

COOPERATIVE AGREEMENT CITY OF OCALA

NOW THEREFORE, this COOPERATIVE AGREEMENT ("Agreement") is entered into on this _____ of _____ 2023 by and between **THE SCHOOL BOARD OF MARION COUNTY, FLORIDA** ("SCHOOL BOARD") and the **CITY OF OCALA**, 110 SE Watula Ave, Ocala, Florida 34471, ("CITY").

RECITALS

WHEREAS, the SCHOOL BOARD has the authority, as provided by § 1006.261, Fla. Stats. (2022) to engage in a contractual relationship with an interlocal agency.

WHEREAS, the SCHOOL BOARD desires to contract with the CITY for the rental of two (2) eighty-three (83) passenger buses for use on Monday through Friday commencing May 30, 2023 and ending July 28, 2023 to transport participants of summer youth programs sponsored by the CITY.

WHEREAS, the parties, for and in consideration of the mutual agreements hereinafter contained agree as follows;

1. **TERM/TERMINATION**. This Agreement is effective beginning on May 30, 2023 through July 28, 2023, or as mutually agreed upon by the parties' agents. Either party may terminate this Agreement at any time by giving written notice to the other party of such termination, specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event funds to finance this Agreement or any part thereof become unavailable, a party must provide written notice to the other party within twenty-four (24) hours of receipt of said information (of the lack of available funds) and of its intent to terminate said Agreement. This Agreement will be considered terminated 24 hours after receipt of the written notice.
2. **COMPENSATION**. The CITY agrees to pay to the SCHOOL BOARD a rental fee of \$200.00 per month for each bus due and payable through an invoice to the CITY at the end of the aforementioned period of this Agreement.
3. **BUS DRIVER(S)**. The CITY must use qualified personnel as defined in Fla. Admin. Code R. 6A-3.0141 when operating SCHOOL BOARD buses. Personnel will be certified or licensed in accordance with the standards established by the State. The CITY must provide proof of said personnel's qualifications to SCHOOL BOARD before the commencement of the use of the buses.
4. **INDEMNIFICATION AND HOLD HARMLESS**. Pursuant to Section 1006.261(2(a)) and (b). Fla. Stats. (2022), the CITY hereby indemnifies and holds harmless the SCHOOL BOARD from any and all liability of SCHOOL BOARD by virtue of the use of such buses pursuant to this Agreement. The CITY indemnifies the SCHOOL BOARD from any and all liability, loss, or damage SCHOOL BOARD may suffer as a result of any claim, demand, cost or judgment against it,

related directly or indirectly to the performance of the CITY'S obligations under the terms of this Agreement. Said indemnity includes, but is not limited to, interest court costs and any other costs incurred by SCHOOL BOARD in establishing the right to indemnification and collecting any judgment against the CITY. The CITY'S indemnification requirement agreed to herein is limited to the extent allowed by § 768.28, Fla. Stats. (2022) and to the monetary amounts set forth therein. Under no circumstances will CITY be required to indemnify SCHOOL BOARD for an amount in excess of those statutory limits. The CITY and SCHOOL BOARD further agree that SCHOOL BOARD'S right to indemnification does not include indemnification for SCHOOL BOARD'S own tortious actions or that of its agents, officers, or employees. SCHOOL BOARD agrees to notify the CITY in writing within ten (10) days of receipt of any notice of any action against SCHOOL BOARD pertaining to this matter. Such notice will be by certified mail, return receipt requested or by overnight courier. A notification will be deemed given on the date such notice is postmarked regardless of whether the CITY actually receives said notification.

5. **ASSIGNMENT**. The CITY agrees not to assign all or any portion of this Agreement without the prior written consent of the SCHOOL BOARD. The CITY shall not enter into subcontracts for any of the work contemplated under this Agreement without the express written approval of the SCHOOL BOARD. Any and all subcontracts, if approved by the SCHOOL BOARD, shall be subject to all of the terms and conditions of this Agreement and to any other conditions of approval deemed necessary by the SCHOOL BOARD.

6. **MAINTENANCE**. Vehicles must be maintained in a safe operating condition as determined by the State of Florida Highway Patrol.

7. **TRANSPORTATION REQUIREMENT**. Drivers must maintain on the vehicle an updated list of all youth program participants assigned to the vehicle. This list must contain, at a minimum, the name, address, telephone number, emergency telephone number and address, and the special needs of the student.

8. **OPERATION OF SCHOOL BUSES**. CITY will provide daily transportation of participants to and from the CITY facility. The CITY must have appropriate personnel on hand at the time the school bus arrives and departs to assure that all participants are properly supervised. The CITY must organize, coordinate, administer, supervise, and operate participant transportation services as follows:
 - A. Participant transportation services must be provided in compliance with the following provisions:
 - (1) Vehicle must be operated by or contracted for by the CITY.
 - (2) Drivers and attendants or any and all personnel who ride or who will be in attendance on the bus at the time students are on the bus must be an employee of the CITY.
 - (3) Individual employees assigned to drive at the time students are on the bus must be licensed by the Florida State Department of Highway Safety

and Motor Vehicles, Drivers' License Division, to operate a vehicle of this size and type.

