

AGREEMENT, made this ____ day of January, 2023 by and between the Board of Education, NORTH BABYLON UNION FREE SCHOOL DISTRICT (hereinafter referred to as the BOARD) and KENNETH E. GRAHAM (hereinafter referred to as the SUPERINTENDENT).

1. **Agreement.**

The BOARD hereby hires the SUPERINTENDENT and the SUPERINTENDENT agrees to work for the BOARD for a term beginning March 6, 2023 and ending on June 30, 2027, as SUPERINTENDENT OF SCHOOLS.

2. **Superintendent's Duties and Responsibilities.**

(a) KENNETH E. GRAHAM, as SUPERINTENDENT OF SCHOOLS of the North Babylon Union Free School District (hereinafter "DISTRICT"), shall be Chief Administrative Officer of the DISTRICT and shall have the power and obligation to perform all those duties and to accept all those responsibilities as are:

(i) Imposed upon or granted to the SUPERINTENDENT by the Education Law of the State of New York, other statutes of the State of New York, or the Rules and Regulations of the Commissioner of Education or Board of Regents, including any amendments or successor statutes thereto;

(ii) Specified in the Policy Manual of the BOARD; and

(iii) Normally associated with the position of SUPERINTENDENT, including, but not limited to, budget formulation and administration, business administration, pupil course of study and curriculum, public relations, personnel management and labor relations.

- (iv) Consistent with and pursuant to Education Law Section 211-b (5):
 - (a) The SUPERINTENDENT will cooperate fully with any distinguished educators appointed by the Commissioner of Education.
 - (b) Without limiting the foregoing, the BOARD acknowledges that as SUPERINTENDENT, KENNETH E. GRAHAM shall have the following specific authority, rights and responsibilities, subject to the supervision of the BOARD:
 - (i) To organize and reorganize the DISTRICT'S administrative, supervisory, and support staff, including instructional and non-instructional personnel, in a manner which in the SUPERINTENDENT'S judgment best serves the DISTRICT, subject to the review and approval of the BOARD, including the authority to initiate and approve all transfers of DISTRICT staff from one job assignment or place of employment to another, subject to the review and approval of the BOARD.
 - (ii) To supervise and direct associate and assistant superintendents, directors, supervisors, principals, teachers, civil service employees and all other persons employed in either the business management or the instructional activities of the DISTRICT;
 - (iii) To effectuate the policies of the BOARD and be accountable in connection therewith to the BOARD;

(iv) To keep the BOARD advised of all matters concerning the administration of the DISTRICT;

(v) To establish and foster effective school community relations, embracing a leadership role in such effort; and

(vi) To make recommendations to the BOARD as a pre-requisite to the BOARD'S appointment or termination of employment of both instructional and non-instructional employees.

(c) The BOARD may, from time to time, prescribe additional duties and responsibilities provided such additional duties and responsibilities are similar in character and consistent with the duties of the position of SUPERINTENDENT OF SCHOOLS.

3. **Work Year.**

(a) The SUPERINTENDENT's work year shall consist of twelve (12) months service annually.

4. **Certification and Citizenship.**

The SUPERINTENDENT shall possess a valid certificate to act as a SUPERINTENDENT OF SCHOOLS in the State of New York during the term of his employment with the DISTRICT. The SUPERINTENDENT has presented proof of his United States citizenship to the BOARD.

5. **Attendance at Board Meetings.**

The SUPERINTENDENT shall receive notice of, and shall attend and participate in any and all meetings of the BOARD including, but not limited to, executive sessions

(unless otherwise determined by the BOARD as hereinafter provided), work sessions, regular BOARD meetings, special BOARD meetings, emergency BOARD meetings, and the like, together with the right to attend and participate in, at his option, the meetings of any BOARD appointed committee and/or BOARD appointed citizens' committee. Notwithstanding the foregoing, the BOARD may conduct executive sessions outside of the presence of the SUPERINTENDENT, including but not limited to the following reasons:

(a) For purposes of discussion of the SUPERINTENDENT'S job performance, or to prepare, review and discuss his annual evaluation.

