

LEASE AGREEMENT

(Fueling Equipment Area)

THIS LEASE AGREEMENT (this "Lease") is made effective as of the ___ day of February, 2023 (the "Effective Date"), by and between the **CITY OF ORANGE BEACH**, an Alabama municipal corporation (the "Tenant"), and **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 "Landlord").

WHEREAS, Landlord owns and operates a high school and middle school on the land located in the City of Orange Beach, Baldwin County, Alabama, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, Tenant owns and operates a fuel tank, fuel pump and related equipment (collectively, the "Fueling Equipment") in the area on the Land depicted on Exhibit B attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the parties desire to set forth the terms and conditions upon which Landlord will lease to Tenant the Premises for purposes of operating the Fueling Equipment.

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. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, according to the terms and conditions of this Lease. Tenant, its employees, agents, contractors and invitees shall have the non-exclusive rights to the use of the adjacent parking lots, drive aisles, driveways, sidewalks, walkways and other similar facilities that are reasonably necessary for the access and use of the Premises, for purposes of operating the Fueling Equipment.

2. TERM. The term of this Lease shall commence as of the Effective Date hereof, and shall continue for a period of two (2) years. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease upon ten (10) days advance written notice, and (ii) if Tenant vacates or abandons the Premises and removes the Fueling Equipment, Landlord shall have the right to terminate this Lease upon ten (10) days advance written notice. 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. RENT; FUEL CHARGING PRIVILEGES. There is no rent payable under this Lease. However, Tenant shall provide Landlord with charge cards to purchase fuel from the Fueling Equipment for buses and drivers' education vehicles, allowing for a convenient on-site amenity to Landlord for obtaining its fueling needs, which Landlord would otherwise not have. Tenant will invoice Landlord for Landlord's fuel consumption each month. Landlord agrees to promptly pay such invoices for its monthly fuel consumption, and in any event, within thirty (30) days of the date of invoice.

4. UTILITIES. Tenant will pay for the utility services that Tenant uses at the Premises to operate the Fueling Equipment. Landlord shall ensure that electrical service is available to the Premises.

5. INSURANCE. Tenant shall maintain, at its sole cost, general liability insurance with such coverages and in such amounts as mutually agreed upon by the parties. All insurance shall be carried by insurance companies authorized to transact business in the State of Alabama, selected by the Tenant. The Landlord shall be named as an additional insured on all policies purchased in satisfaction of the requirements contained in this Section.

6. USE OF THE PREMISES. During the term of this Lease, the Premises will be used only for operating the Fueling Equipment.

7. ENVIRONMENTAL LAWS. Tenant shall operate and maintain the Fueling Equipment in compliance with all applicable environmental laws, regulations and ordinances, and Tenant will not release, generate, manufacture, store, treat, transport, or dispose of any "hazardous material" (as that term is defined in applicable environmental laws), on, in, under, or from the Premises, in violation of any applicable environmental laws, regulations or ordinances.

8. REPAIRS AND MAINTENANCE. Tenant shall be responsible for the repair, replacement and maintenance of the Fueling Equipment, provided such repairs, replacement or maintenance are not occasioned by Landlord, Landlord's invitees or anyone in the employ or control of Landlord, in which case, Landlord shall be responsible for the cost of such items.

9. OWNERSHIP OF FUELING EQUIPMENT. It is acknowledged and understood that Tenant owns the Fueling Equipment. Landlord shall not alter or tamper with the Fueling Equipment.

10. END OF TERM. At the end of the Term of this Lease, Tenant will surrender the Premises in good order and condition, ordinary wear and tear, casualty and condemnation excepted; and, Tenant shall remove the Fueling Equipment. After Tenant has removed the Fueling Equipment, Tenant will fully repair any damage occasioned by the removal thereof.

11. DAMAGE AND DESTRUCTION. If the Fueling Equipment is damaged by fire, the elements, accident or other casualty, Tenant shall have the right to either repair and/or replace the Fueling Equipment or to terminate this Lease.

12. ATTORNEYS' FEES. In the event that either party files suit in any court against the other party to enforce the terms of this Lease against the other party or to obtain performance by it hereunder, the prevailing party, or that party which substantially prevails, will be entitled to recover all reasonable costs, including, without limitation, reasonable attorneys' fees, from the other party as part of any judgment in such suit.

13. WAIVER OF JURY TRIAL. LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES (EXCEPT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE BROUGHT BY A THIRD PARTY).

14. COUNTERPARTS. This Lease 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.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed effective as of the day and year first above written.

LANDLORD:

ORANGE BEACH CITY BOARD OF EDUCATION

By: _____
Randy Wilkes
Its Superintendent

TENANT:

CITY OF ORANGE BEACH

By: _____
Tony Kennon
Its Mayor

ATTEST:

City Clerk

[SEAL]

[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 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 Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease 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: _____

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned, 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, an Alabama municipal corporation, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such Mayor 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 official seal this ____ day of February, 2023

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

Exhibit A

Description of the Land

COMMENCING AT THE SOUTHWEST CORNER OF LOT 21, SWEETWATER BAYOU, AS RECORDED AS SLIDE 2017-A, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA; THENCE RUN S89°53'37"E, ALONG THE SOUTH LINE OF SAID SWEETWATER BAYOU, AN EXTENSION THEREOF, 698.38 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SWEETWATER DRIVE AND THE POINT OF BEGINNING. THENCE RUN N00°11'47"E, ALONG SAID EAST RIGHT-OF-WAY LINE, 1260.43 FEET TO THE POINT OF INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE AND THE SOUTH RIGHT-OF-WAY LINE OF ALABAMA STATE HIGHWAY NUMBER 180; THENCE RUN N89°49'32"E, LEAVING SAID EAST RIGHT-OF-WAY LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, 1335.75 FEET TO A POINT; THENCE RUN S64°23'45"E, LEAVING SAID SOUTH RIGHT-OF-WAY LINE, 58.15 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF WILLIAM SILVERS PARKWAY; THENCE RUN S00°01'18"E, ALONG SAID WEST RIGHT-OF-WAY LINE, 1229.81 FEET TO A POINT; THENCE RUN S89°36'26"W, LEAVING SAID WEST RIGHT-OF-WAY LINE, 1393.00 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING:

LOT 1, CROWN COMMUNICATIONS TOWER SUBDIVISION, AS RECORDED AT SLIDE 2057-C, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA.

THE ABOVE DESCRIBED PROPERTY ALSO BEING THAT SAME PROPERTY AS DESCRIBED IN INSTRUMENT NUMBER 1764335, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA. CONTAINING 39.91 ACRES MORE OR LESS AND LYING IN SECTION 1, TOWNSHIP 9 SOUTH, RANGE 4 EAST, BALDWIN COUNTY, ALABAMA.

Exhibit B

Premises