

**MARLBOROUGH PUBLIC SCHOOLS
EMPLOYMENT AGREEMENT**

This **EMPLOYMENT AGREEMENT** (hereinafter referred to as the "2018 Agreement"), is made this 19th day of April, 2018 by and between the Marlborough School Committee (hereinafter referred to as the "District" or the "Committee") acting by and through its School Committee, whose members act hereunder in their representative capacity only and without any personal liability to themselves, and _____ (hereinafter referred to as _____ or the "Superintendent").

WHEREAS, the School Committee is authorized by Massachusetts General Laws, Chapter 71, §41 to award a contract to a School Superintendent; and,

WHEREAS, the Committee and _____ are currently party to an Employment Agreement dated Sept. 27th, 2013 for the position of Executive Director of Finance & Operations and Employment Addendum "A" dated July 5th, 2017, modifying his title and position duties (hereinafter collectively referred to as the "Original Employment Agreement"), which documents together define the terms and conditions of employment for Mr. Bergeron as Assistant Superintendent of Finance & Operations; and,

WHEREAS, the School District desires to employ Mr. Bergeron as Superintendent of Schools for the Marlborough School District and to provide him with a written employment contract to enhance administrative stability, which the School District believes generally improves the quality of its overall education program; and

WHEREAS, Mr. Bergeron desires to serve as Superintendent of Schools for the Marlborough School District; and

WHEREAS, both parties believe that a written employment contract describing their relationship and mutual obligations serves as the basis for more effective communication between them as they fulfill their respective policymaking and administrative functions in the operation of the education program of the Marlborough School District, and

WHEREAS, it is the desire of the Committee to describe and define the duties, benefits, and terms and conditions of employment for such position;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Employment:** In accordance with its statutory authority as set forth in Chapter 71 of the Massachusetts General Laws, the Committee hereby employs Mr. Bergeron as Superintendent of Schools and Mr. Bergeron hereby accepts such employment under the terms and conditions of employment set forth herein.
2. **Term:**

- A. Notwithstanding the provisions of any other written or verbal agreements or understandings, the contemplated term of this Agreement and the Superintendent's appointment hereunder shall be for a five (5) year period commencing July 1, 2018 through June 30, 2023, unless sooner terminated in accordance with the provisions hereof. It is expressly acknowledged that the Original Employment Agreement with Addendum A terminates effective June 30, 2018 and as of July 1, 2018 this Agreement shall control.
- B. The Committee shall notify the Superintendent no later than December 31, 2022 of its intention to enter into negotiations for a successor agreement. Absent notification of such interest to negotiate a successor agreement, this 2018 Agreement will automatically terminate on June 30, 2023. It is expressly understood and agreed that the non-reappointment of the Superintendent upon the expiration of this 2018 Agreement, or any renewal or extension thereof, shall not be considered a dismissal within the meaning of this Agreement.

3. Compensation.

- A. **Salary:** For services rendered by the Superintendent to the School District, Mr. [redacted] shall be paid an annual salary as set forth below, payable in periodic installments on the same basis as other professional personnel in the Marlborough School District, subject to such deductions for income taxes, retirement and other contributions, as are authorized by law.

- 1. Effective July 1, 2018, [redacted] shall be paid an annual salary of \$150,000.
- 2. Effective July 1, 2019, [redacted] shall receive a two percent (2%) increase to his annual salary;
- 3. Effective July 1, 2020, [redacted] shall receive a two percent (2%) increase to his annual salary;
- 4. The School Committee agrees that it will meet with the Superintendent, not later than June 30, 2021 for purposes of reviewing the Superintendent's salary and discussing increases as well as performance incentives to be effective July 1, 2021. Any adjustment to the salary shall be at the sole discretion of the Committee.

- B. **Performance Incentives.** [redacted] will be eligible for an additional salary increase not to exceed \$2,500 per year based upon the following performance metric measurements:

- 1. **Dropout Rates.** Should the district's dropout rates decrease as provided herein, [redacted] shall receive the corresponding one-time permanent adjustment to his base salary. The Parties agree that the current baseline for dropout rate is 3.8%:

- a. If the FY2019 dropout rate is 3.5% or less, base salary shall be adjusted by \$1000 retroactive to July 1, 2019.
- b. If the FY2020 dropout rate is 3.2% or less, base salary shall be adjusted by \$1000 retroactive to July 1, 2020.

