

SUPERINTENDENT'S
EMPLOYMENT CONTRACT

THIS CONTRACT is made this 15th day of September, 2020, between THE SCHOOL BOARD OF ESCAMBIA COUNTY, FLORIDA (hereinafter referred to as "BOARD") and Timothy Andrew Smith (hereinafter referred to as "SUPERINTENDENT" or "SMITH").

WITNESSETH:

WHEREAS, the BOARD is authorized under Section 1001.50, Florida Statutes, to appoint the SUPERINTENDENT of Schools for the Escambia County School District (hereinafter referred to as "School District"); and

WHEREAS, the BOARD wishes to retain SMITH to perform the duties and responsibilities of school SUPERINTENDENT as set forth in Sections 1001.48, 1001.49, 1001.51, and 1001.53, Florida Statutes; and

WHEREAS, SMITH is willing to provide said services and faithfully and fully comply with the duties and responsibilities of the office as outlined herein as well as provide those services to the BOARD as required and requested by the BOARD throughout the term of the Contract that are in keeping with the official authority of the BOARD.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth hereafter, it is agreed as follows:

1. EMPLOYMENT

The BOARD hereby employs SMITH as SUPERINTENDENT of Schools for Escambia County, Florida, for the period and under the terms and conditions of this Contract.

2. DUTIES

SMITH agrees during the period of this contract to faithfully perform his duties and obligations in such capacity for the School District including, but not limited to, those duties required by state and federal law. As SUPERINTENDENT, SMITH agrees he shall devote his full time, attention and energy to the business of the School District. SMITH will not accept any form of employment other than that as SUPERINTENDENT of the School District during the term of this and any subsequent contracts as long as he is

employed as SUPERINTENDENT of the Escambia County School District unless specifically approved by the School BOARD.

3. LENGTH OF CONTRACT

This Contract shall be effective November 17, 2020, and shall remain in full force and effect through and including June 30, 2024, unless terminated earlier as provided in Section 12 below. The anniversary date of this Contract shall be July 1 of any year. Each July 1 to June 30 time period shall be deemed a "Contract Year," except the initial contract year shall be from November 17, 2020, through June 30, 2021.

Transition Period. Commencing October 5, 2020, and ending November 16, 2020, SMITH shall serve in the capacity of Consultant to the BOARD to review pertinent information and meet with the current SUPERINTENDENT as needed, to learn about the School District and to transition into the position of SUPERINTENDENT. The services to be provided by SMITH during the Transition Period will not constitute employment by the School BOARD and SMITH will not be an employee of the BOARD until November 17, 2020. SMITH will be compensated for his consulting services on a per diem basis in an amount to be determined by reference to the base salary provided for in Section 6.A. below. The BOARD will also reimburse SMITH for any travel expenses incurred as a consultant during the Transition Period.

4. MEDICAL EXAMINATION

A. Post-Employment Medical. The SUPERINTENDENT agrees to undertake a post-employment medical examination. Any medical report furnished to the Chair of the BOARD pursuant to this section shall be treated as confidential as permitted by Section 1012.32(3)(a)5, Florida Statutes. The post-employment physical examination shall be conducted by a physician licensed to practice medicine who is mutually acceptable to both the BOARD and the SUPERINTENDENT. The cost of the post-employment physical examination shall be borne by the School District. The results of the medical examination shall be given to the Chair of the BOARD by the examining physician in the following form:

"It is my opinion after conducting a complete examination of SMITH that he is (is not) physically capable of carrying out the duties of the SUPERINTENDENT."

B. Annual Physical Exam. At least annually, and more frequently if directed by the BOARD, the SUPERINTENDENT shall

submit to a complete medical examination performed by a medical physician or physicians approved by the BOARD. Such physician(s) shall report their full findings to the SUPERINTENDENT personally, and shall report to the BOARD whether the SUPERINTENDENT is able to perform his duties as SUPERINTENDENT. The BOARD will pay all costs associated with such examinations and reports. Lack of physical or mental fitness or capacity or failure to undergo the annual physical and submit the required report within 30 days of the examination shall be considered grounds for termination, as set forth in Section 12.D. below.