(b) For purposes of discussion of the SUPERINTENDENT'S request for additional remuneration and/or fringe benefits, or contract extension

(c) Meetings regarding the discipline and/or discharge of the SUPERINTENDENT.

(d) Meetings called to discuss a search for a successor to the SUPERINTENDENT, including all matters related to the employment of a successor SUPERINTENDENT.

6. Board Referral.

In the event that substantial criticisms and complaints are made to individual BOARD members and/or the whole BOARD regarding the SUPERINTENDENT'S administration of the DISTRICT, or the SUPERINTENDENT'S performance of his duties, the same shall be promptly brought by individual members or the Board President to the attention of the Superintendent.

7. **Outside Employment and Consultation.**

The SUPERINTENDENT shall devote his entire work time to the DISTRICT and herewith agrees to refrain from employment with, or on behalf of, any other person, partnership or corporation. However, the SUPERINTENDENT may accept speaking engagements for professional development programs and educational associations, and may accept adjunct teaching assignments at institutions of higher education. Such activities, if permitted, shall not interfere with the duties of the SUPERINTENDENT and shall be accomplished during periods of vacation or at times other than the SUPERINTENDENT'S work day.

8. **Salary.**

(a) The DISTRICT shall pay to the SUPERINTENDENT as and for his annual salary for the period from March 6, 2023 to and including June 30, 2024, the annual sum of Two Hundred Eight-six Thousand Nine Hundred fifty-one and 50/100 (\$286,951.50) Dollars.

(b) With the exception of the 2022-2023 school year, the BOARD shall meet during the month of June of each year of this contract to review and discuss an appropriate salary increase effective the next following July 1st, if any, for the SUPERINTENDENT. The BOARD'S final determination shall be communicated to the SUPERINTENDENT on or before June 30th of each year. The term "salary increase," for the purposes of the above, shall include other forms of recompense, including fringe benefits. In no event shall the annual salary of the SUPERINTENDENT be lower than the salary provided during the first year of this contract.

9. **Benefits.**

(a) *Vacation:* The SUPERINTENDENT shall be credited twenty-two (22) days paid vacation leave days per year, each July 1st, to be taken at a time selected by the SUPERINTENDENT, during periods of time when his absence will have limited impact on the operations of the DISTRICT. The SUPERINTENDENT shall give the President of the BOARD at least two weeks' notice of his intended use of vacation leave days, which notice period may be reduced in exigent circumstances. The SUPERINTENDENT shall be permitted to accumulated up to seven (7) vacation leave days each year. However, the SUPERINTENDENT's total bank of accumulated vacation leave days shall never, at any time, exceed thirty (30) days. At retirement he shall be paid 1/240th of his annual salary for each day of accumulated vacation leave days not to exceed thirty (30) days. The SUPERINTENDENT shall be permitted to receive the cash value of up to seven (7) unused vacation leave days standing to his credit at the end of each year of this contract. The cash value shall be paid at the per diem rate of 1/240th of his annual salary for each day relinquished. Once paid, the vacation leave day(s) shall be deemed used.

(b) *Holidays:* The SUPERINTENDENT shall not be required to work on those days designated as holidays by the General Municipal Law of the State of New York and such other holidays as may be recognized in the DISTRICT calendar. The SUPERINTENDENT shall not be required to work during the Winter recess period. He shall work during the February and Spring Recess periods except on those days that the District Central Office is closed during the February and Spring Recess periods.

(c) *Sick Leave Days:* Effective, March 6, 2023 the SUPERINTENDENT shall be credited with a sick leave bank of thirty (30) days, to be used by him in the event of personal

illness. Beginning on July 1, 2024, and on the July 1st of each successive contract year (July 1st through June 30th), sick leave days will be earned in the amount of eleven (11) days per school year. Unused leave days may be accumulated and shall be deemed to replace the aforescribed credited 30 days as earned. Said calculation shall be made each July 1st of this contract. The SUPERINTENDENT may accumulate up to One Hundred and Eighty (180) leave days. The SUPERINTENDENT shall be permitted to use up to five (5) sick leave days each year, in the event of the illness of his spouse, or dependent children requiring his presence. At the time of his retirement, he shall be permitted to “cash out” up to thirty (30) of his accumulated sick leave days at the per diem rate of \$65.00.