2. Student Performance Data. [redacted] will be eligible for an additional salary increase if Marlborough High School meets or outperforms the Massachusetts state average on the state competency assessment, i.e. MCAS as provided for herein. The Parties agree that the baseline data for student performance at Marlborough High School is 86% proficient/ advanced in ELA, 67% proficient/ advanced in Math, 71% proficient/ advanced in Science and they further agree that the state average is currently, 91%, 79% and 74% proficient/ advanced, respectively.

- a. If the FY2019 MHS performance data for ELA is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2019.
- b. If the FY2019 MHS performance data for Math is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2019.
- c. If the FY2019 MHS performance data for Science is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2019.
- d. If the FY2020 MHS performance data for ELA is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2020.
- e. If the FY2020 MHS performance data for Math is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2020.
- f. If the FY2020 MHS performance data for Science is equal to or exceeds the state average, base salary shall be adjusted by \$500 retroactive to July 1, 2020.

C. [redacted] will be paid Five Thousand Dollars (\$5,000.00) if he becomes a permanent resident of the City of Marlborough. Said payment shall be added to his base salary, within thirty (30) calendar days of the submission of proof of residence in the City. [redacted] will receive this pay only if he remains a resident of Marlborough.

- D. At no time during the term of this Agreement or any extension hereof shall the Superintendent's salary be reduced.
 - E. For purposes of determining any pro-rated annual salary and benefit eligibility, the "contract year" shall be the period commencing July 1 and ending June 30 of any year under this Agreement.
 - F. The Superintendent's per diem rate of pay is calculated at 1/260th of the annual salary set forth above.
4. **Work Year and Hours of Work:** The Superintendent shall be employed on a full-time basis during a twelve (12) month work year, less vacations and holidays. The Superintendent recognizes that the nature of his employment and the level of responsibility is such that his obligations hereunder are not determined by a prescribed number of hours and that he may be required to work at times other than normal work days, including night and/or weekend meetings or events, when necessary to effectively perform his job duties and responsibilities. Because the Superintendent's workday frequently begins before and extends beyond normal working hours, reasonable time off during the day for personal reasons or business will be allowed without loss of pay or deduction from personal or vacation leave, with notice to the Chair of the Committee.
5. **Duties and Responsibilities:** The Superintendent will serve as Chief Executive Officer and Chief Educator of the Marlborough School District. He shall manage the affairs of the school system in accordance with M.G.L. c. 71, §59 and the policy determinations of the School Committee. He shall perform the duties of the Superintendent as established by the School Committee and agreed to by the Superintendent, and as consistent with the respective roles of the Superintendent and School Committee under the Education Reform Act. In addition, he recognizes that the job of Superintendent involves frequent attendance at school and community events, as well as attendance at all regular and special meetings of the School Committee and all sub-committee meetings thereof, except as otherwise directed or requested by the Committee. The Superintendent will also perform such other duties and responsibilities as may from time to time be assigned to him by the School Committee.

shall diligently, faithfully and competently perform the duties and responsibilities imposed upon or required of the Superintendent of Schools under:

- A. The statutes of the Commonwealth including, without limitation, M.G.L. c. 71, as amended by the Education Reform Act of 1993; and,
- B. The laws and regulations of applicable state and federal agencies; and
- C. The policies and procedures of the School Committee; and,
- D. The Marlborough Public School District's goals and objectives as outlined in the District's Strategic Plan; and,
- E. The job description for Superintendent; and,