5. RENEWAL OPTION

On or before June 30, of each year during the term of the contract, or at any other time of the BOARD's choosing, the BOARD may exercise the following options:

A. The BOARD may, by majority vote, extend or offer to modify the Contract for an additional year or additional years.

B. The BOARD may vote not to modify or extend the existing contract for an additional year on or before January 1 of the final year of the existing contract and, as such, give notice to the SUPERINTENDENT the contract may be allowed to expire of its own accord.

C. The SUPERINTENDENT may request the BOARD not consider extending an existing contract. In such case, the contract will expire on its own terms on June 30 of the calendar year.

6. COMPENSATION

A. Base Salary. The SUPERINTENDENT's initial annual base salary shall be \$160,000.00, prorated for the period November 17, 2020 through June 30, 2021. The base salary for each succeeding Contract Year (beginning with the Contract Year commencing July 1, 2021) shall be no less than the previous year's base salary, and, if the SUPERINTENDENT receives an overall evaluation rating of effective or higher on the evaluation completed by the BOARD on or about the previous June, the SUPERINTENDENT shall receive a salary increase commensurate with administrative personnel for that fiscal year.

B. Performance Pay/Annual Performance Goals. In addition to the Base Salary described above, beginning in the Contract Year starting on July 1, 2021, and in each subsequent Contract Year this Contract is in effect, the School BOARD shall consider whether the SUPERINTENDENT shall be eligible to receive Performance Pay. On or before June 30, 2021, the School BOARD shall set goal(s) for the SUPERINTENDENT and/or School District to complete or perform during the 2021-22 Contract Year. The School BOARD shall discuss with the SUPERINTENDENT the establishment of these goals but will retain the absolute discretion whether to establish performance pay for the goals and the amount of the Performance Pay that the SUPERINTENDENT may earn by the achieving a particular goal or goals. The goal(s) and the amount of Performance Pay for the achieving of any particular goal shall be established by a majority vote of the members of the BOARD. This procedure for goal setting shall be completed by the School BOARD on or before June 30 of each Contract Year to establish Performance Pay goals for the next Contract Year. Any Performance Pay received by the SUPERINTENDENT will not become part of the SUPERINTENDENT's Base Salary. The BOARD may establish a time frame for completing prescribed goals that extends beyond the Contract Year.

C. Special Certification (Phase One)/Chief Executive Officer Leadership Development Program (CEOLDP), (Phase Two). In addition to the base salary, as permitted by section 1001.50(4), Florida Statutes, the SUPERINTENDENT shall receive an annual performance salary incentive from the BOARD in the amount as provided for elected SUPERINTENDENTS, pursuant to sections 1001.47(4) and (5), Florida Statutes. Upon completion of Phase One of the Special Certification Program, the SUPERINTENDENT shall be entitled to an additional \$2000.00 per year. If the Certification is earned during a calendar year, the increase shall be prorated from the date the certification is received to June 30th of that initial year. Upon the successful completion of Phase Two of the Chief Executive Officer Leadership Development Program, the SUPERINTENDENT shall be compensated in accordance with Florida Statutes 1001.47(5)(b) where he shall be paid a salary incentive of not less than \$3000.00 nor more than \$7,500.00 based upon his performance evaluation as determined by the Florida Association of District School SUPERINTENDENTS. After the SUPERINTENDENT is initially certified he must complete an annual renewal process, led by the FADSS leadership team to maintain certification and meet the yearly requirement of the CEOLDP. Completion of the annual certification renewal shall constitute eligibility for the award of the yearly salary incentive.

D. Temporary Housing/Relocation Expenses. The BOARD shall pay a one-time amount of \$15,000.00 for temporary housing and relocation costs.

E. Florida Retirement System. SMITH shall be eligible to participate in the Florida Retirement System (FRS). The 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, the BOARD agrees to continue to pay into SMITH retirement for FRS, for the duration of the term of this contract, as a Senior Management Service Class employee unless expressly prohibited by law.

F. Additional Retirement Compensation. In addition to the base salary provided in subsection 6.A., the SUPERINTENDENT shall also receive deferred compensation in the form of a contribution to an IRS approved tax shelter vehicle in the name of Timothy Andrew Smith in the amount of 5% of the base salary. The deferred compensation shall be paid into the SUPERINTENDENT's account monthly, and it shall be fully vested and earned upon deposit.

