

PERFORMANCE AGREEMENT

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

1. The Contractor is an organization with the mission to produce and promote custom car shows and events;
2. The Gulf Coast is the location of many events that have a significant positive economic impact on the City and its businesses such as, the Alabama Shrimp Festival, the Hangout Festival, Orange Beach Freedom Festival and others;
3. The City wishes to have a free-to-the-public event car show. The event is entitled Bama Coast Cruisin’ in the City of Orange Beach (“the Event”), which event is expected to draw support and participation from local citizens and businesses as well as draw visitors and guests to the City. The event will promote the health, safety, morals, security, prosperity, contentment and general welfare of the community by boosting public morale and stimulating the local economy thru increased revenues for businesses, the City, and the Gulf Coast;
4. The Contractor will hold the Event at the Orange Beach Event Center and the Wharf properties adjacent to the Event Center;
5. The City wishes to engage Contractor to bring the event to Orange Beach, and advertise and promote the City and the Alabama Gulf Coast through this Event;

NOW, THEREFORE:

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

Contractor’s Obligations

7. Contractor agrees to host the Bama Coast Cruise Event at the Orange Beach Event Center on or about April 27-29, 2023. 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.
8. Contractor shall submit to the City the following information:
 - a. A description of the event;
 - b. Photographs of the event that include photographs of the crowds in attendance, entertainment, booths, and any other activities;
 - c. Screen shots that display the use of social media, including but not limited to blogs, “likes”, and comments or reviews on visitor 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.

9. Contractor shall provide staff to set up, operate and tear down the audio / outdoor sound system provided by the City during the Event. These operators must be duly qualified and approved by the City. If said staff is not approved by the City, Contractor must hire a City approved outside third-party to operate the audio / outdoor sound system.
10. Contractor shall inspect all City sound equipment at delivery and be liable for any damages incurred as part of set up, use and tear down of the equipment.
11. Contractor shall utilize sound equipment to make public service announcements, public safety announcements and event notifications. All announcements and or music played shall be appropriate for all ages (contain no profanity, etc.).

City's Obligations

12. The City will provide Contractor the following in-kind services:
 - a. Audio / outdoor sound system support for the Event, including speakers, cords, cable ramps, mixing board and a member of the City staff to supervise installation and operation during the Event and removal of the system after the Event;
 - b. Tables – 12 tables;
 - c. Barricades – 100 barricades for public safety control.

Terms

13. This Agreement shall be effective on and after its adoption by the City Council and execution by the Mayor and shall continue in full force and effect through the completion of the event. Contractor's obligation to document the event as required by paragraph 8 shall survive the expiration or termination of this Agreement.
14. Notwithstanding anything written herein to the contrary, all commitments made herein by the City are subject to the discretion of the City. If at any time the City determines that a public need arises that requires the denial or withdrawal of any in-kind service, then the City shall no longer be obligated or required to provide such in-kind services.
15. Indemnification: Contractor agrees to indemnify and hold harmless the City, its elected officials, agents, servants and employees, from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind which arise from, or which are in any way related to the event, including any reasonable attorneys fees, expenses or costs incurred by the City as a result of any enforcement of compliance with this Agreement or defending any actions or claims related in any way to this Agreement. This provision shall survive the expiration or termination of this Agreement.
16. No Joint Venture: Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest in the business of the Contractor, and shall not be liable for any debts or obligations incurred by Contractor, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of the Contractor, or sums earned or derived by the Contractor, nor shall Contractor at any time

or times use the name or credit of the City in purchasing or attempting to purchase any car, equipment, supplies or other thing or things whatsoever.

17. Independent Contractor. Contractor, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense, as the City may from time to time request, to indicate that it is an independent contractor. City does not and will not assume any responsibility for the means by which or manner in which services by the Contractor, provided for herein, are performed, but on the contrary, the Contractor shall be wholly responsible therefore.
18. Agreement not Assignable. Contractor acknowledges that its identity and peculiar capacity to provide the services described hereinabove constitute a material consideration for the City's having entered in this Agreement. Therefore, Contractor shall not transfer or assign this contract or the license or any of the rights or privileges granted herein, without the prior written consent of the City, which such consent shall be granted or denied solely at the City's discretion.
19. Compliance with Law. Contractor hereby agrees to strictly comply with all ordinances of the City and the laws of the State of Alabama and of the United States while performing its obligations under the terms of this Agreement.
20. Termination. Either party may terminate this Agreement at any time, with or without cause, by notifying the other party of its intent to terminate. Termination shall be effective on the date notice is delivered either in person, or by mail (or by courier service).
21. Non-Discrimination. Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or disability, in connection with this Event.
22. Insurance. Contractor shall maintain in full force and effect, liability and comprehensive insurance coverage for the Event, a copy of the certificate of insurance naming the City as an additional insured, being attached hereto. Said insurance coverage will not be altered or terminated without 30 days prior written notice to the City.
23. Notices. All notices of cancellation, requests, demands or other communications shall be in writing and duly delivered to the following addresses:

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

With a required copy to:
City Attorney
City of Orange Beach
Post Office Box 458
Orange Beach, Alabama 36561

To the Contractor:
Mr. Ernest A. "Sonny" McLean, III
President
McLean Motor Sports Productions, LLC
322 Bradford Circle
Trussville, Alabama 35173

24. 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.
25. Modifications. Any alterations, variations, modifications or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the party against whom enforcement is sought.
26. 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.
27. Law Governing. This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement shall be Baldwin County, Alabama.

Dated this ____ day of _____, 2023.

CITY OF ORANGE BEACH, ALABAMA
A Municipal Corporation

By: _____
Tony Kennon, Mayor

ATTEST:

Renee Eberly, City Clerk

MCLEAN MOTOR SPORTS PRODUCTIONS,
LLC

By: _____
Ernest A. "Sonny" McLean, III
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 Ernest A. "Sonny" McLean, III, as President of McLean Motor Sports Production, LLC, whose name is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

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

(SEAL)

Notary Public, State of Alabama
My Commission Expires: _____