

## PERFORMANCE CONTRACT

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

1. Recitals:

- a. Contractor is a water aerobics instructor 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 water aerobics classes at the Orange Beach Aquatics Center.
- b. Contractor must possess a current certification from (at least) one of the following nationally recognized certifying agencies: Aquatic Exercise Association (AEA), United States Water Fitness Association (USWFA), FiTour, and/or YMCA. (Certifications from organizations not listed may be accepted, pending approval by the Aquatics Center Coordinator).
- c. Contractor must have an Orange Beach Business License.
- d. Contractor will conduct each class scheduled, regardless of the number of participants present at the scheduled class time.
- e. Pre-determined cancellations due to the weather must be decided no less than one hour prior to class time.

3. City’s Obligations:

- a. City agrees to make available during normal operational hours lanes 5 and 6 and the deep end of the Aquatics Center for the Contractor to teach classes.
- b. City agrees to provide all necessary equipment for Contractor’s water aerobic classes.

Compensation:

Contractor will be paid at a fixed rate of \$30.00 per hour on a bi-weekly basis. If inclement weather occurs during a class time, the current class will be cancelled, and the instructor will be paid for the full hour. This does not include pre-determined cancellations.

4. Term:

The term of this agreement shall begin on June 1, 2023, and end on May 31, 2024 unless terminated earlier in accordance with paragraph 11. This agreement may be renewed annually by resolution adopted by the City Council.

5. 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.

6. 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.

7. 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 \$500,000 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.

8. 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.

9. 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.

10. Termination:

This agreement may be terminated by either party for any reason upon one (1) week notice of the intent to terminate.

11. 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.

12. 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.

13. 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.

14. 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 would be Baldwin County, Alabama.

15. 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.

16. 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.

17. 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:  
Joan Hill  
22595 Wedgewood Drive  
Foley, AL 36535

IN WITNESS WHEREOF, we have hereunto set our hands and seal on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF ORANGE BEACH,  
An Alabama Municipal Corporation

By: \_\_\_\_\_  
Tony Kennon, Mayor

ATTEST:

\_\_\_\_\_  
Renee Eberly, City Clerk

CONTRACTOR:

Joan Hill

By: \_\_\_\_\_  
Joan Hill

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 \_\_\_\_\_, 2023.

(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 Joan Hill 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_