not permitted- this would mark the north boundary. The Cypress Avenue canoe launch marks the west boundary, and Harrison Park canoe launch in Bay la Launch marks the east boundary. Public and private shorelines make up the entire south boundary of the proposed rental equipment use area. This area has low currents, and typical waves heights of less than 1.0 foot.

This program and all educational components will be overseen by W&WLC staff holding ACA Coastal Kayak Instructor Level 2 certification, US Sailing Small Boat Level 1 certification, CPR certification, and Wilderness First Responder certification.

This equipment rental plan is in line with our mission statement of providing locals and guests coastal access, equipment, and education in paddling and sailing sports. Safety will be at the forefront of this program and any other that is operated at the W&WLC.

REQUIREMENTS AND TERMS

When you rent a sailboat, kayak, or stand up paddleboard you are required to rig and de-rig (if applicable), launch and land, clean up and properly store your boat and associated equipment. If you have not rented with us before, you must pass a skills assessment (includes an intro to our facility, dock, boats and best launching/landing practices). A skills assessment which includes on-the-water practice is required of everyone on an annual basis (no exceptions). Once you pass your skills assessment for the initial year, you are eligible to rent until next year and can recertify/review at that point.

To enjoy access to our rental fleet at great rates you must:

- Be over the age of 18.
- Provide a government issued photo ID for all rentals.
- Have at least one person in their boat with sailing experience or in their group with kayaking/paddleboarding experience, and have knowledge of the right of way and local water body.
- Wear a USCG approved Type III PFD at all times while on the water.
- Have a communication device with you at all times while on the water.
- Be responsible for any damages to the boat or equipment during use including total loss.
- Sign a waiver accepting responsibility for any damages or injuries arising from your use of the rental.
- Pass a written and on-the-water skills assessment prior to obtaining access to the rental equipment
 - For people who do not pass the on-the-water skills assessment, we recommend scheduling a private or small group lesson to hone your sailing or paddling skills.

Renters agree to:

1. Navigational Limitations: The Renter agrees to restrict the operation of the boat to the following described area: The waters Wolf Bay and Bay la Launch south of the Intercoastal Waterway.

2. Renter declares that he/she is experienced and qualified to handle the boat rented herein, and has passed the Skills Assessment required by the W&WLC.

3. The Renter covenants and agrees that the boat will be operated in a safe and careful manner and with due diligence and shall be returned with equipment and boat in same condition as when taken, ordinary wear and tear excepted.

4. During the term of this agreement the Renter shall be in full control of the boat and it is expressly understood that the Renter is not the agent, servant or employee of the Owner, in any way whatsoever, and that the Owner is not responsible for injuries sustained by Renter, his guests and employees.

5. The boat shall be used exclusively as a pleasure vessel for the safe and proper use of the Renter during the term of this agreement and shall not be used to transport merchandise, nor passengers for hire or for pay.

6. Owner herein assumes no responsibility for weather conditions which may arise or occur during the term of this agreement, and all rates and agreements will continue in full force and effect until the return of the boat to Owner.

7. The Renter further agrees:

- a) To notify the Owner immediately of any accident involving the boat
- b) On demand, to reimburse the Owner for the cost of all damages to the boat and equipment resulting from accident, collision, theft or loss.
- c) To release the owner and/or boat from any claim for loss and/or injury of any nature whatsoever
- d) To indemnify and save the Owner and/or boat harmless from any claim for liability for loss and/or injury to any other boat, property or persons, including all occupants of the boat hereby rented, by reason of accident involving the said boat during this rental or as a result of the operation of the boat in violation of any law or ordinance.

8. This contract constitutes the entire agreement by and between the parties hereto and no oral or implied agreement or understanding shall cancel or vary the terms of this contract unless reduced to writing and signed by the parties hereto.

9. Both parties acknowledge that they have read the foregoing provisions all of which they are in complete understanding and agreement.