G. Insurance. The SUPERINTENDENT shall be entitled to receive such health, dental, vision, life, disability, and any other insurance as provided to other twelve (12) month administrative employees of the School District. The costs of such benefits shall be paid by the BOARD to the same extent they are paid to other twelve (12) month administrative employees. In addition, the School BOARD shall offer the same health, dental and vision insurance benefits available to the SUPERINTENDENT's eligible family members on the same basis as such benefits are offered to other twelve (12) month administrative employees' family members.

7. OTHER BENEFITS PROVISIONS

A. Leave. The SUPERINTENDENT shall earn leave at the highest rate allowed for other twelve (12) month administrative employees of the District beginning on November 17, 2020. This is in addition to normal holidays of the School District. Any unused leave may accumulate and carry over into a subsequent month or year in the same manner as other twelve (12) month administrators.

B. Sick Leave. The SUPERINTENDENT shall accumulate one (1) day per month sick leave. Any unused sick leave shall be payable in accordance with Section 1012.61(2)(A)(5), Florida Statutes. All sick day benefits accrued from the SUPERINTENDENT's previous public employment in Orange County shall be transferred to Escambia County and shall be earned in accordance with Florida law through a matching of the sick days awardable under this Contract until the expiration of the term of this Contract or any extension thereof or any early termination of this Contract, should it occur, pursuant to section 12. At the conclusion of the SUPERINTENDENT's employment by the BOARD, all sick days accrued shall be payable to the SUPERINTENDENT at 100% of their value irrespective of the length of his service.

C. Other Leaves. The SUPERINTENDENT shall be entitled to any other leave provisions afforded to other twelve (12) month administrative personnel.

D. Professional Growth. The BOARD encourages the continuing professional growth of the SUPERINTENDENT and will permit reasonable time away from his regular duties to attend or participate in meetings, seminars and other educational programs sponsored by local, state or national associations of school SUPERINTENDENTS, administrators or school BOARDS, or by private or public educational institutions, and to meet with other organizations or individuals, if such meetings will enhance his ability to perform his duties. If travel outside Escambia County is involved, the BOARD will pay reasonable and appropriate expenses incurred under this provision. The SUPERINTENDENT shall file itemized expense statements to be processed for payment and approved by the BOARD Chair and may be allowed the use of a School District credit card for allowable purchases. The BOARD will determine whether time and expenses are reasonable and appropriate and may restrict the SUPERINTENDENT's activities if it determines that he is spending an unreasonable amount of time away from his regular duties.

E. Membership Dues. The BOARD shall pay, on behalf of the SUPERINTENDENT, the annual membership dues for the American Association of School Administrators, the Florida Association of District School Superintendents, and, with prior approval of the BOARD, such other professional organization memberships which will contribute to the performance of his duties. The BOARD will also pay membership dues for the SUPERINTENDENT to maintain membership in one local civic organization as designated by SMITH.

8. EXPENSES

A. Automobile Expense. The BOARD will pay to the SUPERINTENDENT a supplement of \$500.00 per month which the SUPERINTENDENT will use to provide himself with the use of a personal automobile and all expenses relating thereto. The SUPERINTENDENT will not receive any reimbursement/mileage for in county travel. Out of county travel will be reimbursed in the same manner as any other employee.

B. Other Business Expenses. The BOARD will pay to the SUPERINTENDENT a supplement of \$200.00 monthly for any business expenses incurred in the performance of school related duties.

C. Reimbursable Expenses. In order to assist and enhance SMITH's ability to perform his job responsibilities, to the extent permitted by law, the District may also, subject to BOARD approval, pay or reimburse SMITH for any extraordinary reimbursable expenses which may be incurred by SMITH in the continuing performance of his duties as under this Contract.

9. REVIEW OF PERFORMANCE

A. Annual Evaluation. The SUPERINTENDENT's evaluation, salary adjustment, performance pay and reemployment will be based on the performance of the SUPERINTENDENT and the achievement of School District goals. Beginning with the 2021-22 school year, the BOARD will render a formal evaluation of the performance of the SUPERINTENDENT on or before June 30 of each Contract Year. The results of this annual evaluation shall be reduced to writing and will be a public record. Each member of the BOARD will meet with the SUPERINTENDENT individually to discuss the evaluation and the BOARD and SUPERINTENDENT will then meet and discuss the evaluation in a public meeting. In addition to discussion in this public forum, the SUPERINTENDENT may supply a written response to the BOARD's evaluation.

