

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA (“SCHOOL BOARD”), a body corporate and political subdivision of the State of Florida whose principal place of business is 2700 Judge Fran Jamieson Way, Viera, Florida 32940, and Paul Gibbs (hereinafter referred to as “GIBBS” or “General Counsel”).

WHEREAS, the SCHOOL BOARD has previously determined that it needs the services of a full-time, in-house general counsel; and,

WHEREAS, GIBBS has agreed to serve as General Counsel to the SCHOOL BOARD; and,

NOW, THEREFORE, in consideration of the promises and the mutual agreements herein provided, SCHOOL BOARD and GIBBS agree as follows:

1. **RECITALS**: The foregoing recitals are true and correct and incorporated herein by reference.

2. **TERMS OF AGREEMENT**:

A. **Term of Employment**: The SCHOOL BOARD hereby agrees to continue to employ GIBBS as General Counsel and GIBBS hereby accepts and agrees to continue employment for a term of employment commencing on July 1, 2022 and ending on June 30, 2025. The General Counsel shall devote full time to SCHOOL BOARD business and shall not have any shares or partnership status with any and all law firms during the terms of this Employment Agreement and GIBBS shall serve no other clients as an attorney during the term of the Agreement, except as provided for herein in paragraph 7. The

nature of employment between the SCHOOL BOARD and the General Counsel is that of employer and employee.

B. Renewal Term of Employment: Upon written consent by GIBBS, subject to approval by the SCHOOL BOARD, the terms of employment, as set forth herein, may be renewed and extended for additional terms. Should GIBBS obtain an evaluation of at least effective each year, the contract will automatically extend for one additional year thereby maintaining a three (3) year agreement with the Board under the same terms outlined herein without further action of the SCHOOL BOARD or GIBBS. Amendments to the terms may be made by written mutual consent of the SCHOOL BOARD and GIBBS at any time through an Amendment.

3. COMPENSATION: For all services rendered by the General Counsel pursuant to this Agreement, the SCHOOL BOARD shall pay to and provide the salary and other benefits described in this Agreement.

A. Base Salary:

i. The General Counsel shall receive an annual salary of \$170,000 subject to additional increases as described below, less appropriate deductions for employment taxes and income tax withholdings. Any such annual salary shall be paid in accordance with the SCHOOL BOARD's normal payroll procedures for administrative employees.

ii. GIBBS shall be eligible for an increase in his base salary commensurate with his performance assessment rating. For each year that GIBBS receives a rating of highly effective, he shall receive a four percent (4%) increase. For each year he receives an effective rating, he shall receive a two percent (2%) increase.

Any year in which GIBBS receives anything below effective, he shall not be eligible for any increase for the next fiscal year.

iii. SCHOOL BOARD and GENERAL COUNSEL agree that he is NOT eligible for any additional salary increases or bonuses provided to other employees, including any increases or bonuses provided to other twelve (12) month administrative employees of the SCHOOL BOARD during the term of this Agreement.

B. Retirement: In addition to the salary provided in Paragraph 3(A) above, the General Counsel shall be eligible to participate in the Florida Retirement System and all other retirement programs for which he is or may become eligible during the term of this Agreement. The SCHOOL BOARD shall designate the position of General Counsel for inclusion in the Senior Management Service Class of the Florida Retirement System in accordance with Section 121.055, Florida Statutes, and hereby authorizes and directs, through approval of this Agreement, that the appropriate school district staff take all actions necessary to maintain this designation during the terms of this Agreement.

