

**AGREEMENT FOR THE EMPLOYMENT OF  
THE SUPERINTENDENT OF  
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**

This Agreement (hereinafter referred to as the "AGREEMENT") made and entered into this 14th day of March, 2018, by and between THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a body corporate existing under the laws of the State of Florida, (hereinafter referred to as the "BOARD") and Donald E. Fennoy II (hereinafter referred to as "SUPERINTENDENT") specifically provides as follows:

**1. TERMS OF THE AGREEMENT**

1.1 That BOARD, in accordance with a motion duly adopted at its official meeting held on the 14th day of March, 2018, has the duly vested authority to employ and does hereby employ SUPERINTENDENT, as its SUPERINTENDENT of Schools, pursuant to Section 1001.50, Florida Statutes effective immediately following the adjournment of School Board meeting of March 14, 2018 and ending on June 30, 2024.

1.2 Following SUPERINTENDENT's 2019 evaluation, pursuant to Section 3 of this Agreement and following each subsequent annual evaluation thereafter, and contingent upon SUPERINTENDENT receiving an overall rating of "Highly Effective", the term of this AGREEMENT shall be automatically extended for an additional year. However, in the event that SUPERINTENDENT receives an overall rating of "Effective" or is less, BOARD shall at the meeting during which the annual evaluation takes place, in its discretion and by simple majority vote, decide whether to extend the term of this AGREEMENT for an additional year.

1.3 For purposes of this AGREEMENT, the terms "Highly Effective" and "Effective" shall mean the highest and second highest ratings, respectively, that SUPERINTENDENT can achieve on his annual review. In the event that SUPERINTENDENT's annual review is modified in the future to delete these terms, the term "Highly Effective" shall be replaced with the highest rating that can be achieved and the term "Effective" shall be replaced with the second highest rating that can be achieved.

1.4 BOARD and SUPERINTENDENT mutually agree that during the aforesaid term of this AGREEMENT, SUPERINTENDENT shall perform the duties of SUPERINTENDENT in and for the public schools of Palm Beach County, Florida, as prescribed by the laws, policies and rules of the State of Florida, BOARD, the Florida State BOARD of Education and the terms and conditions of this AGREEMENT.

**2. JOB RESPONSIBILITIES**

SUPERINTENDENT's responsibilities, duties and functions shall include, but not be limited to, the following:

2.1 Serve as the Chief Executive Officer of the District ("District") as described by BOARD policy and Florida law. SUPERINTENDENT shall be delegated all powers and duties necessary to the efficient management and administration of the District to the full extent permitted by law, including the hiring, firing, organizing, reorganizing, assigning or reassigning administrative staff of the District deemed necessary to effect positive change for students within the District and such other duties and responsibilities prescribed in Section 1001.51, Florida Statutes, as well as those provisions outlined in Sections 1001.49, 1001.50 and 1012.27, Florida Statutes. SUPERINTENDENT shall also be responsible for providing internal monitoring data and reports as required by BOARD policies.

2.2 Represent the interests of BOARD and the District in day-to-day engagement with parents, other citizens, community organizations and governmental agencies.

2.3 Perform other duties and functions as assigned or required by BOARD policies and Florida and Federal laws and the job description attached hereto as Exhibit "A". Without the written consent of SUPERINTENDENT, BOARD will not reassign SUPERINTENDENT to another position in the District and shall not assign SUPERINTENDENT's duties to other employees of the District, except as provided for in the Wind Down Period in Section 8.3 of this Agreement.

2.4 SUPERINTENDENT shall, within six months of the beginning of the term of this AGREEMENT establish and maintain, during the term of this Agreement, a primary residence in Palm Beach County, Florida.

### **3. SUPERINTENDENT EVALUATION**

3.1 Not later than May 1, 2018, SUPERINTENDENT shall submit to BOARD a model evaluation instrument. On June 6, 2018, SUPERINTENDENT and BOARD shall meet to discuss and agree on the instrument to be used for SUPERINTENDENT's evaluation.

3.2 Using the agreed-upon evaluation instrument, by September 1, 2019 and no later than each September 1 thereafter, SUPERINTENDENT shall provide BOARD a written self-appraisal, which shall include an assessment of his accomplishments. No later than September 15, 2019 and no later than each year September 15 thereafter, BOARD shall complete the agreed-upon evaluation and shall consider SUPERINTENDENT's self-appraisal in completing its evaluation. No later than October 1, 2019 and no later than each October 1 thereafter, the BOARD shall meet with the SUPERINTENDENT to advise regarding his evaluation. In addition, BOARD members shall meet individually with SUPERINTENDENT to share their perspectives on the evaluation.

