

PASSENGER VEHICLE USAGE AGREEMENT

THIS PASSENGER VEHICLE 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, the City owns a number of passenger vehicles that it uses for municipal purposes (the “Passenger Vehicles”); and

WHEREAS, in connection with its operation of such schools, the Board, from time to time, desires to utilize the Passenger Vehicles for purposes of certain school activities and events (“School Activities”), at such times as the Passenger Vehicles are not being used by the City for municipal functions; and

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

WHEREAS, the City is willing to allow the Board such right of usage of the Passenger Vehicles 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 PASSENGER. The City grants to the Board the right to use certain of the Passenger Vehicles for purposes of School Activities, at such times that the Passenger Vehicles are not being used by the City for municipal 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 Board shall have the unilateral right to terminate this Agreement upon providing written notice of termination to the City 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 Board desires to use one or more Passenger Vehicles for a School Activity, the Board shall contact the City Administrator or such staff

member as may be designated in writing by the City Administrator, to request usage of the Passenger Vehicles. Such request shall specify the date(s) of the School Activity, the name of the School Activity, and the number of Passenger Vehicles desired for such School Activity. So long as the date and time of such proposed usage would be outside of the hours that the City utilizes the Passenger Vehicles for municipal purposes and so long as the City does not otherwise need to utilize such Passenger Vehicles during the requested time, the City agrees to grant the Board the right to use the requested Passenger Vehicles for such School Activity.

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

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

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

7. **BOARD'S INSURANCE OBLIGATIONS.** At all times that the Board utilizes the Passenger Vehicles, 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 Board. The City 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 City's insurers, the City waives any and all rights to recover against the Board or any of its officers or employees, for any loss or damage arising from any cause covered by any insurance carried by the City.

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

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

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

11. HOLD HARMLESS. The Board hereby releases and saves harmless the City from any loss, damage, or injury of any kind or character to any person or property arising from any use of a Passenger Vehicle by the Board, its agents, employees or invitees or caused by or arising from any act or omission of the Board, 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 City.

12. REGULATORY COMPLIANCE. The City agrees to keep and maintain the Passenger Vehicles in good and serviceable condition, and in accordance with all applicable laws; in no event, however, shall the City be required to comply with the Alabama Minimum Specifications for School Buses. The City shall ensure that the license tags on the Passenger Vehicles are current, and that all information legally required to be kept on board the Passenger Vehicles is so kept. The City shall maintain accurate and complete records of all repairs and maintenance of the Passenger Vehicles and allow the Board to inspect those records at any time, upon request. The City will maintain in good standing all permits and licenses required by any governmental authority for the operation, use, maintenance or storage of a Passenger Vehicle.

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