

**MUTUAL SEPARATION AGREEMENT AND THIRD AMENDMENT TO
SUPERINTENDENT'S EMPLOYMENT AGREEMENT**

THIS MUTUAL SEPARATION AGREEMENT AND THIRD AMENDMENT TO SUPERINTENDENT'S EMPLOYMENT AGREEMENT (hereinafter referred to as the "Agreement") is made this ___ day of December, 2022, between **Dr. Mark Mullins** ("Dr. Mullins") and the School Board of Brevard County, Florida, 2700 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "SBBC") and together with Dr. Mullins, the "Parties.")

WHEREAS, Dr. Mullins is employed by SBBC as the Superintendent of Schools for the school district of Brevard County; and

WHEREAS, SBBC and Dr. Mullins are parties to an Employment Agreement, originally dated July 10, 2018, and subsequently amended on March 26, 2019, and October 6, 2020, (the "Employment Agreement" or "Contract"); and

WHEREAS, Dr. Mullins and SBBC mutually agree to his voluntary resignation effective December 31, 2022; and

WHEREAS, the Parties desire to extinguish any potential claims or disputes which may arise against each other which the Parties wish to settle by this Agreement; and

WHEREAS, Parties mutually desire to make a full and final settlement of any and all matters relating to Dr. Mullins employment by the SBBC, the separation of his employment, and the termination of his Employment Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

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

2. **Modification of Term of Employment Agreement.** The Parties agree that the Term of Contract set forth in Section 3 of Amendment #2 to Superintendent's Employment Agreement is hereby modified. Dr. Mullins hereby submits a letter of resignation with an Effective Date of December 31, 2022. This letter of resignation is conditioned on the acceptance, execution, and full implementation of this Agreement by the Parties.

3. **Resignation.** The parties agree that Dr. Mullins will resign from his employment with SBBC effective December 31, 2022. Dr. Mullins agrees not to carry out any official duties as the Superintendent of Schools on behalf of the SBBC after December 31, 2022 or an earlier date as determined by the SBBC.

4. **Terminal Pay for Accrued Vacation and Sick Leave.** Pursuant to Section 15 – Termination, the parties agree that Dr. Mullins will be entitled to receive (a) payment in a lump sum of accrued, but unused, vacation time at the rates and up to the limits set forth in his Employment Agreement and §1012.65, Fla. Stat.; and (b) payment in a lump sum of all accrued, but unused, sick leave at the rates and up to the limits set forth in his Employment Agreement and §1012.61, Fla. Stat.

Dr. Mullins currently has approximately 331 hours of accrued but unused vacation leave and 545.875 hours of accrued but unused sick leave. Hours accrued prior to Dr. Mullins becoming superintendent shall be paid at the prior positions' rates as delineated in the Employment Agreement. The parties agree that Dr. Mullins shall be granted the salary increase granted to all administrative employees for Fiscal Year 2023 retroactive to July 1, 2022 and that such salary increase will be considered when calculating the payout for vacation leave and sick leave. These sums shall be reduced by any leave taken by Dr. Mullins from the date of this Agreement to separation date, and shall be in addition to any other amounts payable to Dr. Mullins upon termination of employment under his Employment Agreement and applicable law. SBBC shall pay these sums to Dr. Mullins no later than January 15, 2023.

5. Terminal Pay for Severance. The parties agree that SBBC will pay Dr. Mullins severance pay in the amount of twenty (20) weeks at his applicable salary, which will include the salary increase given to all administrative employees for Fiscal Year 2023 retroactive to July 1, 2022 subject to applicable statutory tax withholdings plus benefits and perquisites for employment for twenty (20) weeks. Pursuant to Section 215.425(4)(a), Florida Statutes, the parties agree that this sum of severance pay represents the settlement of an employment dispute and does not exceed an amount greater than twenty (20) weeks of compensation as defined by Florida law, School Board Policies and the Employment Agreement. Pursuant to Section 215.425(4)(d), Florida Statutes, such severance pay includes salary, benefits, or perquisites for employment services yet to be rendered. In accordance with Section 215.425(4)(d)1, 2 and 3, Florida Statutes, the severance pay does not include earned and accrued annual, sick, compensatory or administrative leave; early retirement under provisions established in an actuarially funded pension plan subject to part VII of Chapter 112; or any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is by policy available to all employees of the unit of government pursuant to the unit's health insurance plan. This amount shall be paid to Dr. Mullins no later than January 15, 2023. Additionally, for 20 weeks beginning January 1, 2023, SBBC will maintain Dr. Mullins on its health insurance plan and will make all required Board contributions on behalf of Dr. Mullins. Dr. Mullins will remain responsible to pay all employee-required contributions to continue his health insurance during the 20-week period beginning January 1, 2023.

6. Florida Retirement System Payments. The parties agree that Florida law and Dr. Mullins' Employment Agreement, including but not limited to Section 4.3, requires certain payments be made directly to the Florida Retirement System (FRS). These payments are to be made by SBBC to FRS for Dr. Mullins retirement, and not as a lump sum payment to Dr. Mullins.

7. Payment of attorney's fees and costs related to contractual negotiations. SBBC will reimburse Dr. Mullins for the cost of his legal fees incurred as a result of this separation but in no event shall an amount greater than \$10,000 be paid by SBBC under this provision.

8. Indemnification: Section 18 of the Employment Agreement will survive Dr. Mullins' separation of employment. SBBC will continue to defend, hold harmless, and indemnify Dr. Mullins to the extent provided for in Paragraph 18 of the original Employment

Agreement. This also includes any case subsequently filed against Dr. Mullins resulting from his official duties.