3.3 It shall be the sole responsibility of SUPERINTENDENT to advise BOARD of the appropriate timelines and to schedule the required meetings to complete the

evaluation process in a timely manner.

#### **4. COMPENSATION**

**4.1 BASE SALARY.** The annual salary for SUPERINTENDENT for the initial year of this Agreement shall be \$290,000.00. The salary base amount shall be subject to annual review by BOARD but shall be no less than the salary base amount for the immediate previous fiscal year. Effective July 1, 2019, SUPERINTENDENT's annual base salary shall be increased as follows: (i) if SUPERINTENDENT is rated as "Highly Effective" on his annual review by BOARD for that year, SUPERINTENDENT shall receive a salary increase equal to the same percentage amount as provided by BOARD to all 12-month administrative employees of the District for that fiscal year, retroactive to July 1; (ii) if SUPERINTENDENT is rated as "Effective" on his annual review by BOARD for that year, SUPERINTENDENT shall receive a salary increase equal to the same percentage amount as provided by BOARD to all 12-month administrative employees of the District for that fiscal year, LESS one (1) percentage point, retroactive to July 1 (for example, if all 12-month administrative employees receive a 3% salary increase for that year, SUPERINTENDENT will receive a 2% salary increase for that year); and (iii) if SUPERINTENDENT does not achieve a rating of "Highly Effective" or "Effective" on his annual review by BOARD for that year, or if BOARD does not provide a salary increase to 12-month administrative employees of the District during a particular year or years, SUPERINTENDENT shall receive no salary increase. All payments shall be in equal installments at the same intervals as the District's other administrative personnel are paid.

**4.2 HEALTH INSURANCE BENEFITS.** In addition to other benefits under this AGREEMENT, BOARD shall provide to SUPERINTENDENT, during the entire term of this AGREEMENT, health, dental, vision and other flexible benefits for SUPERINTENDENT, as provided generally to 12-month administrative employees of the District from time to time. BOARD shall also provide to SUPERINTENDENT, during the entire term of this AGREEMENT, such other benefits as are provided by BOARD to its other 12-month administrative employees.

**4.3 LIFE INSURANCE.** In addition to other benefits under this AGREEMENT, during the entire term of this AGREEMENT, and any extensions, BOARD shall provide term life insurance to SUPERINTENDENT in the coverage amount of \$300,000.00 and pay SUPERINTENDENT an additional \$1,500.00 per year toward SUPERINTENDENT's cost of purchasing supplemental life insurance coverage, to be obtained by SUPERINTENDENT. The payment for the purchase of supplemental life insurance coverage shall be disbursed to SUPERINTENDENT equally over 24 pay periods as a part of SUPERINTENDENT's regular paycheck beginning with the first paycheck on April 6, 2018. All policy ownership and beneficiary designations shall be at the option of SUPERINTENDENT.

**4.4 DISABILITY INSURANCE.** In addition to other benefits under this

AGREEMENT, BOARD shall provide a disability income policy, with a sixty (60) day waiting period, insuring SUPERINTENDENT for an amount equal to the Sixty percent (60%) of the annual base salary earned by SUPERINTENDENT, from time to time. This coverage will be provided under the District's group disability insurance carrier.

**4.5 DEFFERED COMPENSATION.** The District shall make contributions to a tax-sheltered annuity, chosen by SUPERINTENDENT, consistent with the Internal Revenue Code, in the amount of Twelve Thousand Dollars (\$12,000.00) per year. Said contributions shall be made, during the entire term of this AGREEMENT, to the specified tax-sheltered annuity equally over 24 pay periods in each fiscal year beginning with the first paycheck on April 6, 2108. This payment shall be coordinated with any other retirement benefits so that the total benefits are, if necessary, reduced to the IRC Section 415 and/or 457 limits (including any successor code sections or other applicable code sections).

In addition to the foregoing, SUPERINTENDENT shall have the right to direct a portion of his salary to a deferred compensation plan established by BOARD at SUPERINTENDENT's direction, allowing SUPERINTENDENT to reduce the amount of taxable income he receives within the limits of the Internal Revenue System and the Treasury regulations for payments made to a qualifying Section 403(b), 457(b) or 401(a) plan.