10. Alcoholic beverages are prohibited on all vessels.

11. Boat shall be returned by time agreed or an hourly charge of \$75.00 for each additional hour or fraction thereof will be due.

I accept and agree to the above terms.

Vessel type:	Initial Skills Assessment (2 hr)	Recertify/Review annually (1 hr)
Sunfish	\$60	\$40
Touring Kayak/SUP	\$40	\$20

Curriculum to be covered in skills assessment course:

- Proper PFD fit and Swim Capability Check
- Weather awareness and response
- Launching and landing
- Right of Way and Boater Awareness on the water
- Capsize Recovery
- Basic maneuvers specific to requested equipment
- Review of permitted recreation area using a chart
- Float plans and emergency contact information

Rental Timeframes & Rates:

Monday - Friday 10AM - 4PM / 5PM - sunset.

**The rental fleet is available by reservation or on an "as available" basis with priority given to scheduled classes and programs.

Vessel type:	Hourly:	Day:	Weekday Evening (5PM - Sunset):
Kayak/SUP	\$25	\$65	\$40
Sunfish	\$40	\$85	\$55

*City of Orange Beach employees receive a \$10 discounted rate on all Skills Assessment fees and rental rates.

Current Equipment Inventory:

Kayaks:

- (4) Perception 14.0 Carolina touring kayak single sit-in (14' length / 300 lb weight capacity)
- (2) Wilderness Systems Tsunami 145 touring kayak single sit-in (14'6" length / 350 lb weight capacity)
- (2) Wilderness Systems Tsunami 135 touring kayak single sit-in (13'5" length / 275 lb weight capacity)
- (4) Alchemy 14.0 S touring kayaks single sit-in (14' length / 275 lb weight capacity)
- (2) Current Design Vision 150 touring kayak single sit-in (15' length / 375 lb weight capacity)
- (4) Perception Sport single top-sit (9'5" length/ 250 lb weight capacity)
- (3) Ocean Kayak Banzai single top-sit (9'6" length/ 230 lb weight capacity)
- (2) Old Town Twister single top-sit (11'3" length/ 275 lb weight capacity)
- (20) Kayak paddles

****requested (3) tandem kayaks, (6) SUPs, and all associated gear in 2023 Budget****

Dinghies:

- (8) Sunfish sailboats with rigging (13'9" length/ 1-2 person capacity; optimal weight = 190 lbs)

Safety Gear:

- (20) Adult Type III PFDs
- (14) Youth Type III PFDs
- (2) Type IV Throwable Flotation
- (2) Tow Belts
- (2) Inflatable Paddle Float
- (1) Rescue Stirrup Strap
- (5) Marine Radios
- (2) Kayak Bilge Pumps
- (1) AED
- (2) Stocked First Aid kits in waterproof casing

****Renters will be required to comply with the cold water gear recommendations listed on the W&WLC website****

Max Weight Capacity: The weight capacity of a kayak indicates how much weight it can bear and still float. If a kayak has a listed weight capacity of 350 pounds, it does not mean that a 350-pound kayaker can paddle it. The boat would just be at the water line with most of it under the water — and there's no way the kayaker could paddle

efficiently. So when a weight capacity is indicated, the paddler size for the kayak isn't the exact weight limit listed, but minus 30% - 35% of the indicated weight capacity.

Example: For a kayak's weight limit of 350 pounds, the paddler's weight for the boat should be about 262 pounds or less, and that is only if the paddler doesn't carry any gear. The ideal weight limit is one that offers enough room for paddler, gear and equipment to paddle efficiently.

With this in mind, weight capacities for the W&WLC equipment rental forms would be listed for all models of equipment at 35% less than the manufacturer's listed capacity.

Q&A's:

Q: What if the boat becomes damaged while in use or while in my care?

A: We provide a complete list of replacement parts and prices to allow you to assess the cost for the damage for which you are responsible.

