

RESOLUTION NO. 22-51

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A BEACH SAFETY SERVICES AGREEMENT WITH RESORT HOSPITALITY ENTERPRISES, INC. FOR THE CITY'S PROVISION OF LIFEGUARD SERVICES ALONG THE SANDY GULF BEACH AT THE BOARDWALK BEACH RESORT.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Beach Safety Services Agreement between the City and Resort Hospitality Enterprises, Inc. relating to the City's provision of lifeguard services at the sandy gulf beach along the Boardwalk Beach Resort as more fully set forth in the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in special session this 9th day December, 2021.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

BEACH SAFETY SERVICES AGREEMENT 2022 – 2023

THIS BEACH SAFETY SERVICES AGREEMENT (the "Agreement") is made this ____ day of ____, 2021, between **THE CITY OF PANAMA CITY BEACH, FLORIDA**, a political subdivision of the State of Florida, whose address is 17007 Panama City Beach Parkway, Panama City Beach, FL 32413, (the "City"), and **RESORT HOSPITALITY ENTERPRISES INC**, a Florida Corporation, whose address is 1022 West 23rd Street, Panama City, Florida, (the "Owner").

WHEREAS, the City's Fire Department desires to provide beach safety and education services as described in the Scope of Services attached hereto and incorporated as **Exhibit A**, and has the qualifications, experience, staff and resources to perform those services, including but not limited to advising beach and water users concerning surf conditions and safety issues and providing/coordinating rescue activities and emergency response, and

WHEREAS, the beachfront property of the Owner is available for the use and enjoyment of Owner's guests as well as for the recreational use of the public;

WHEREAS, the Owner desires to have proficient lifeguard services for the protection of beachgoers who use the water along said beachfront for swimming and other recreational purposes;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. ENGAGEMENT OF THE CITY. Owner hereby hires the City to provide services as defined in this Agreement (the "Beach Safety Services") on those beach areas within the East and West boundaries of the Owner's property (the "Property"), as further illustrated on the map attached hereto as Exhibit "A."

2. TERM. This Agreement is effective upon execution by both parties for a 1-year term which is to end on October 1, 2022. The parties may agree to extend the terms of this Agreement for two (2) additional 1-year renewals. Any such extension must be agreed upon at least sixty (60) days prior to the termination of this Agreement term. This Agreement may be cancelled by either party upon ninety (90) days written notice.

3. COMPENSATION. Subject to the provisions of this Agreement, the cost of the Beach Safety Service as described herein and an inventory of the equipment necessary for the performance of Beach Safety Services is attached and incorporated hereto as Exhibit "B". The Parties hereby acknowledge and agree that there may be maintenance or additional equipment costs that are not included in Exhibit "B" but may be incurred. Owner agrees to reimburse these additional costs to the City so long as they are reasonable and necessary and approved by Owner, such approval not to be unreasonably withheld.

a. Procurement of Beach Safety Equipment. Upon execution of this Agreement, Owner shall procure the equipment inventoried in Exhibit B with the participation and assistance of the City.

- b. **Labor Service Payments.** Payments for the labor service cost, as described in the Labor Cost Inventory attached hereto as Exhibit "C", for each contract year shall be in eight (8) equal monthly installments and shall begin to be due and payable on March 15, 2022 and be due the 15th day of each subsequent month thereafter covered by the terms of this Agreement. For each subsequent year of the Agreement, monthly installment payments shall resume on February 15th. All financial obligations shall terminate on the final day of service or upon termination after notification, and any accounts due will be paid in full within 30 days

4. **SCOPE OF BEACH SAFETY SERVICES.** The City shall ensure adequate staffing to meet educational, preventive, and response coverage at all times during the term as follows:

- a. The City shall provide one (1) lifeguard tower, and typically two (2) lifeguards, with the lifeguards serving at the same time between the tower. Staffing needs may call for fewer lifeguards and a Supervisory patrol during off-peak periods of the season and additional lifeguards and Supervisory staff patrol during peak periods and/or during event conditions requiring additional staff. The number of lifeguards needed to adequately staff is in the sole discretion of the City.
- b. Beach Safety Services shall commence at 10:00 a.m. on April 6, 2022, and end at 6:00 p.m., September 6, 2022, unless otherwise mutually agreed to in writing by the Parties. The same service term shall commence and end for the second-year term of 2023 if the parties exercise the 1-year renewal option at the end of the original term ending September 6, 2022.
- c. The City will monitor persons present on the beach and swimmers within the designated lifeguard areas as defined by Exhibit "A", and educate them on the beach flag system, rip currents, surf conditions and safety issues. In addition, the City will provide and coordinate rescue activities and emergency response. The City agrees to perform its duties through public education, adoption and implementation of national lifeguard standards of training, recordkeeping and high levels of lifeguard readiness in accordance with the City Lifeguard Standard Operating Procedures.
- d. The City shall meet and maintain compliance with the United States Lifesaving Association's (USLA) guidelines for an open water lifeguard agency.
- e. The City shall provide lifeguard services including, but not limited to, patrolling and supervising beach and Gulf areas defined in Exhibit A from the assigned lifeguard tower; performing rescue and preventative actions at the beach and in the open water environment; monitoring and advising beach and water users of local, state, and federal laws, rules and ordinances that are known and may be applicable to the services rendered by City lifeguards; providing and coordinating emergency medical and water rescue activities and emergency response All duties will be consistent with all City standard operating procedures.
- f. The City shall perform the following duties within the area defined by Exhibit A on a constant and consistent basis:
 - i. Implementing a beach safety management plan. This may include the placement of warning flags or other markers on either side of an identified rip current.

- ii. Determining and clearly designating, on a daily basis, a safe swim area based on local surf conditions. This may, at the discretion of the Beach Safety staff, include marking any discovered rip currents.
 - iii. Closely monitoring all aquatic users within designated areas of supervision.
 - iv. Maintaining a proactive approach to beach and water safety by advising the public, when necessary, of dangers and providing advice to best minimize risk.
 - v. Educating the public on beach safety and the beach flag warning system.
 - vi. Carrying out the rescue of any person(s) in difficulty and informing other service providers, including but not limited to, patrol members, City Fire and Rescue, and the Panama City Beach Police Department, if and when backup is required.
 - vii. Carrying out other duties such as emergency medical response and minor first aid, dry-land and in-water rescues, missing person searches, safety interventions and preventive actions as required, prevention or treatment of injury, prevention of death, minimizing risk, and maintaining public safety.
 - viii. Providing Owner with monthly written reports of incidents and Daily Activity Reports (DAR's) for required beach statistics that are consistent with the forms currently used by the City for such reports and DARs.
 - ix. Providing and promoting established Standard Operating Guidelines for the safe and efficient operations of the lifeguard service.
 - x. Monitoring the condition of lifeguard equipment and reporting deficiencies and repairs needed.
 - xi. Undertaking scheduled cleaning and maintenance of surf rescue equipment and facilities on a daily, weekly and monthly basis.
- g. City employees who are acting as lifeguards under this Agreement shall be trained in and shall meet the USLA Open Water Lifeguard Standards. All lifeguards employed pursuant hereto must be at least 17 years of age, must be USLA Open Water Lifeguard certified, have participated in first responder training and possess current CPR certification acceptable by the Florida Department of Health. Any lifeguard hired under the age of 18 shall be assigned to work with a senior lifeguard only and not allowed to work alone. The City shall subject all lifeguards to a background check, professional references, drug screen, and physical evaluation.
- h. The City shall be responsible for training the lifeguards. However, should Owner request any additional training above the training provided by the City, which is mutually agreed upon, and if that training was outside the normal scope of duties as provided by the City, then the Owner will be required to reimburse the City for those expenses.
- i. The City shall be responsible for assuring at all times while lifeguards are on duty that one (1) lifeguard shall be on the lifeguard tower and at minimum one (1) lifeguard shall be patrolling the defined beach area. The City and its employees will act with due diligence to observe the area of their responsibility/coverage for swimmers or beachgoers in distress and will make reasonable efforts to perform first responder rescue and assistance to such persons. The City shall have the authority to close the water (fly double red flags) or close the beach

when deemed necessary. Owner acknowledges that City lifeguards have an affirmative duty to attempt any and all rescues including those that may be outside the area defined in this Agreement. Once such duties of rescue are carried out, the lifeguard(s) shall return to their assigned area as soon as reasonably possible.