**4.6 AUTOMOBILE EXPENSES.** The duties and responsibilities of SUPERINTENDENT will require him to travel extensively in Palm Beach County by automobile. The Board shall provide SUPERINTENDENT an automobile for his exclusive use, and shall pay all expenses or provide any necessary services through its fleet maintenance program related to the operation of the automobile including expenses for tolls, fuel, oil, insurance, maintenance and repairs for the term of this AGREEMENT. SUPERINTENDENT's use of this vehicle includes incidental personal uses within Palm Beach County.

**4.7 BUSINESS EXPENDITURES.** In order to assist and enhance SUPERINTENDENT's ability to perform his job responsibilities and to meet and/or exceed the performance objectives, SUPERINTENDENT shall receive the fixed amount of \$1,000.00 per month to compensate SUPERINTENDENT for the costs associated with the performance of his duties in the accomplishment of District business.

**4.8 PROFESSIONAL MEETINGS AND ORGANIZATIONAL DUES.** In support of the BOARD's educational interests, SUPERINTENDENT shall attend and participate in appropriate professional meetings at the local, state, and national levels with the reasonable expenses for such attendance to be borne by the District in accord with BOARD's policies and state law, including membership fees and dues of SUPERINTENDENT in such organizations as he deems appropriate in the performance of his duties. SUPERINTENDENT may hold offices or accept responsibilities in these professional or educational organizations, provided that such responsibilities do not interfere with the performance of his duties as

SUPERINTENDENT. BOARD shall pay the entire cost of SUPERINTENDENT's memberships in or engagements with the following organizations:

American Association of School Administrators;  
Florida Association of District School Superintendents;  
Council of Great City Schools;  
Florida Association of School Administrators;  
The Broad Center and The Broad Foundation;  
Association for Supervision and Curriculum Development;  
Chiefs for Change and,

Such other professional or educational memberships as SUPERINTENDENT determines are necessary to maintain or improve his professional knowledge and skills.

The cost of such professional and educational memberships shall be paid by BOARD only to the extent permitted by law.

To encourage community activity on the part of SUPERINTENDENT, BOARD shall pay the membership dues for SUPERINTENDENT's membership in one or more local civic organizations, as permitted by state law.

**4.9 FLORIDA RETIREMENT SYSTEM.** SUPERINTENDENT shall be eligible to participate in the Florida Retirement System (FRS). BOARD shall contribute to the FRS as required by law including the provisions of Section 121.055, Florida Statutes, which currently provide that Senior Management Service Class is compulsory for all appointed District school superintendents. In the event, that Senior Management Service Class is no longer compulsory for appointed District school superintendents, BOARD agrees to continue to pay into SUPERINTENDENT's retirement for FRS, for the duration of the term of this AGREEMENT, as a Senior Management Service Class employee unless expressly prohibited by law. In the event Senior Management Service Class is no longer recognized as a class of employees by FRS, BOARD shall contribute the maximum contributions permitted under FRS for SUPERINTENDENT.

**4.10 TECHNOLOGY.** Board shall provide Superintendent with the use of equipment technology suited to the efficient performance of his duties, including but not limited to, a smart phone of his choosing as made available for other District administrators for Board business, which includes all monthly or recurring charges incurred in the course of District business. The Board shall also provide for a personal computer system, software, high-speed internet connection, laser printer/fax, and such other equipment and technology as will increase his efficiency, to be installed and maintained for the conduct of District business by SUPERINTENDENT in the home of SUPERINTENDENT. In the event that the District is not able to procure the make/model of the personal computer system of SUPERINTENDENT's choice, SUPERINTENDENT may purchase same and receive reimbursement for the actual

cost thereof.

## **5. LEAVE AND OTHER DAYS OF PAID NON-SERVICE**

**5.1 ANNUAL LEAVE.** SUPERINTENDENT shall be granted twenty-two (22) annual leave days per year during the term of this AGREEMENT. Any unused days may accumulate and carry over to following years, and is payable in full upon termination to the maximum extent allowable by law. Additionally, in order to provide essential services to the District, SUPERINTENDENT may not be able to use all of his earned vacation in a year and/or may be unable to schedule vacation at a desirable time. In consideration of such circumstances, at SUPERINTENDENT's election, SUPERINTENDENT may sell back up to twelve (12) vacation days to the BOARD, annually on June 30, and the BOARD shall pay SUPERINTENDENT for up to twelve (12) vacation days to be computed per diem at Superintendent's current base salary for each vacation day sold back.