Q: How do I know what wear has been made to the Sunfish or kayak before my rental term?

A: We provide an itemized list of previous wear to the hull and other parts.

Q: Do you have lifejackets?

A: USCG Approved Type III lifejackets are included with the rental; if you have your own that is also USCG approved you are welcome to use it.

Q: Can I pick up a rental boat and take it to another launch location? Do you deliver and pick up rental equipment?

A: No; all rental boats and equipment are to be launched and landed on site at the W&WLC.

Q: Do you have a waterproof case for my phone?

A: We can provide waterproof casing/dry bags for your personal items, but we are not responsible for anything that gets damaged or lost overboard.

Q: How old do my children need to be to sail or paddle alone?

A: All minors under the age of 18 must have an adult guardian in their Sunfish or with their kayak group.

To be eligible for Wind & Water Learning Center equipment rentals, individuals must be 18 years or older, provide a government issued photo ID, pass an annual on-the-water skills assessment, and be knowledgeable of boating rights of way and marine channel markers.

Renters will be required to sign a waiver of liability, wear a USCG approved Type III PFD and carry a communication device at all times while on the water.

Kayak/ SUP Rental Rate

\$25 per hour, \$65 per half day, \$45 5PM - sunset

City of Orange Beach Employee \$15 per hour, \$55 per half day, \$35 5PM - sunset

Sunfish Rental Rate

\$40 per hour, \$85 per half day, \$55 5PM - sunset

City of Orange Beach Employee \$30 per hour, \$75 per half day, \$45 5PM - sunset

Initial Skills Assessment Fee (required for any new Renter)

Kayaks/ SUP \$40 City employees \$30

Sunfish \$60 City employees \$50

Skills Assessment Review Fee (required annually for established Renters)

Kayaks/ SUP \$20 City employees \$10

Sunfish \$40 City employees \$30



**COMMITTEE OF THE WHOLE MEETING
NOVEMBER 15, 2022**

Departments: No Department Selected

Description of Topic:

Resolution authorizing execution of a performance contract with Anne B. Gajda for golf instruction services. (JL)

Action Options/Recommendation:

Source of Funding (if applicable) :

ATTACHMENTS:

Description

- ▣ Resolution
- ▣ Agreement

RESOLUTION NO. 22-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
PERFORMANCE CONTRACT WITH
ANNE B. GAJDA FOR GOLF INSTRUCTION SERVICES**

FINDINGS:

1. The City of Orange Beach and Anne B. Gajda have reached an agreement (attached Exhibit A) whereby Anne B. Gajda will provide golf instruction services for the City of Orange Beach.
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.

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 Anne B. Gajda 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 6th DAY OF DECEMBER, 2022.

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. 22-xxx, which was duly and legally adopted at a regular meeting of the City Council on December 6, 2022.

City Clerk

PERFORMANCE CONTRACT

This Agreement is made and entered into by and between the City of Orange Beach, an Alabama municipal corporation (the “City”) and Anne B. Gajda (sometimes hereinafter “Contractor”), as follows:

1. Recitals:

- a. Contractor is a golf teacher who provides instruction.
- b. The City desires to engage Contractor to provide such services for the benefit of Orange Beach residents and visitors.
- c. 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, the parties do hereby covenant and agree as follows.

2. Contractor’s Obligations:

- a. Contractor shall offer golf lessons, and related skill-development classes at the Orange Beach Golf Center.
- b. Contractor shall provide, at no charge at least twenty hours a year of golf instruction for the City’s Expect Excellence Program and/or the public schools within the City of Orange Beach.
- c. Contractor must have an Orange Beach Business License.
- d. Contractor will schedule lesson times with the Orange Beach Golf Center prior to the lessons.

3. City’s Obligations:

- a. City agrees to make available during normal operational hours an agreed portion of the range for the Contractor to provide lessons.
- b. City will provide an indoor space during weather events if the room is not previously booked.
- c. City will provide students free memberships and ten range tokens per year.