C. Expenses: The SCHOOL BOARD shall establish a budget to pay or reimburse the General Counsel for his reasonable and necessary expenses incurred in performance of his duties hereunder in accordance with applicable state law and SCHOOL BOARD policies. Without limiting the foregoing, the SCHOOL BOARD shall budget expenses for the General Counsel to attend professional and official meetings, seminars, continuing legal education programs, conventions, conferences, and other meetings and functions that the General Counsel deems relevant to the performance of his duties hereunder without further SCHOOL BOARD approval. The SCHOOL BOARD shall pay any and all membership fees and dues of the General Counsel in the Florida

Bar, the Florida School Board Association, the Florida School Board Attorneys Association (FSBAA), the National School Board Association (NSBA), the NSBA Council of School Attorneys (COSA), the Brevard County Bar Association (BCBA), the City, County and Local Government Section of the Florida Bar, the American Bar Association (ABA), and any other similar organizations, associations, or committees that may not be enumerated herein but that are beneficial to or are pertinent in representing the SCHOOL BOARD. The SCHOOL BOARD also agrees to pay for any and all certifications obtained that are related to the General Counsel's duties including any Florida Bar Board Certification, National Association of Parliamentarian accreditation, and any annual fees and costs of courses associated with maintaining such certifications. The General Counsel may hold offices or accept responsibilities in such professional organizations, associations, and committees, provided that such responsibilities do not interfere with the performance of his duties to the SCHOOL BOARD.

D. Employee Benefits: For each year of the Agreement, the SCHOOL BOARD shall provide health, dental, vision, life insurance, and other flexible benefits which are then available to all administrative employees of which the General Counsel elects for himself from the SCHOOL BOARD's standard benefit program available to all administrative employees on the same terms and in the same manner as they are available to all administrative employees. The General Counsel's family will be eligible for these benefits in the same manner as are the families of other twelve (12) month administrative employees of the SCHOOL BOARD.

E. Other Benefits: The General Counsel shall have the right to participate in any benefit or program to which other twelve (12) month administrative employees of the SCHOOL BOARD are entitled.

F. Vacation, Sick Leave, and Holidays: During the term of employment under this Agreement, the General Counsel shall be entitled to the same annual leave benefits as authorized by SCHOOL BOARD policies for administrative employees on twelve (12) month calendars, except that the General Counsel shall accrue annual leave (vacation leave) at a rate of 1.5 days per month. The General Counsel shall be entitled to sick leave as authorized in SCHOOL BOARD policies for administrative employees on twelve (12) month calendars. The General Counsel shall be entitled to the same holidays as the twelve (12) month administrative employees of the SCHOOL BOARD. The General Counsel shall have winter break off. Winter Break shall be paid time off without the use of accumulated vacation time. General Counsel shall also receive six (6) days of work-life days to be used only in June and July of each year. These work-life days are not tied to accumulated vacation time, and cannot be rolled over or used beyond June and July each year, without separate SCHOOL BOARD approval should circumstances arise during June and July that prevent their use. Proper justification should appear on the agenda seeking SCHOOL BOARD approval.

4. **TERMINATION:**

A. Termination for Cause. The General Counsel may be terminated for cause as provided in Section 1012.33, Florida Statutes, or other applicable statute. It shall be considered just cause under this Agreement to terminate the General Counsel if he is disciplined, suspended, or disbarred by the Florida Bar or if he is convicted with a violation

of Florida or Federal criminal law, or found liable for a violation of the Florida Bar's Rules of Professional Conduct and/or the Code of Ethics in the Education Profession in Florida.

B. Termination for Disability. The SCHOOL BOARD shall have the right to terminate the General Counsel's employment in the event General Counsel develops a disability which prevents him from fully performing his duties outlined herein.

C. Resignation by the General Counsel. The General Counsel may resign during the term of this Agreement without the consent of the SCHOOL BOARD upon no less than ninety (90) days' written notice or upon mutual agreement of the parties. The SCHOOL BOARD's obligation to compensate the General Counsel under this Agreement will terminate upon the General Counsel's resignation effective date or upon mutual agreement of the parties. The General Counsel shall also be entitled to any accrued but unused annual leave in accordance with SCHOOL BOARD policies for administrative employees on twelve (12) month calendars.