**5.2 SICK LEAVE.** SUPERINTENDENT shall accrue sick leave as provided by Florida law, that presently accrues at one (1) day per month. SUPERINTENDENT may accumulate unused sick leave and carry same over to the following fiscal year, and shall be paid for same upon termination to the maximum extent allowable by law.

**5.3 LEGAL HOLIDAYS.** SUPERINTENDENT shall be entitled to the same legal holidays as those provided to the 12-month administrative employees of the District.

**5.4 LEAVE CARRYOVER.** Annual and sick leave accrued by SUPERINTENDENT prior to the effective date of this Agreement shall carryover and not be forfeited as a result of SUPERINTENDENT assuming the position of superintendent pursuant to this Agreement.

## **6. ADDITIONAL PROFESSIONAL DEVELOPMENT ACTIVITIES**

**6.1** SUPERINTENDENT may engage in additional, outside professional development activities, including teaching, consulting, speaking, writing, and participating in professional associations related to education or business, provided said activities do not interfere with SUPERINTENDENT's duties. Any compensated consulting work undertaken by SUPERINTENDENT may not be performed without using SUPERINTENDENT's annual leave time, personal leave time, holidays or other non-duty time unless otherwise agreed to by the BOARD and SUPERINTENDENT's expenses associated with compensated consulting work shall not be subject to reimbursement by the BOARD. SUPERINTENDENT shall disclose to BOARD, in writing, any consulting work he will perform in advance of performing same. It is also agreed that unpaid consulting work in assistance to Districts or organizations shall be considered professional development or temporary duty leave, due to positive exposure for the District or experiences that would enhance SUPERINTENDENT's performance of District responsibilities. Reimbursement of expenses associated with unpaid consulting work shall be subject to reimbursement, including any reasonable per diem

for meals and travel, and shall not be considered compensation for purposes of this paragraph.

## **7. BOARD/SUPERINTENDENT RELATIONS/COMMUNICATIONS.**

7.1 BOARD and SUPERINTENDENT agree that they shall work with each other in the spirit of cooperation and team work and shall provide each other periodic opportunities to discuss BOARD/SUPERINTENDENT relationship and communications. By June 1, 2018 and at least annually thereafter, BOARD and SUPERINTENDENT shall meet to discuss how they will communicate and work cooperatively together.

7.2 SUPERINTENDENT and BOARD agree to work with one another in compliance with BOARD policy and in so doing SUPERINTENDENT shall advise and counsel with BOARD.

7.3 Administrative responsibility and commensurate authority for administering the school system on a day-to-day basis will be delegated by BOARD to SUPERINTENDENT to the extent permitted by law.

7.4 BOARD recognizes that it is a collective body and each BOARD Member recognizes that his or his power as a BOARD Member is derived from the collective deliberation and action of BOARD as a whole in a duly-constituted meeting and that there is no individual authority to give direction to SUPERINTENDENT or any District staff member regarding the management of the District or the solution of specific problems.

7.5 It is agreed that BOARD, individually and collectively, will refer promptly to SUPERINTENDENT for study and recommendation, criticism, complaints and suggestions brought to the attention of BOARD or any member thereof.

7.6 BOARD and SUPERINTENDENT agree that, absent an emergency, Sunday is not a workday within the intention of the Parties to this AGREEMENT.

## **8. TERMINATION AND NON-RENEWAL**

8.1 **TERMINATION FOR CAUSE.** BOARD may dismiss SUPERINTENDENT, by a super majority vote of the entire seven-member BOARD (defined as a minimum of five (5) votes), during the term of this AGREEMENT for just cause or breach of this AGREEMENT ("Just Cause"). The Board agenda item to consider the termination for cause shall be publicly noticed at least five (5) business days in advance (i.e. at a minimum, notice will be given on Thursday for an agenda item on the meeting for the following Wednesday). BOARD shall be the sole decision-maker as to the determination of whether Just Cause, as hereinafter defined, exists or a breach of this AGREEMENT has occurred. Just Cause shall be defined as set forth in Subsections 1012.33(1)(a) and (4)(c), Florida Statutes, as amended. Just Cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education:

immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude as these terms are defined by the State Board of Education. Misconduct in office shall be defined as set forth in Florida Administrative Code, Rule 6A – 5.506(2). Just Cause shall also include SUPERINTENDENT making a written application for another position or participating in an interview for another position without providing prior written notice to the BOARD Chair.