- F. The directives of the Committee; and,
 - G. The terms of this Agreement.
6. **Licensure:** The Superintendent shall furnish and maintain throughout the term of this Agreement a valid and appropriate Massachusetts Department of Elementary and Secondary Education license qualifying him to act as Superintendent of Schools in the Commonwealth, as required by Massachusetts General Laws, Chapter 71, §38G.
7. **Status:** The position of Superintendent is an exempt position under the Federal Fair Labor Standards Act.
8. **Insurance:** The Superintendent is entitled to all insurance benefits (medical, hospital, and life), to the extent he is otherwise eligible, at the same premium contribution rates as are currently provided by the City of Marlborough to its employees. The Committee, on behalf of the City, reserves the right to change insurance benefits, including provider, plan design and/or premium contribution rates during the term of this Agreement. The Superintendent agrees to accept any such changes which are made by the City of Marlborough.
9. **Benefits:**
- A. **Vacation:** The Superintendent will be entitled to twenty (20) vacation days on the first day of each contract year. Up to ten (10) vacation days may be carried over to be used in the following year. Otherwise, unused vacation days may not be accumulated from contract year to contract year, but will be surrendered and shall have no cash redemption value. Mr. Bergeron can carry up to (5) vacation days from his current position into this contract.
 - B. **Personal Leave:** The Superintendent shall be granted up to three (3) days of absence, without loss of pay, for personal business which cannot be reasonably conducted on a non-scheduled work day. These days shall not accumulate from year to year and shall have no cash redemption value if unused.
 - C. **Sick Leave:** Mr. Bergeron can carry forward up to ninety (90) days of sick time from his current position into this contract. The Superintendent shall be granted eighteen (18) sick days on July 1st of each contract year. Accumulated and unused sick leave shall be carried over and may accumulate. There will be no compensation paid for unused sick leave under the terms of this Agreement.
 - D. **Bereavement Leave:** The Superintendent shall be granted up to three (3) days leave with pay on account of death in the immediate family.
 - E. **Holidays:** The Superintendent shall be entitled to a day off with pay on the following legal holidays:

Labor Day, Columbus Day, Thanksgiving (including a half day on the Wednesday before, Thanksgiving Day and the Friday after, for a total of 2.5 days), M.L.K. Day, President's Day, Patriots Day, and Memorial Day.

The Superintendent shall be entitled to a day off with pay on the following legal holidays when they occur during the work week, or are observed during the work week: Christmas (including Christmas Eve and Christmas day for a total of 2 days), Independence Day, Veterans' Day, New Year's Day.

10. **Reimbursement for Expenses:** The Superintendent shall be entitled to attend up to one (1) national education conferences as well as other state and regional conferences during each year of this Agreement, subject to the Committee's advance approval, such approval not to be unreasonably withheld. The reasonable and necessary expenses incurred by the Superintendent in connection with said attendance shall be reimbursed by the Committee for necessary lodging, meals, registration, and travel expenses. Said expenses are not to exceed three thousand five hundred dollars (\$3,500.00) annually, unless so authorized by the Committee. In addition, the Committee will also pay for annual fees for membership in professional organizations as deemed appropriate by the Committee.
11. **Equipment.** The School District will provide the Superintendent with appropriate equipment for use in both his office and home, including, at a minimum, a cell phone and an office and home computer, and printer. Such equipment shall be considered property of the District and is provided to the Superintendent for District purposes. Their use shall be subject to the District's policies applicable to such equipment. Upon termination of this Agreement or upon its expiration, the computer (with the all District-issued accessories and software), cell phone and other equipment shall be returned to the Committee.
12. **Retirement.** The Superintendent shall be a member of the Massachusetts Teachers' Retirement System as required by M.G.L. c. 32, §1 *et seq.*
13. **Evaluation.** The School Committee shall annually evaluate the Superintendent prior to June 30 in accordance with the performance evaluation system as established by the Massachusetts Department of Elementary and Secondary Education regulations and guidelines for evaluation of Superintendent. On or before September 15th of each contract year, the School Committee and the Superintendent shall mutually agree to a set of goals, objectives, elements, and benchmarks (SMART Goals), constituting the Superintendent's Annual Performance Plan.

Nothing contained herein shall limit the Committee from discussing and/or reviewing the Superintendent's performance at any time during the term of this Agreement. Failure of the Committee for any reason to evaluate the Superintendent shall not be considered a material breach of this Agreement.

14. **Termination of the Agreement**

- A. **Discipline/Dismissal.** Where good cause exists, the Committee may discipline or discharge the Superintendent upon a majority vote, provided that the Superintendent has been informed of the charge or charges and cause or causes for his proposed discipline or discharge and has been given an opportunity for a hearing before the Committee prior to an official action being taken. Said hearing shall be convened in Executive Session unless the Superintendent requests that it be in

public. The Superintendent may be represented by counsel at such Executive Session who shall be entitled to participate on behalf of the Superintendent. The Committee shall provide fifteen (15) days written notice of said hearing with a statement of charges in sufficient detail to place the Superintendent on notice of the basis for such intended action and copies of all relevant documents prior to the hearing upon which the Committee intends to rely for such action.