B. Criteria for Evaluation. The evaluation of the SUPERINTENDENT's performance will be based upon the performance of the duties imposed upon him by Florida law and this Contract. The School BOARD shall consult with the SUPERINTENDENT about the criteria and the evaluation instrument but will retain the absolute discretion to establish both. Additionally, the evaluation will seek to measure the SUPERINTENDENT's progress in meeting the annual performance goals of the SUPERINTENDENT as established pursuant to Section 6.B. above.

10. PROFESSIONAL LIABILITY

A. The BOARD will defend, hold harmless and indemnify the SUPERINTENDENT against all civil demands, criminal proceedings, claims, suits, actions and legal proceedings brought against the SUPERINTENDENT individually or in his capacity as agent or employee of the BOARD, arising out of and in the course of the performance of assigned duties and responsibilities.

B. If in any school-related matter covered by Section 10.A. above, the BOARD determines that the SUPERINTENDENT should engage separate legal counsel, it shall be at the expense of the BOARD.

C. The BOARD shall have no obligation to pay legal fees or other expenses on behalf of the SUPERINTENDENT in any litigation in which the interests of the BOARD and the SUPERINTENDENT are adverse, however, a civil complaint naming both the BOARD and the SUPERINTENDENT as defendants where the interests of the SUPERINTENDENT and the BOARD are not identical or potentially adverse, does not release the BOARD from its obligations under 10.A. above.

D. No BOARD member shall be personally liable to the SUPERINTENDENT for any costs, expenses, fees or judgments arising from matters described above.

11. RESIDENCE

The SUPERINTENDENT shall reside in Escambia County, Florida at all times while employed as SUPERINTENDENT.

12. TERMINATION OF CONTRACT

A. Termination Without Cause. Notwithstanding any other provision of this Contract, the BOARD may remove SMITH from the position of SUPERINTENDENT at any time during the term of this Contract, without cause, upon an affirmative vote of a majority of the BOARD's members. SMITH expressly waives any right he might otherwise have to object to the reasons for his termination, prior notice and/or a hearing in connection with the termination of his employment.

B. Severance Compensation. In the event the BOARD exercises its discretion to terminate SMITH's employment without cause pursuant to Section 12.A. above, the BOARD agrees to pay

SMITH a lump sum equivalent to the SUPERINTENDENT's base salary and benefits for 20 weeks at the rate then in effect or the maximum allowed by Section 215.425, Florida Statutes, whichever is less. SMITH agrees that the payments described in Section 12.B. shall be the only compensation to which he is entitled as a result of his employment being terminated without cause.

C. Termination for Cause. SMITH may be dismissed for cause from his employment for conduct which is seriously prejudicial to the BOARD or the School District including, without limitation, willful neglect of duty, material breach of this Contract, violation of the Code of Ethics applicable to members of the teaching profession in Florida, violation of the Code of Ethics prescribed by Chapter 112, Florida Statutes (as amended), conduct precluded by Rules 6B-1.001, 6B-1.006 and 6B-4.009, Florida Administrative Code (as amended), or for "just cause" as determined by Section 1012.33, Florida Statutes (as amended). Notice of termination for cause shall be given in writing and SMITH shall be entitled to request a hearing to contest his termination. The SUPERINTENDENT must request a hearing within ten calendar days of the notice of termination or the right to a hearing is waived. Any such hearing will proceed in accordance with Chapter 120, Florida Statutes. If terminated for cause, SMITH shall only be entitled to payment for any earned, accrued and unused annual leave to the extent permitted by BOARD policy and shall be ineligible for any other compensation or benefits including but not limited to any severance compensation. If it is determined pursuant to the Chapter 120 hearing described above that the termination was without cause, then the provisions of Sections 12.A. and 12.B. shall apply.