In the event SUPERINTENDENT desires to challenge the Board's decision, SUPERINTENDENT shall file a written Notice of Intent to Challenge within ten (10) days of BOARD's decision and the parties shall proceed to implement Section 9.13 within 30 days. If not resolved through mediation, either party may initiate suit in the 15<sup>th</sup> Circuit Judicial Court, each waiving right to a jury trial.

**8.2 TERMINATION WITHOUT CAUSE.** BOARD may dismiss SUPERINTENDENT, by a super-majority vote of the entire seven-member BOARD (defined as a minimum of five (5) votes), during the term of the AGREEMENT without cause. The Board agenda item to consider the termination without cause shall be publicly noticed at least five (5) business days in advance (i.e. at a minimum, notice will be given on Thursday for an agenda item on the meeting for the following Wednesday). In the event of such termination without cause, SUPERINTENDENT may: (i) waive all rights to contest or challenge BOARD's decision and, in consideration of such waiver, will accept a lump sum amount, calculated as of the effective date of BOARD's termination, equal to twenty (20) weeks salary, ("Severance Pay") plus accrued sick and annual leave, and such other benefits required by law, in full satisfaction of BOARD's obligations hereunder and otherwise and in full release of any and all claims against BOARD under this AGREEMENT or otherwise, to the maximum extent allowable by law; or (ii) exercise his right to challenge as set forth herein. In the event SUPERINTENDENT challenges the termination, Severance Pay shall be withheld until the resolution of the dispute and/or litigation and paid out according to an agreed settlement or judgment.

In the event SUPERINTENDENT desires to challenge the Board's decision, SUPERINTENDENT shall file a written Notice of Intent to Challenge within ten (10) days of BOARD's decision and the parties shall proceed to implement Paragraph 9.13 within 30 days. If not resolved through mediation, either party may initiate suit in the 15<sup>th</sup> Circuit Judicial Court, each waiving right to a jury trial. In such event, Severance Pay shall be withheld until the resolution of the dispute and/or litigation and paid out according to an agreed settlement or judgment.

**8.3 RESIGNATION.** SUPERINTENDENT may resign during the term of this AGREEMENT without the consent of BOARD upon ninety (90) days advance written notice to BOARD. In such case, SUPERINTENDENT will receive the accrual of sick leave and annual leave and such other benefits as required by law. Failure of SUPERINTENDENT to abide by the terms of this Section, including giving less than the

required advanced notice of resignation, will constitute a breach of contract for which SUPERINTENDENT may be terminated for cause by simple majority vote. In the event that the BOARD terminates SUPERINTENDENT for cause as a result of SUPERINTENDENT's breach of any term of this Section, SUPERINTENDENT shall only be entitled to receive payment for those items set forth in Section 8.1, above.

Following the submission of a notice of resignation by SUPERINTENDENT through the effective date of resignation (the "Wind Down Period"), SUPERINTENDENT shall be required to continue to perform his assigned duties, including, but not limited to serving as a mentor to the BOARD's selected replacement superintendent. During the Wind Down Period, SUPERINTENDENT shall not be eligible to take more than ten (10) days of annual leave, consecutively or intermittently, without the prior approval of the BOARD, by simple majority vote.

During the Wind Down Period, the BOARD, in its sole discretion and by simple majority vote, may elect to unilaterally accelerate the effective date of SUPERINTENDENT's resignation and in such event, SUPERINTENDENT shall only be entitled to any salary, reimbursements, accrued benefits or other payments due and owing under this AGREEMENT through the accelerated resignation date selected by the BOARD. Additionally, the BOARD, in its sole discretion and by simple majority vote, may elect to transfer SUPERINTENDENT, without a reduction in base salary but with the elimination or reduction of all other benefits not paid to other 12 month administrative employees, to a temporary job classification such that the replacement superintendent may hold the title of superintendent. The BOARD's rights, during the Wind Down Period, to accelerate the effective date of resignation and place SUPERINTENDENT in a temporary job classification shall not be mutually exclusive.

Nothing in this Section shall be construed as precluding BOARD from terminating SUPERINTENDENT under Section 8.1. or 8.2. of this AGREEMENT during the Wind Down Period.