- j. All City lifeguards shall be dressed in the uniform of the City lifeguards and such uniforms shall be neat and orderly, consistent with those uniforms normally worn by City lifeguards
- k. Notwithstanding the requirements of Paragraph 4(i), the parties acknowledge that lifeguards are hired and retained on a seasonal basis which may be subject to fluctuations and volatility in the available labor market. Accordingly, the parties acknowledge that, due to inability to staff Owner's property, the City may be unable to fully staff or otherwise provide Beach Safety Services. The City shall nonetheless make best efforts to provide the Beach Safety Services described herein with the labor pool available to the City. In the event that there is a day or days during the term on this Agreement that the City is unable to fully staff or otherwise provide Beach Safety Services, City shall post notice advising the public of same. Furthermore, at the end of each one (1) year term of this Agreement, the City shall reimburse Owner for each day that it was unable to provide Beach Safety Services in accordance with this Agreement. The right to reimbursement contemplated herein shall not apply where Beach Safety Services are interrupted by the City in order to respond to an emergency call or days when conditions requires the City to only partially staff Owner's beach.

5. DUTIES OF THE OWNER.

- a. **BEACH SAFETY EQUIPMENT.** Beach safety equipment, vehicle(s), and lifeguard tower (the "Beach Safety Equipment), and other personal property required in connection with the City's performance of this Agreement shall be selected at the sole, but reasonable, discretion of the City and purchased directly by the Owner. All Beach Safety Equipment purchased shall remain the property of the Owner.
 - i. Owner shall make all reasonable efforts to have the Beach Safety Equipment delivered and inspected by the City on or before February 15, 2022. In the event that all Beach Safety Equipment is not delivered to the Owner on or before March 31, 2022, then the parties may either (1) renegotiate the terms and performance obligations under this or Agreement or (2) be released from any obligation under this Agreement and the Owner shall reimburse the City the actual labor costs incurred in the hiring and training of Lifeguard personnel as a result of this Agreement.
 - ii. On or before February 15, 2022, all Beach Safety Equipment used in the performance of this Agreement shall be leased for a total consideration of One Dollar and no cents (\$1.00), receipt of which is hereby acknowledged, to the City for its exclusive use and control.
 - iii. The parties agree that Owner shall reimburse the City for any agreed upon equipment, maintenance, or repair costs not included in Exhibit B within thirty (30) days of the City submission of an invoice. Beach Safety Equipment shall include, at a minimum, the following:

1. Lifeguard tower
 2. First Aid Kit to include a pocket mask and rubber medical gloves
 3. Automated External Defibrillator (AED)
 4. Buoys
 5. Rescue type surfboard
 6. Lifeguard identification sign
 7. Flag information sign
 8. All-Terrain Vehicle(s)
 9. Other equipment as needed and agreed upon by the Parties.
- iv. A radio for each Lifeguard capable of communicating with City Fire and Rescue Dispatch Center shall be purchased directly by the City and the cost of such shall be reimbursed by the Owner.
- b. BEACH ACCESS.** Owner acknowledges that this Agreement is intended to provide a municipal purpose to the residents, guests, and visitors of Panama City Beach. Owner agrees that the public shall be granted access to the sandy gulf beach located on the Property for customary recreational uses through public access areas. Additionally, Owner grants the City the right to access all areas of the sandy gulf beach and other defined common areas on the Owner's property for purposes of carrying out its normal duties as shown in Exhibit "C" attached hereto and incorporated by reference.
- c. LIFEGUARD TOWER.** The lifeguard tower will be placed at such location mutually agreed upon by the City and Owner provided that such placement is adequate for the City's supervision of beachgoers. Should Owner object to the placement of a lifeguard tower that the City deems reasonably necessary for the provision of Beach Safety Services, the City shall require an additional tower, associated lifeguard(s), and equipment, at the Owner's expense, to accommodate the Owner's desired tower placement.
- 6. USE OF CITY LOGO.** The City hereby grants to Owner a non-exclusive license during the term of this Agreement to use the City's name, logo, or other identifying marks (the "City's Marks") relating to the City's provision of Beach Safety Service on Owner's beachfront property. This license shall be limited to marketing, promotion, and public relations efforts but shall not be used for merchandise or other commercial products bearing the City's Marks. Any proposed use of the City's Marks shall be submitted to the City and shall be approved in writing by the City prior to their use.
- 7. INSURANCE.** Prior to providing lifeguard services, the City shall provide Owner proof of Public Liability and Workers Compensation insurance with limits commensurate with statutory requirements, and any Certificate of Insurance shall name Owner as an additionally insured.
- 8. CONTROLLING LAW AND ATTORNEY FEES.**
- a. This Agreement is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this Agreement shall be in Bay County, Florida.
 - b. Should any litigation, notice of claim, or other adversary action or proceeding arising out of, or relating to, this Agreement be initiated by either party, in addition to any other relief that may be granted, then all reasonable litigation and collection expenses, witness fees,