D. Termination Without Cause.

i. GIBBS recognizes and acknowledges that the position of the General Counsel is an at-will position and that the General Counsel serves at the pleasure of the SCHOOL BOARD. GIBBS further acknowledges that as a condition of his employment with the SCHOOL BOARD, he/she shall not serve or represent any other clients, except as provided herein in Paragraph 7, and that he shall not have any shares or partnership status with any and all law firms during the terms of this Agreement.

ii. The SCHOOL BOARD acknowledges that GIBBS, as a result of the conditions imposed in this Agreement, will suffer financial hardship and potential injury to his personal and professional reputation in the community if he is terminated without

cause. Therefore, this Agreement may be terminated without cause by the SCHOOL BOARD provided that GIBBS shall be entitled to a severance package equivalent to the compensation GIBBS would have earned for a period of twenty (20) weeks from the date of termination, along with the salary and any other benefits that have accrued but are unpaid as of the date of the termination and an amount equal to the pro rata portion of his salary for any unused personal leave. The foregoing shall survive the expiration or termination of this Agreement.

5. **DUTIES:**

A. The General Counsel shall be responsible for the recommendation to the Superintendent for nomination to the Board for the selection, hiring, and supervision of such in-house attorneys and legal department support staff as may be necessary for the proper handling of the legal work of the SCHOOL BOARD subject to the approval of the SCHOOL BOARD.

B. Insofar as the SCHOOL BOARD's demands for legal services exceed the capacity of the General Counsel and his staff, the SCHOOL BOARD shall have the right to engage outside counsel to handle specific cases, types of cases, or items of legal business, the compensation for which shall be approved and paid by the SCHOOL BOARD.

C. The General Counsel and/or his staff shall be responsible for handling all legal matters of the SCHOOL BOARD, including but not limited to examination of land titles, acquisition of real property, including condemnation suits, advice and consultation with the various departments, preparation of legal opinions of the SCHOOL BOARD, drafting contracts, and representation of the SCHOOL BOARD in litigation and at

administrative hearings. The General Counsel shall make assignments of the legal work of the SCHOOL BOARD to the attorney(s) assisting him and shall direct the activities of such attorney(s). Alternatively, or in addition to assigning legal work to in-house attorneys, the General Counsel shall assign and/or oversee the services rendered by outside counsel and shall be responsible for coordinating services and assessing the scope and performance of services rendered by outside counsel.

D. The General Counsel, or his designee, shall attend all regular and special SCHOOL BOARD meetings and workshops as deemed appropriate by the SCHOOL BOARD and shall serve as parliamentarian for the SCHOOL BOARD.

E. The General Counsel shall regularly review the policies and procedures of the SCHOOL BOARD to determine compliance with federal and state laws, rules, and regulations and advise the SCHOOL BOARD which policies shall be changed and recommend the appropriate changes.

F. The General Counsel and/or his staff shall render legal advice to the Superintendent and to such members of the administrative staff as shall be designated by the Superintendent on matters relating to the school district, including, but not limited to, employee and student rights, compulsory school attendance, rights of disabled individuals, local zoning rules, employee and student discipline, conflict of interest laws, government in the sunshine laws, operations, and public records laws, provided that such services do not conflict with the General Counsel's representation of the SCHOOL BOARD.

G. The General Counsel is also responsible to perform all job duties listed in the General Counsel's written job description, a copy of which is attached as Exhibit "A."

6. **PERFORMANCE EVALUATION**: On an annual basis, the SCHOOL BOARD and the Superintendent will evaluate and assess, in writing, the performance of the General Counsel, including working relationships among the General Counsel, the Superintendent, and the SCHOOL BOARD. In the event the SCHOOL BOARD determines that the performance of the General Counsel is unsatisfactory, the SCHOOL BOARD shall provide the General Counsel, in writing, the instances of unsatisfactory performance described in specific detail. The evaluation shall include recommendations as to the areas of improvement in all instances where the SCHOOL BOARD considers the General Counsel's performance to be unsatisfactory or needing improvement. The General Counsel will have the right to submit a written response to the SCHOOL BOARD's written evaluation. All evaluations and responses thereto shall become part of the General Counsel's personnel file.