Without regard to whether it was accepted or not by BOARD, the SUPERINTENDENT's resignation may not be withdrawn or revoked by SUPERINTENDENT without the consent and agreement of BOARD.

**8.4 SUPERINTENDENT's INCAPACITY.** In the event that SUPERINTENDENT becomes unable to perform any or all of his duties with reasonable accommodations under this AGREEMENT due to illness, accident or other cause beyond his control and if said inability continues for a period of more than thirty (30) consecutive days, BOARD may, in its sole discretion, appoint an Acting SUPERINTENDENT to fulfill the duties and responsibilities of SUPERINTENDENT under this AGREEMENT. If such condition continues for more than ninety (90) consecutive days, BOARD may, in its sole discretion, terminate this AGREEMENT whereupon the respective duties, rights and obligations of the Parties hereto shall terminate including any obligations for severance pay. BOARD's decision and determination to terminate this AGREEMENT pursuant to this Section shall be final and shall be based upon the opinion of a properly licensed

medical doctor or medical professional utilizing an approved District provider. SUPERINTENDENT hereby consents to any medical or psychological examination requested by BOARD under this provision.

**8.5 DEATH OF SUPERINTENDENT.** This AGREEMENT shall be terminated upon the death of SUPERINTENDENT. If termination is the result of the death of SUPERINTENDENT, SUPERINTENDENT's estate or designated beneficiaries shall be entitled to receive such benefits under any death benefit plan that may be in effect for employees of the District in which SUPERINTENDENT participated and any salary, reimbursement, accrued benefits or other payments due and owing under this AGREEMENT as of the date of death.

**8.6 MUTUAL AGREEMENT.** This AGREEMENT may be terminated by mutual agreement of SUPERINTENDENT and BOARD in writing upon mutually agreed upon terms and conditions. If termination by mutual agreement, SUPERINTENDENT shall be entitled to any salary, reimbursements, accrued benefits or other payments due and owing under this AGREEMENT as of the termination date. Termination under this Section does not obligate BOARD to provide any severance pay, unless agreed to by the Parties at the time of the mutual separation.

**8.7 BENEFITS UPON TERMINATION.** In the event of termination of this AGREEMENT, SUPERINTENDENT's medical insurance will be addressed in accordance with any federal and state laws and regulations in effect at the time of such termination of employment.

## **9. GENERAL CONDITIONS**

**9.1 PLACE OF PERFORMANCE.** All obligations of BOARD under the terms of this AGREEMENT are reasonably susceptible of being performed in Palm Beach County, Florida and shall be payable and performable in Palm Beach County, Florida.

**9.2 SOVEREIGN IMMUNITY.** Nothing herein is intended to serve as a waiver by BOARD of sovereign immunity or of any rights under Section 768.28, Florida Statutes.

**9.3 NO THIRD PARTIES.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this AGREEMENT. None of the Parties intend to directly or substantially benefit a third party by this AGREEMENT. The Parties agree that there are no third party beneficiaries to this AGREEMENT and that no third party shall be entitled to assert a claim against any of the Parties based upon this AGREEMENT. Nothing herein shall be construed as consent by either party to be sued by third Parties in any matter arising out of any contract.

**9.4 INDEMNIFICATION OF SUPERINTENDENT.** BOARD agrees that it shall defend, hold harmless and indemnify SUPERINTENDENT in accordance with Florida Statutes §768.28 from any and all demands, claims, suits, actions and legal

proceedings brought against SUPERINTENDENT in his official capacity and/or individual capacity made by third parties asserting liability because of acts committed within SUPERINTENDENT's scope of employment. BOARD may refuse to indemnify SUPERINTENDENT for those actions brought against SUPERINTENDENT in his individual capacity if BOARD deems that SUPERINTENDENT has acted outside the scope of his employment or in those actions which could result in punitive damages or criminal penalties against SUPERINTENDENT. BOARD reserves the right to approve SUPERINTENDENT's counsel, which approval shall not be unreasonably withheld, in those instances in which SUPERINTENDENT is entitled to indemnification.

**9.5 ENTIRE AGREEMENT.** This AGREEMENT constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and is the final, complete and exclusive expression of the terms and conditions of their agreement. Any and all prior agreements, representations, negotiations and understandings made by the Parties, oral and written, express or implied, are hereby superseded and merged herein. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. Any amendment, modifications, or variations from the terms of AGREEMENT shall be in writing, shall be effected only upon approval of such amendment, modification, or variation by BOARD and SUPERINTENDENT, and shall not operate as a termination of this AGREEMENT.