The parties agree that the term "good cause" shall be defined as any ground that is put forth in good faith that is not arbitrary, irrational, unreasonable, or irrelevant to the efficient operation of the public schools, including but not limited to inefficiency, incompetency, incapacity, conduct unbecoming a Superintendent whether or not during the regular business day, or on or off school department property, insubordination, unsatisfactory rating on the Superintendent's performance evaluation by the Committee, or other good cause.

shall have the right to challenge dismissal in any court of competent jurisdiction in the Commonwealth of Massachusetts.

Resignation by the Superintendent. The Superintendent may terminate this Agreement before the expressed termination date by giving written notice of his intent to do so to the Chair of the School Committee at least 180 days prior to the effective date of his termination and provided the termination date corresponds with the end of the academic year in which notice is given, unless otherwise agreed to by the Committee.

15. **Indemnification:** The parties acknowledge their mutual obligations with respect to claims of negligence under M.G.L. c. 258, § 2 filed against the Superintendent. The Committee agrees to indemnify the Superintendent from any claim of negligence when he is acting within the scope of his official duties to the extent permitted and subject to the provisions of Massachusetts General Laws, Chapter 258. Notwithstanding any other language or provisions in this Agreement or elsewhere, this indemnification shall not be effective or binding on the City of Marlborough, the Marlborough School District or the Marlborough School Committee unless the Superintendent provides reasonable cooperation to the City, District or Committee and their legal counsel in the defense of any claim or litigation arising out of such incident, events or facts occurring during his employment or services as Superintendent. In no case will individual Committee members be considered personally liable for indemnifying the Superintendent pursuant to the terms of this Agreement.
16. **Completeness.** This Agreement sets forth the full understanding and agreement between the parties regarding Michael Bergeron' employment as Superintendent and may not be changed except by written Agreement, signed by the Superintendent and by the Chairman of the Committee or designee.
17. **Warranty of Credentials:** The Superintendent warrants the validity of the credentials and experience represented to the Committee in pursuit of this position and any material

misrepresentations made therein may constitute grounds for immediate termination of this Agreement and the Superintendent's employment.

18. **State Ethics Laws.** The Superintendent will complete the online training program prepared by the Massachusetts Ethics Commission for municipal employees and will comply with all applicable ethics laws of the Commonwealth of Massachusetts in connection with the performance of his job duties and responsibilities.
19. **Criminal Background Checks.** Prior to the commencement of the contract term, the Superintendent shall authorize and the Committee shall perform a so-called CORI check with the Massachusetts Criminal History Systems Board and a state and national fingerprint-based criminal background check pursuant to M.G.L. c. 71, §38R. The Superintendent shall remain subject to such CORI and fingerprint criminal background checks throughout the term of this Agreement as may be required by law or School Committee policy. To the extent that the Committee becomes aware of any information revealed by the CORI and/or fingerprint criminal background check, which in its sole discretion, renders the Superintendent unqualified or otherwise unfit for the position of Superintendent of Schools, then this Agreement will become null and void with no further obligations or recourse to the parties.
20. **Re-opening of Agreement.** This Agreement may be re-opened for discussion of its terms and conditions upon mutual written agreement of the School Committee and the Superintendent.
21. **Entire Agreement.** This Agreement contains the whole agreement between the Marlborough School Committee and _____ and supersedes any prior agreement. There have been no inducements, promises, terms, conditions, or obligations made or entered into by either party other than set forth herein. No modification or addition to this Agreement shall be effective unless and until set forth in writing and specifically identified as a "Modification" or "Addendum" executed by both parties.
22. **Severability of Provisions.** This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Agreement or any application of this Agreement to the Superintendent is found to be contrary to law, then such provision or application shall not be deemed to be valid except to the extent permitted by law, but all other provisions and applications of this Agreement will continue in full force and effect.
23. **Notice.** Notice called for under this Agreement shall be satisfied by written notice by certified mail return receipt to:

Chairman
Marlborough School Committee
17 Washington Street
Marlborough, MA

24. **School District Protection.** The Superintendent and the Committee agree that the several individual members of the School Committee and its agents shall not be sued personally for any alleged violation of this Agreement.
25. **Other.** This Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and both of which taken together shall be deemed one and the same instrument.

MARLBOROUGH SCHOOL COMMITTEE
Acting by and through the School Committee

SUPERINTENDENT OF SCHOOLS

Marlborough School Committee Chairman

Superintendent of Schools

Dated:

4/19/18

Dated:

4/19/18