7. **OUTSIDE BOARDS AND PRO BONO REPRESENTATIONS**: GIBBS recognizes and understands that the position of General Counsel for the SCHOOL BOARD shall require his full attention and accordingly agrees to devote all time necessary to fully discharge his duties. However, nothing in this Agreement shall prevent GIBBS from serving as a non-paid director, board member or ex-officio, or volunteer legal advisor for certain charitable, religious, or other not-for-profit organization, foundation, or association. Furthermore, to fulfill the pro bono requirements of the Brevard County Bar Association or other professional association, GIBBS may undertake pro bono cases assigned by the Brevard County Legal Aid Society or other organization which are not in conflict with his duties as General Counsel. At any time during the terms of this Agreement, any member of SCHOOL BOARD or the Superintendent may request that GIBBS provide full

disclosure of any such affiliations or pro bono cases. GIBBS shall comply with any such request within five (5) business days.

8. **ENTIRE AGREEMENT**: This document incorporates and includes all prior negotiations, correspondences, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

9. **NOTICE**: When any of the parties desire to give notice to the other, such notice must be in writing, sent by electronic mail, addressed to the party for whom it is intended. The place for giving notice shall remain the same until such time it is changed by written notice in compliance with the provisions of this paragraph. The parties designate the following places for giving notice:

SCHOOL BOARD:
School Board of Brevard County, Florida
Attention: BPS Chair
CC: Superintendent
2700 Judge Fran Jamieson Way
Viera, Florida 32940

Paul Gibbs
Pgibbs1284@aim.com

10. **ASSIGNMENT**: This Agreement shall inure to the benefit of, and shall be binding upon, the SCHOOL BOARD, its assigns, and successors and the General Counsel, his heirs, and personal representatives, but may not be assigned by either party.

11. **SEVERABILITY**: In case any one or more of the provisions contained in this Agreement shall for any reason be held illegal, invalid, unlawful, unenforceable, or void in any respect, the illegality, invalidity, unlawful, or void nature of that provision shall not affect any other provisions and this Agreement shall be considered as if such illegal, invalid, unlawful, unenforceable, or void provision had never been included.

12. **APPLICABLE LAW AND VENUE**: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any disputes under this Agreement shall be the Circuit Court for the 18th Judicial Circuit in and for Brevard County, Florida.

13. **ATTORNEY'S FEES**: Subject to Section 768.28, Florida Statutes, should it become necessary for either of the parties to resort to legal action based upon a default or breach of this Agreement by the other party, then the non-prevailing party in any litigation shall pay all reasonable costs and expenses incurred by the prevailing party, including reasonable attorney's fees incurred by the prevailing party, to include reasonable attorney's fees incurred prior to litigation, during litigation, at trial or on appeal. Notwithstanding the foregoing, the General Counsel and the SCHOOL BOARD acknowledge that the SCHOOL BOARD is entitled to benefits of sovereign immunity as provided by Florida Law and in no event shall the SCHOOL BOARD's liability under this Paragraph exceed the liability limits established in Section 768.28, Florida Statutes.

14. **PARAGRAPH HEADINGS**: The paragraph headings contained herein are for reference only and shall not in any way affect the meaning or interpretation of this Agreement.

15. **AUTHORITY**: Each person signing this Agreement on behalf of either party individually warrants that he or she has the 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.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have signed their names at Viera, Brevard County, Florida this ____ day of _____, 2019.

BY:

MISTY BELFORD, SCHOOL BOARD CHAIRPERSON
THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

PAUL GIBBS, ESQ.
GENERAL COUNSEL

ATTEST:

DR. MARK MULLINS
SUPERINTENDENT OF SCHOOLS

Exhibit "A"

General Counsel's Written Job Description