9. **Future Cooperation:** Following his separation, Dr. Mullins agrees to reasonably cooperate with the SBBC in any claims, investigations, administrative proceedings or lawsuits which relate to SBBC and for which Dr. Mullins may possess relevant knowledge or information. If such cooperation is requested by SBBC or if Dr. Mullins is subpoenaed by a party to provide testimony relating to events while he was Superintendent of Schools, and SBBC requests his future cooperation, Dr. Mullins agrees to cooperate as directed. SBBC agrees to promptly compensate Dr. Mullins at his last hourly rate of compensation at the time of separation from the District and will reimburse Dr. Mullins for reasonable out-of-pocket expenses. This compensation is separate from any compensation provided pursuant to any other provision of this Agreement.

10. **No Admission:** This Agreement is not, and shall not be construed to be, an admission of liability, culpability or any other legal conclusion.

11. **Return of District Property upon Termination.** Dr. Mullins agrees to return to SBBC any school district property, keys, entrance security badges, equipment, computers, documents or copies of documents presently in his possession on or before the termination of his employment with SBBC.

12. **Release of SBBC.** Upon receipt of those payments to be made by SBBC under this Agreement, Dr. Mullins releases and forever discharges SBBC, its members, and the present and former employees of The School Board of Brevard County, Florida, from any and all liabilities, causes of action, debts, claims and demands, both in law and equity, known or unknown, fixed or contingent, which Dr. Mullins may have or claim to have based on or in any way related to Dr. Mullins's employment by SBBC or this Agreement.

13. **Release of Dr. Mullins.** SBBC releases and forever discharges Dr. Mullins from any and all liabilities, causes of action, debts, claims and demands, both in law and equity, known or unknown, fixed or contingent, which SBBC may have or claim to have based on or in any way related to Dr. Mullins employment by SBBC or this Agreement.

14. **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, 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.

Superintendent of Schools
The School Board of Brevard County, Florida 2700 Judge Fran Jamieson Way
Viera, Florida 32940

Office of the General Counsel
The School Board of Brevard County, Florida 2700 Judge Fran Jamieson Way

Viera, Florida 32940

Dr. Mullins: At his last address provided to the School District

15. **No Third-Party Beneficiaries.** 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 an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement.

16. **Compliance with Laws.** Each party shall comply with all applicable federal state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

17. **Place of Performance.** All obligations of SBBC under the terms of this Third Amendment to Employment Agreement are reasonably susceptible of being performed in Brevard County, Florida and shall be payable and performable in Brevard County, Florida.

18. **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. 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 exclusively to the jurisdiction of the State courts of the Eighteenth Judicial Circuit of Brevard County, Florida or to the jurisdiction of the United States District Court for the Middle District of Florida. Each party agrees and admits that the state courts of the Eighteenth Judicial Circuit of Brevard County, Florida or the United States District Court for the Middle District of Florida shall have jurisdiction over it for any dispute arising under this agreement.

19. **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, 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.

20. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

21. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC. This Agreement shall inure to the benefit of, and shall be binding upon, the Board, its successors and assigns, and Dr. Mullins,

his heirs and personal representatives, but may not be assigned, hypothecated, pledged, garnished, attached by the parties, or any of them.

22. Settlement and Mutual Release, Covenant not to Sue. The parties agree that except for the terms and conditions contained herein, this constitutes a complete settlement of the obligations of the parties under the Employment Agreement. Furthermore, this Agreement constitutes a complete and mutual settlement and release by the parties of any and all disputes, claims, demands, lawsuits, cause of action, complaints, whether ripe or contingent, accrued or unaccrued, whether stated or unstated, whether discovered or undiscovered, that either Dr. Mullins or SBBC may have against each other, except for the terms and conditions of this Agreement. The parties further agree that, except for the terms and conditions of this Agreement, this constitutes a settlement and release of any claim, demand, lawsuit, cause of action, complaint, set-off, counterclaim, defense that each party could assert against the other. SBBC agrees that it will never institute a legal proceeding, lawsuit or action against or relating to Dr. Mullins or assert a defense to or avoidance of the compensation and benefits or obligations set forth in this Agreement, whether by way of delay or failure to pay or by way of suit, counterclaim or affirmative defense. Dr. Mullins agrees that he will never institute a lawsuit, proceeding or action against the SBBC, except in the event of a breach of this Agreement.

23. Priority of Documents. It is the parties' intent that this Agreement completely replace and supersede the Employment Agreement and the First and Second Amendments to Employment Agreement. In the event of any conflict of provisions, the following priority of documents shall be applied in resolving such conflicts:

First: This Mutual Agreement and Third Amendment to the Superintendent's Employment Agreement;

Second: Amendment #2 to Superintendent's Employment Agreement;

Third: Amendment #1 to Superintendent's Employment Agreement, and

Fourth: Superintendent's Employment Agreement

24. Severability. In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

25. Preparation of Agreement. 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. The language agreed to herein express their mutual intent 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.

26. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

27. **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 unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

28. **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, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, 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.

29. **Survival.** All representations and warranties made herein, including, without limitation, indemnification obligations, obligations to reimburse SBBC, and obligations to provide a legal defense, reporting requirements shall survive the termination of this Agreement.

30. **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

31. **Authority.** Each person signing this Separation 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 Mutual Separation Agreement and Third Amendment to Superintendent's Employment Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Mutual Separation Agreement and Third Amendment to Superintendent's Employment Agreement on the date first above written.

Dr. Mark Mullins
Superintendent

SCHOOL BOARD OF BREVARD
COUNTY

By: _____

Matthew Susin, School Board Chair

Date

Date

State of Florida
County of Brevard

Affirmed and subscribed before me this ____ day of _____, 2022 by Dr. Mark Mullins
and Matthew Susin.

By:
Notary Public State of Florida

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____