4. Compensation:

Contractor will be permitted to retain the fees earned for the instructional services provided under this Agreement.

5. Term:

The term of this agreement shall begin on December 1, 2022, and end on April 30, 2023, unless terminated earlier in accordance with paragraph 11. This agreement may be renewed annually by resolution adopted by the City Council.

6. Independent Contractor:

- a. 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 venturer 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.
- b. Contractor, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of City but shall be deemed to be an Independent Contractor in every respect and shall take all steps at its own expense, as 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 the manner in which the services by Contractor provided for herein are performed, but on the contrary, Contractor shall be wholly responsible therefor.

7. Assignment:

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.

8. Insurance:

- a. Contractor shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor under this Agreement, including the following, at a minimum:
 - i. Worker's compensation insurance as required by law; and
 - ii. Commercial general liability insurance with minimum coverage limits of \$100,000 per person and \$300,000 per occurrence, naming the City of Orange Beach and the City's officers, employees, and consultants as additional insured. The policy shall be with a carrier and in a form acceptable to the City at the City's sole discretion.
- b. Any insurance carried by the City, its officers, or its employees or contractors is excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.
- c. Contractor shall provide to the City a Certificate of Insurance as evidence that required policies are in full force and effect.

9. Indemnity:

Contractor agrees to indemnify and hold the City, its elected and appointed officials, officers, agents, and employees, harmless from all costs, liabilities and claims for damages of any kind, including interest and attorneys' fees, arising in any way out of the performance of this Agreement and/or the activities of Contractor, its principals, directors, agents, servants and employees in the performance of this Agreement, for which the City is alleged to be liable. This section is not as to third parties or to anyone a waiver of any defense of immunity or statutory damages cap otherwise available to Contractor or City and these defenses and matters may be raised in the City's behalf in any action or proceeding arising from this Agreement.

10. Compliance with Law:

Contractor hereby agrees to comply strictly with all the laws of the State of Alabama and of the United States, and the laws and ordinances of any other jurisdiction in which contractor may perform any work pursuant to this agreement.

11. Termination:

This agreement may be terminated by either party for any reason upon thirty (30) days notice of the intent to terminate.

12. 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.

13. 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 authorized representatives of the party against whom enforcement is sought.

14. 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.

15. Laws 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 would be Baldwin County, Alabama.

16. Permits, Licensing, etc:

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.

17. 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.

18. Notices:

All notices of cancellation, requests, demands, or other communications shall be in writing and duly delivered to the addresses appearing below.

City of Orange Beach:

City Clerk
Post Office Box 458
Orange Beach, Alabama 36561

With Required Copy to:

City Attorney
Post Office Box 458
Orange Beach, Alabama 36561

And to Contractor:

Anne B. Gajda
24160 Perdido Beach Blvd. #2092
Orange Beach, AL 36561

IN WITNESS WHEREOF, we have hereunto set our hands and seal on this the _____ day of _____, 2022.

CITY OF ORANGE BEACH,
An Alabama Municipal Corporation

By: _____
Mayor Anthony T. Kennon

ATTEST:

Renee Eberly, City Clerk

CONTRACTOR:

ANNE B. GAJDA

By: _____
Anne B. Gajda

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, an Alabama 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 on the _____ day of _____, 2022.

(SEAL)

Notary Public

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 Anne B. Gajda 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, she, as such owner 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 on the _____ day of _____, 2022.

(SEAL)

Notary Public

My Commission Expires: _____

ITEM 1.



COMMITTEE OF THE WHOLE MEETING NOVEMBER 15, 2022

Departments: Community Development

Description of Topic:

Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 1105-ZT-22, Zoning Text Amendments for Articles 4, 5, 8, 10, 12 & 15. (Suggested date 12/20/2022) (KA)

Action Options/Recommendation:

Source of Funding (if applicable) :