D. Incapacity. In the event SMITH becomes unable to perform any or all of his duties with reasonable accommodations under this Contract 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, the BOARD may, in its sole discretion, appoint an Acting SUPERINTENDENT to fulfill the duties and responsibilities of SMITH under this Contract. If such incapacity continues for more than ninety (90) consecutive days, the BOARD may, in its sole discretion and upon an affirmative vote of a majority of the BOARD's members, terminate this Contract whereupon the respective duties, rights and obligations of the parties hereto shall terminate including any obligations for severance pay contained in Section 12.B. above. In the event of termination due to incapacity, SMITH shall continue to receive the base salary and benefits provided in this Contract for a period of ninety (90) days from the date his employment is terminated. The

BOARD's decision and determination as to the incapacity of SMITH shall be final and shall be based upon the opinion of a licensed medical physician. SMITH hereby consents to an examination by a medical doctor as requested by the BOARD pursuant to this provision. The parties agree that the BOARD may select the licensed physician who will perform any such medical examination.

E. Resignation. If SMITH should at any time elect to resign his position as SUPERINTENDENT, he agrees to provide the BOARD not less than ninety (90) days prior written notice of such resignation. After ninety (90) days following the delivery of such notice to the BOARD, in accordance with the notice provisions of this Contract, this contract and all rights and obligations created hereunder, shall terminate unless the BOARD elects to terminate the Contract earlier or unless the parties mutually agree to a different date of resignation. Absent such mutual Contract or a vote by the BOARD to terminate this Contract earlier, such written resignation shall become effective on the 90th day after its delivery to the BOARD and shall become final. Without regard to whether it was accepted or not by the BOARD, such written resignation may not be withdrawn or revoked by SMITH without the consent and Contract of the BOARD through a properly adopted motion by the BOARD at a regularly scheduled meeting. All salary and other benefits which are or would be payable or accrue to SMITH under this Contract shall be prorated as of the effective date of the resignation. SMITH shall be entitled to receive payment for any earned, accrued and unused annual leave.

F. Benefits Upon Retirement or Death. This Contract shall be terminated upon the retirement or death of the SUPERINTENDENT. If termination is a result of death, SMITH's estate or designated beneficiaries shall be entitled to receive such benefits under any death benefit plan that may be in effect for the employees of the School District in which he participated and any salary, reimbursement, earned, accrued and unused annual leave or benefits, and any other payments due and owing, including any death benefits under Florida's Workers Compensation laws and under this Contract as of the date of death. If termination is as a result of retirement, SMITH shall be entitled to any salary, reimbursements, earned, accrued and unused leave or benefits, and any other payments due and owing under this Contract as of the date of retirement.

G. Mutual Contract. This Contract may be terminated by mutual Contract of SMITH and the BOARD in writing upon mutually agreed upon terms and conditions. Termination under this provision does not require the BOARD to pay any or all of the Severance Pay

pursuant to Section 12.B. above unless expressly agreed to by the parties at the time of the mutual separation.

13. WAIVER

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

14. SEVERABILITY CLAUSE

This Contract is severable. If any part or provision of this Contract is declared invalid, illegal, unlawful, unenforceable or void by a court of competent jurisdiction, such part or parts shall be deleted and the remaining provisions shall not be affected but shall continue in full force and effect and binding on all Parties.

15. LAWS OF FLORIDA

This Contract shall be applied and in all respects interpreted according to the laws of the State of Florida. Sole and exclusive jurisdiction for any action shall be in the County or Circuit Court for the First Judicial Circuit in and for Escambia County unless the cause of action must be removed to a federal court in the Northern District of Florida.

16. NOTICES

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 until it is changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice:

To the BOARD: School BOARD of Escambia County, Florida
Attn: School BOARD Chair
75 N Pace Blvd
Escambia, FL 32505

With a copy to: General Counsel
75 N. Pace Blvd
Pensacola, FL 32505

To Timothy Andrew Smith:
SUPERINTENDENT of Schools
75 N Pace Blvd.
Pensacola, FL 32505

17. CONTRACT PREPARATION

The parties acknowledge that they have had the opportunity to obtain advice and counsel as was necessary for each of them to form a full and complete understanding of all rights and obligations herein. This Contract 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.

18. ENTIRE CONTRACT

This Contract constitutes the entire Contract between the parties and may be amended only by written document signed by both parties.

SUPERINTENDENT

**THE SCHOOL BOARD OF ESCAMBIA
COUNTY, FLORIDA**

Timothy Andrew Smith

BY: _____
Patricia Hightower, Chair

DATE: _____

DATE: _____