expert witness fees, court costs and reasonable attorneys' fees shall be paid to the prevailing party.

9. SUCCESSORS AND ASSIGNS. The City and Owner bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City nor Owner shall assign or transfer any interest in this Agreement without the written consent of the other.

10. EXTENT OF AGREEMENT.

- a. This Agreement represents the entire and integrated agreement between the Owner and the City and supersedes all prior negotiations, representations or agreement, either written or oral.
- b. This Agreement may only be amended, supplemented, modified, changed or canceled by the agreement of both parties by a duly executed written instrument.
- c. This Agreement's Scope of Services may be amended, supplemented, changed or canceled by the agreement of both parties by a duly executed written instrument

11. SEVERABILITY. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

12. NOTICES. Any notices to be given under this Agreement shall be given by United States Mail, addressed to the City at its address stated herein, and to the Owner at its address stated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**RESORT HOSPITALITY ENTERPRISES
INC**

**CITY OF PANAMA CITY BEACH,
FLORIDA**

By: _____

Its: _____

Date: _____

By: Drew Whitman

Its: City Manager

Date: _____

Attest: _____

Lynne Fasone, City Clerk



Beach Safety Proposal 2021

OPEX	Cost
L/S Duty Shirt (4)	220.00
Rash Guard L/S (4)	180.00
Duty Shorts (4)	160.00
Uniform Swimwear (4)	145.00
Rain Coats (2)	200.00
Knife (2)	185.00
Fin Belt (2)	74.00
Mask and Snorkel (2)	70.00
Fins (2 sets)	118.00
Polarized Rescue Goggles (2)	54.00
Whistle/Lanyard (2)	15.00
Sunscreen (1 gallon)	140.00
Lifeguard Tower Umbrella	150.00
Rescue Tube (2)	116.00
VHF Water Proof Radio Case (2)	86.00
Throw Signal	82.50
Float Marker	82.00
Beach Warning Flags Set	60.00
Dry Bag (2)	40.00
Admin Cost	3,500.00
General Insurance	2,100.00
Fuel/Maint/Repairs	1,000.00
First Aid Kit (various items) (2)	500.00
Employee Salary (2)	\$62,720.00
FICA (7.65%)	\$4,798.08
Workers Comp (4.5%)	\$2,822.40
Unemployment Insurance	\$1,000.00
Physical & Drug Screen (2)	\$320.00
Overtime (20% of days)	\$4,704.00
TOTAL CAPEX	\$43,836.00
TOTAL OPEX	\$85,641.98
Year 2021 OVERALL TOTAL	\$129,477.98
Year 2022 Total OPEX (3% increase)	\$88,211.24
Year 2023 Total OPEX (3% increase)	\$90,857.58

CAPEX

- JWelds LLC Lifeguard Tower
- ATV/UTV (Equiped with rack & warning pkg)
 - Fire Radio (2)
 - Rescue Boards (2)
 - AED (2)
 - Rescue Reel
 - Binoculars (2)
 - Rescue Can (2)
 - 25 watt Megaphone
- 90' Throw Rope and Bag (2)
- Case (Medical Storage) (2)
- Spinal Immobilization Kit

Cost

- \$22,800.00
- \$8,500.00
- \$6,300.00
- \$2,290.00
- \$2,200.00
- \$325.00
- \$350.00
- \$120.00
- \$105.00
- \$56.00
- \$450.00
- \$340.00