- (4) The CITY represents and warrants to the SCHOOL BOARD that it has obtained a Motor Vehicle Registration search on any person who will provide transportation services to the SCHOOL BOARD pursuant to this contract and that it will not provide personnel if the person has had more than 8 points on his or her driver's license within the 3-year period before performing services under this contract.
 - (5) The CITY will develop policies and procedures concerning the transportation of participants and ensure that appropriate personnel are given an orientation regarding these procedures. Policies and procedures must not be in conflict with any policy or procedure of the SCHOOL BOARD.
- B. All of the vehicles utilized under the terms of this contract must meet the following standards:
- (1) Equipped with seat belts, which are used at all times to secure Students while being transported.
 - (2) Maintained to Original Equipment Manufacturers (OEM) standards and comply with requirements of Sections 1006.21, 1006.22, 1006.25 and 1006.261, Fla. Stats. (2022) "Transportation of School Children."
- C. The CITY will make its personnel available at a time and in a place stipulated by the SCHOOL BOARD for in-service training of school bus drivers or attendants. This in-service training will not exceed eight (8) hours in any one year exclusive of travel time to and from training.
- D. The CITY will provide supervision of all participants while in the vehicles, with attendants on the bus where appropriate.
- E. Vehicles must be maintained in a safe operating condition as determined by the State of Florida Highway Patrol. The SCHOOL BOARD reserves the right to take any bus out of service until the CITY corrects the deficiencies.
- F. The CITY agrees that it will use the buses only to transport Marion County participants between their homes and the CITY'S youth summer program site and for no other purpose whatsoever. When not in use, the buses will be stored at CITY property located at 1805 N.E. 30th Avenue, Ocala, Florida 34470. Use will be in compliance with Florida Statute and Florida Department of Education rules concerning student transportation.
- G. The CITY has had an adequate opportunity to inspect the vehicles and agrees to accept them as is, where is. The SCHOOL BOARD makes no warranties or representations about the condition of the buses.
- H. The CITY will comply with state and federal law regarding maintenance

requirements. Routine maintenance or damage caused by students or bus drivers will be invoiced to the CITY. All maintenance and repair work will be done by the SCHOOL BOARD and invoiced to CITY. The CITY will pay all invoices within thirty (30) days of receipt. During such time as buses are being serviced or repaired, the SCHOOL BOARD will attempt to provide CITY with substitute buses for use during that period. The SCHOOL BOARD makes no warranties or representations regarding the condition of the substitute buses. Notwithstanding the preceding, the CITY will be responsible for maintaining the interior and exterior of the buses in the same condition as existed at the commencement of this Agreement, ordinary wear and tear excepted. The CITY will be responsible for cleaning the bus interiors upon return to SCHOOL BOARD or CITY will be assessed a fee of \$154.50 per bus.

- I. All drivers must follow and meet federal and state rules and regulations and attend CDL training provided or approved by the SCHOOL BOARD.
 - J. The CITY will be responsible for all damage to the buses and must return them at the end of the lease term in the same condition as existed at the commencement of the term, ordinary wear and tear excepted.
 - K. The CITY will provide all of its own oil and fuel.
 - L. The CITY agrees to comply with the transportation requirements outlined on herein.
9. **LIABILITY AND INSURANCE**. CITY shall be liable as provided by law. CITY relies on sovereign immunity and is self-insured in accordance with the terms and limited liability set for under Section 768.28, Fla. Stats. (2022).
10. **PASSENGER LOAD LIMIT**. When SCHOOL BOARD buses are used for CITY transportation needs, the passenger capacity for persons being transported must not exceed the rated capacity of the vehicle. No one shall be permitted to stand in the aisles, on the seats, etc. while the school bus is moving or otherwise in operation.
11. **INDEPENDENT CONTRACTOR**. The CITY shall act as independent contractors and not as an employee or agent of the SCHOOL BOARD in fulfilling its respective obligations under this Agreement.
12. **ENTIRE UNDERSTANDING**. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other understanding(s) and agreement(s) by the parties.