(d) *Jury Duty:* The SUPERINTENDENT, if required to serve as a juror, shall be paid full salary, without loss of sick or personal leave, during the period of civic obligation. He shall endeavor to take steps to seek his relief from such duty during periods when school is in session, by making appropriate application for attendance at jury duty during periods when school is not in session.

(e) *Personal Leave:* The SUPERINTENDENT shall be permitted to attend to items of a personal or personal business nature during work time by utilizing no more than three (3) personal leave days each year. Prior to such use he shall notify the BOARD President of his election to take personal leave. Personal leave shall not be used for any income producing activity and shall be limited to those occasions upon which the SUPERINTENDENT must attend to personal matters or personal business for which his attendance is compelled during regular working hours. Unused personal days shall be accumulated as sick days.

(f) *Bereavement:* The SUPERINTENDENT shall receive up to five (5) consecutive workdays per occurrence for death in the immediate family to be used proximate to the date of death. Immediate family shall be defined as: spouse or domestic partner, father, mother, brother, sister, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepmother, stepfather, stepchild and any relative permanently residing in the immediate household of the SUPERINTENDENT.

(g) Health Care Benefits:

- (1) The SUPERINTENDENT shall be permitted to elect enrollment in the DISTRICT's health insurance program granted to the professional employees of the DISTRICT. He shall pay twenty-two (22%) per cent of the individual or family premium for such coverage under the health insurance program then granted to the DISTRICT's professional employees.
- (2) Upon the completion of five (5) years of service to the DISTRICT, he shall be granted health insurance in the DISTRICT's health insurance program during retirement, for life, upon his resignation from the DISTRICT for the purpose of ordinary service retirement into the New York State Teachers' Retirement System. The SUPERINTENDENT shall pay Twenty-Two (22%) of the premium costs of the SUPERINTENDENT's individual or family health insurance coverage.
- (3) If the SUPERINTENDENT secures employment after the effective date of

his service retirement into the New York State Teachers' Retirement System by another employer which is a participating municipality under the NYS Government Insurance Program (NYSHIP), the DISTRICT's obligation to pay premiums after retirement hereunder shall be suspended during any period of time when the SUPERINTENDENT is eligible to receive health insurance coverage from another employer, if it is a participating municipality in the New York State Health Insurance Program, and the SUPERINTENDENT is required to pay a premium contribution of not greater than Twenty Two (22%) percent.

(4) The SUPERINTENDENT's spouse and his dependent children shall be eligible for continued coverage at a premium contribution rate of Twenty-Two (22%), under the DISTRICT's health care plan if the SUPERINTENDENT predeceases his spouse and/ or his dependent children during active service or following his separation from service for the purpose of retirement under the NYSTRS, subject to the then applicable eligibility rules of the New York State Health Insurance Program.

(h) *Attendance at Conferences:* The SUPERINTENDENT shall be permitted to attend national conferences, to attend workshops given by local colleges and universities, and to engage in other such educational activities that bring both personal and professional growth opportunities. The SUPERINTENDENT shall be permitted to attend such activities without charge to leave days or vacation, so long as the prior approval of the BOARD shall have been obtained. Also, costs incurred including transportation,

lodging, meals and the like shall be reimbursed to the SUPERINTENDENT provided appropriate DISTRICT vouchers are submitted to the DISTRICT and subject to the BOARD'S prior approval, hereinabove referred to. The Superintendent shall be permitted to attend local Long Island educational conferences and New York State Council of Chief School Officers meetings within New York State without prior Board approval but on reasonable notice provided to the President of the Board of Education.

(i) *Disability Insurance:* The DISTRICT shall provide the SUPERINTENDENT with a disability insurance policy, at preferred rates, providing two-thirds (2/3) of his income until age sixty-five (65) in the event the SUPERINTENDENT suffers a permanent disability as a result of which he can no longer perform the essential duties of his position. If the SUPERINTENDENT is uninsurable, or insurable at other than preferred rates, no disability insurance shall be provided.

