

SCHOOL BUS USAGE AGREEMENT

THIS SCHOOL BUS USAGE AGREEMENT (this “Agreement”) is made effective as of the ___ day of February, 2023 (the “Effective Date”), by and between ORANGE BEACH CITY BOARD OF EDUCATION, a city school system established by the City of Orange Beach, Alabama, pursuant to *Code of Alabama* §16-11-1 *et seq.*, (1975), as amended (the “Board”) and the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation (the “City”).

WHEREAS, the Board owns and operates an elementary school and a high school/middle school in Orange Beach, Alabama; and

WHEREAS, in connection with its operation of such schools, the Board owns a number of school buses (the “Buses”); and

WHEREAS, from time to time, the City hosts, sponsors or promotes certain events and festivals in and around the City (“Events”); and

WHEREAS, the City desires to utilize the Buses for purposes of shuttling attendees and event staff to and from Events, at such times as the Buses are not being used by the Board for school functions; and

WHEREAS, the City is allowing the Board to use certain City properties and facilities, without charge, for the benefit of the Board, under other agreements between the parties hereto dated on or around the date hereof; and

WHEREAS, the Board is willing to allow the City such right of usage of the Buses on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

1. AGREEMENT TO UTILIZE BUSES. The Board grants to the City the right to use the Buses for purposes of shuttling attendees and event staff to and from Events, at such times that the Buses are not being used by the Board for school functions.

2. TERM. The term of this Agreement shall commence as of the Effective Date, and shall continue for a period of five (5) years, except that the City shall have the unilateral right to terminate this Agreement upon providing written notice of termination to the Board at any time. The term of this Agreement shall automatically renew for successive periods of five (5) years each, unless either party provides the other written notice of termination at least sixty (60) days prior to the end of a five (5) year period. Either party shall have the right to terminate this Agreement if the other party breaches this Agreement and fails to cure the breach within thirty (30) days after having been given written notice by the non-breaching party specifying the nature of the breach.

3. **PERIOD OF USE.** When the City desires to use one or more Buses for an Event, the City shall contact the Board Superintendent or such staff member as may be designated in writing by the Superintendent, to request usage of the Buses. Such request shall specify the date(s) of the Event, the name of the Event, and the number of Buses desired for such Event. So long as the date and time of such proposed usage would be outside of the hours that the Board utilizes the Buses for school purposes, the Board agrees to grant the City the right to use the requested Buses for such Event.

4. **LOGISTICS OF USE.** The Board shall specify which Buses are to be used by the City as to a particular Event, based on the number of Buses requested. The Board shall make the keys to the applicable Buses available to the City at a reasonable time prior to the time of usage. Upon the conclusion of the usage, the City shall return the Buses and the keys to the Buses to the Board.

5. **CITY'S USE.** During such time of the City's use of the Buses, (i) the City shall have exclusive possession and full operational control of the Buses, and (ii) the City will ensure that any individuals who drive the Buses are properly licensed for such uses.

6. **FUEL.** The City shall be responsible for fuel costs for its usage of the Buses. The City shall endeavor to return the Buses after their use with the same amount or more fuel than prior to the usage.

7. **CITY'S INSURANCE OBLIGATIONS.** At all times that the City utilizes the Buses, it shall maintain, at its sole cost, general liability insurance with such coverages and in such amounts as mutually agreed upon by the parties hereto. All insurance shall be carried by insurance companies authorized to transact business in the State of Alabama, selected by the City. The Board shall be named as an additional insured on all policies purchased in satisfaction of the requirements contained in this Section.

8. **WAIVER OF SUBROGATION.** To the extent permitted by the Alabama Department of Risk Management State Insurance Fund, the Board waives any and all rights to recover against the City or any of its officers or employees, for any loss or damage arising from any cause covered by any insurance carried by the Board.

9. **MECHANICAL FAILURES.** In the event of any mechanical failure of a Bus while in the City's use, which prevents it from being driven, the City agrees to have the Bus towed to a repair shop in the area, of the Board's choosing. The Board, however, shall be responsible for the cost of such repairs, unless the damage was caused by the gross negligence or willful misconduct of the City, in which case, the City shall be responsible for the cost of such repairs.

10. **THEFT, COLLISION OR OTHER CASUALTY.** The Board shall maintain theft, collision and casualty insurance on the Buses, for the replacement value thereof. In the event of any theft, collision or casualty damage to a Bus while in the City's use, the City shall have no liability or responsibility therefor, it being agreed that the Board will make appropriate

claims to its insurer. The City agrees to cooperate with the Board in connection with any such claim.

11. HOLD HARMLESS. The City hereby releases and saves harmless the Board from any loss, damage, or injury of any kind or character to any person or property arising from any use of a Bus by the City, its agents, employees or invitees or caused by or arising from any act or omission of the City, or any of its agents, employees or invitees, unless such loss, damage or injury is a result of the gross negligence or willful misconduct of the Board.

12. REGULATORY COMPLIANCE. The Board agrees to keep and maintain the Buses in good and serviceable condition, and in accordance with all applicable laws, including the Alabama Minimum Specifications for School Buses and the Americans With Disabilities Act. The Board agrees to have the Buses inspected regularly as required by applicable law. The Board shall ensure that the license tags on the Buses are current, and that all information legally required to be kept on board the Buses is so kept. The Board shall maintain accurate and complete records of all repairs and maintenance of the Buses and allow the City to inspect those records at any time, upon request. The Board will maintain in good standing all permits and licenses required by any governmental authority for the operation, use, maintenance or storage of a Bus.

13. CONSTRUCTION. “Including” or “include” shall mean including (or include) without limitation.

14. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the City and the Board have caused this School Bus Usage Agreement to be duly executed by its duly authorized representative effective as of the Effective Date.

CITY:

CITY OF ORANGE BEACH, ALABAMA

By: _____
Tony Kennon, Mayor

Attest:

City Clerk

BOARD:

ORANGE BEACH CITY BOARD OF
EDUCATION

By: _____
Randy Wilkes, Superintendent

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Tony Kennon, whose name as Mayor of the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation, is signed to the foregoing School Bus Usage Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said School Bus Usage Agreement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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

[SEAL]

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Randy Wilkes, whose name as Superintendent of the ORANGE BEACH CITY BOARD OF EDUCATION, a city school system established by the City of Orange Beach, Alabama, is signed to the foregoing School Bus Usage Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said School Bus Usage Agreement, he, as such Superintendent and with full authority, executed the same voluntarily for and as the act of said Board of Education.

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

[SEAL]

Notary Public
My Commission Expires: _____