13. **GOVERNING LAW & VENUE**. The laws of the State of Florida govern all aspects of this Agreement and all transactions contemplated by it without regard to principles of conflicts of laws. Venue for any litigation related to this Agreement will be in Marion County, Florida.
14. **COMPLIANCE WITH LAWS AND POLICIES**. Each party must comply with all applicable federal and state laws, local government licensing requirements, codes, rules, and regulations and written SCHOOL BOARD policies in performing its duties, responsibilities, and obligations pursuant to this Agreement. Lack of knowledge by the CITY will in no way be a cause for relief from responsibility.
15. **NON-DISCRIMINATION**. Neither party will subject any person to discrimination because of age, race, color, disability, pregnancy, gender, marital status, national origin, or religion, in the performance of the parties' respective duties, responsibilities, and obligations under this Agreement.
16. **NO WAIVER OF SOVEREIGN IMMUNITY**. This Agreement does not waive sovereign immunity by any agency or political subdivision to which sovereign immunity may apply, or of any rights or limits of liability existing under § 768.28, Fla. Stats. (2022). This term survives the termination of all performance or obligations under this Agreement and is fully binding until any applicable statute of limitations bars any proceeding brought under this Agreement.
17. **INSPECTOR GENERAL AUDITS**. CITY and its subcontractors (if any), shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General or by any other Florida official with proper authority.
18. **NO THIRD PARTY BENEFICIARIES**. Nothing in this Agreement provides consent by any agency or political subdivision of the State of Florida to allow any person or entity not a party to this Agreement to sue, including, but not limited to, any citizen or employees of the CITY or SCHOOL BOARD, in any matter arising out of this Agreement, or to confer any rights on any third party to allow any claim otherwise barred under the doctrine of sovereign immunity by operation of law.
19. **WAIVER**. A waiver by either party of a breach or failure to perform under this Agreement will not constitute a waiver of any subsequent breach or failure to perform. Any waiver of insurance requirements as provided by this Agreement and the policies of SCHOOL BOARD does not relieve CITY of the indemnification provisions required by this Agreement. A waiver is only valid against a party if the waiver is in writing, signed by that party, and then only to the extent expressly specified therein.
20. **E-VERIFY**. In accordance with Executive Order 11-116, and Section 448.095, Fla. Stats. (2022), CITY must use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. CITY must also require all subcontractors performing work under this Agreement to utilize the E-Verify system for

any employees they may hire during the term of this Agreement. Failure to comply with this provision is a material breach of the Agreement, and SCHOOL BOARD may choose to terminate the Agreement at its sole discretion.

21. **PUBLIC RECORDS.**

A. IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF RECORDS AT: PUBLIC RELATIONS AND COMMUNICATION OFFICER: KEVIN CHRISTIAN, APR, CPRC, AT (352) 671-7555, PUBLIC.RELATIONS@MARION.K12.FL.US OR IN PERSON AT 1614 E. FORT KING STREET, OCALA, FLORIDA 34471.

B. IF SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SCHOOL BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF RECORDS AT: ANGEL B. JACOBS, CITY CLERK, AT (352) 629-8266, AJACOBS@OCALAFI.ORG OR IN PERSON AT 110 SE WATULA AVENUE, OCALA, FLORIDA 34471.

22. **NOTICES.** All notices, requests, consents, and other communication required or permitted under this Agreement must be in writing and hand delivered by messenger or courier service; faxed; emailed; or mailed by Registered or Certified Mail (postage pre-paid) Return Receipt Requested, addressed to:

School Board: Diane V. Gullett, Ed.D, Superintendent
The School Board of Marion County, Florida
1614 E. Fort King Street
P.O. Box 670
Ocala, Florida 34471
(352) 671-7720
Fax: (352) 671-7582
Email: Diane.Gullett@marion.k12.fl.us

With a copy to: Current School Board Chair
The School Board of Marion County, Florida
1614 E. Fort King Street
P.O. Box 670
Ocala, Florida 34471
(352) 671-7720
Fax: (352) 671-7582
Email: allison.campbell@marion.k12.fl.us

City of Ocala: John King, Director of Fleet Management
1805 N.E. 30th Ave., Bldg. 200
Ocala, Florida 34470
(352) 351-6750
Fax: (352) 867-5131
Email: fleet@ocalafl.org

With a copy to: William E. Sexton, Esq. City Attorney
City of Ocala, City Hall
110 SE Watula Ave, 3rd Floor
Ocala, FL 34471
(352) 401-3972
Email: cityattorney@ocalafl.org

or to such address(es) as the parties may mutually designate by notice complying with the terms of this Agreement. The parties will deem the notice delivered:

- (a) On the date delivered, if by personal delivery,
- (b) On the date faxed or emailed, if by facsimile or email, and
- (c) On the date, a party signed the Return Receipt, or refused acceptance of delivery, or the notice is designated by the postal authorities as not delivered if mailed to the proper address.

23. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of The School Board of Marion County, Florida and the City of Ocala.

THE SCHOOL BOARD OF MARION COUNTY, FLORIDA

Date: _____ By: _____
Allison Campbell DCS, Board Chair

Date: _____ By: _____
Diane V. Gullett, Ed.D., Superintendent

CITY OF OCALA

Date: _____ By: _____
James Hilty Sr, City Council President

ATTEST

Date: _____ By: _____
Angel B. Jacobs, City Clerk

APPROVED FOR FORM AND LEGALITY:

Date: _____ By: _____
William E. Sexton, Esq., City Attorney