**9.6 AGREEMENT PREPARATION.** The Parties acknowledge that they have sought and obtained whatever competent *advice* and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this AGREEMENT has been their joint effort. This AGREEMENT contains the Parties' mutual expressions and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

**9.7 BINDING EFFECT.** This AGREEMENT shall be binding upon and inure to the benefit of the Parties hereto and any respective successors.

**9.8 WAIVER.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this AGREEMENT and, therefore, is a material term hereof. Any party's failure to enforce any provision of this AGREEMENT shall not be deemed a waiver of such provision or modification of this AGREEMENT. A waiver of any breach of a provision of this AGREEMENT shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this AGREEMENT.

**9.9 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT.

**9.10 GOVERNING LAW AND VENUE.** This AGREEMENT shall be governed by the laws of the State of Florida and it shall be performed in Palm Beach County, Florida unless otherwise provided by law. The Parties agree that any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida.

**9.11 LEGAL COMPLIANCE.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this AGREEMENT. Furthermore, any provisions of this AGREEMENT which do not comply with the laws of the State of Florida in existence from time to time during the term of this AGREEMENT shall be deemed amended to comply with such laws.

**9.12 SEVERABILITY.** Should any provision of this AGREEMENT be invalid, illegal, unlawful, unenforceable or *void* in any respect the surviving provisions of this AGREEMENT shall nevertheless be effective and binding on all Parties.

**9.13 MEDIATION.** The Parties agree that in the event they cannot resolve a dispute hereunder, they shall, prior to filing any law suit, mutually participate in a mediation, to be conducted by a certified Florida Circuit Court mediator, who shall be mutually selected and whose fees and costs shall be equally divided between the Parties.

**9.14 ASSIGNMENT.** This AGREEMENT shall inure to the benefit of and shall be binding upon BOARD, its successors and assigns, and SUPERINTENDENT, his heirs and personal representatives. Neither this AGREEMENT nor any interest herein may be assigned, transferred or encumbered by either Party. There shall be no partial assignments of this AGREEMENT including, without limitation, the partial assignment of any right to receive payments from BOARD.

**9.15 FORCE MAJEURE.** Neither party shall be obligated to perform any duty, requirement or obligation under this AGREEMENT if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

**9.16 CAPTIONS.** The captions, section numbers, article numbers, title and headings appearing in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this AGREEMENT, nor in any way effect this AGREEMENT and shall not be construed to create a conflict with the provisions of this AGREEMENT.

9.17 **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.

9.18 **STATE FUNDING.** SUPERINTENDENT's salary, performance incentives and benefits paid for by state funds shall be limited as prescribed in Section 1001.50, Florida Statutes. BOARD shall be responsible for identifying additional sources of funding for any amounts due and owing to SUPERINTENDENT under the terms of this AGREEMENT that are in excess of the limits prescribed by Section 1001.50, Florida Statutes.

9.19 **ATTORNEY'S FEES.** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this AGREEMENT shall be borne by the respective Parties; provided, however, that this clause pertains only to the Parties to the AGREEMENT.

9.20 **NOTICE.** When either of the Parties desire to give notice to the other, such notice must be in writing, and hand-delivered or sent by certified U.S. Mail, with return receipt requested, postage prepaid, addressed to the Party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To BOARD:                    Board Chair  
                                  The School District of Palm Beach County  
                                  3300 Forest Hill Blvd., C-316  
                                  West Palm Beach, FL 33406

With a Copy to:            General Counsel  
                                  3300 Forest Hill Blvd., C-323  
                                  West Palm Beach, FL 33406

To SUPERINTENDENT:    Donald E. Fennoy II  
                                  3300 Forest Hill Blvd., C-316  
                                  West Palm Beach, FL 33406

SUPERINTENDENT

\_\_\_\_\_  
Donald E. Fennoy II

THE SCHOOL BOARD OF PALM  
BEACH COUNTY, FLORIDA

Date: \_\_\_\_\_

BY \_\_\_\_\_  
CHUCK SHAW, BOARD CHAIRMAN

Reviewed and Approved As To Legal  
Form

\_\_\_\_\_  
School Board Attorney

Date: \_\_\_\_\_