(j) *Out-of-Pocket Expenses:* The DISTRICT shall reimburse the SUPERINTENDENT for all reasonable out-of-pocket expenses incurred as a result of the performance of his duties such as meals, transportation and lodging, subject to the review and approval of the BOARD. Costs incurred shall be reimbursed to the SUPERINTENDENT provided appropriate DISTRICT vouchers are submitted to the DISTRICT.

(k) *Professional Organizations:* It is understood and agreed that the BOARD will pay the SUPERINTENDENT's dues in those professional and or local service organizations to which he belongs or to which he may hereafter belong, including the following:

American Association of School Administrators; Association of

Supervision and Curriculum Development; New York State Council of School Superintendents (NYSCOSS); Suffolk County School Superintendents' Association; and a local service organization such as Rotary or Kiwanis.

(l) *Physical Examination:* The SUPERINTENDENT shall be reimbursed for reasonable costs of an annual medical physical examination, unreimbursed by insurance.

(m) *Life Insurance:* The SUPERINTENDENT shall be reimbursed annually up to \$2,500 for the purchase by him of term life insurance. If the SUPERINTENDENT is uninsurable, or insurable at other than preferred rates, the aforesaid \$2,500 premium shall not be paid. The SUPERINTENDENT shall provide the DISTRICT with a copy of any insurance policy purchased using the aforesaid reimbursement of \$2500 hereunder together with a paid premium invoice.

(n) *Equipment:* The SUPERINTENDENT shall be provided with a laptop computer and a tablet computer, that will remain property of the DISTRICT, for business use and incidental/minimal personal use. The SUPERINTENDENT shall be provided a cell phone for business use and incidental/minimal personal use.

(o) *Reimbursement for use of personal vehicle:* The SUPERINTENDENT shall be reimbursed \$500 per month for use of his personal vehicle for business travel on behalf of the DISTRICT.

(p) *Annuity contribution* Annually, the DISTRICT shall provide for a non -elective non-discretionary employer contribution in the amount of \$10,000. This non-elective, non-discretionary Internal Revenue Code Section 403(b) employer contribution shall be made

on or about August 1st of each year of this agreement. The non-elective, non-discretionary Code Section 403(b) employer contribution to the DISTRICT'S 403(b) plan shall be in accordance with the principles of IRS Revenue Ruling 2009-32, to the extent the contribution (in combination with other annual additions) does not exceed the applicable limitations under Code Section 415(c).

10. Just Cause Dismissal.

(a) Throughout the term of this agreement, the SUPERINTENDENT shall be subject to discharge for just cause.

(b) The SUPERINTENDENT shall have the right to service of written charges by the BOARD and notice of the BOARD'S intention to proceed to a fair hearing before an impartial hearing officer.

(c) At the election of both parties, within one week of the service of written charges by the BOARD, prior to the convening of a fair hearing as hereinafter provided, the parties shall enter into mediation before a mediator selected in order from the following list of mediators based upon the availability of the mediator to commence mediation within two weeks of the date of service of the aforesaid charges: Elena Cacavas, Esq., Jay Siegal, Esq., Rosemary Townley, Esq., or Dennis Campagna, Esq. The mediation process shall not extend more than two (2) months from the date of the first scheduled mediation session. The cost of the mediator's services shall be borne by the DISTRICT.

(d) Should the parties not elect to proceed to mediation, or in the event that mediation does not result in a resolution of the differences between the parties within the timeframe hereinbefore set forth, an impartial hearing officer to hear the charges against the

SUPERINTENDENT shall be mutually selected by the BOARD and SUPERINTENDENT within five (5) days of the date of termination of the mediation process, if any. Should the parties not make a mutual selection within said five (5), the parties shall use the process for selection of an impartial hearing officer through the American Arbitration Association, pursuant to its Rules for Voluntary Labor Arbitration. (The use of said Rules for Voluntary Labor Arbitration of the American Arbitration Association does not mean that the hearing herein described shall be deemed an arbitration proceeding.) The hearing shall not be scheduled prior to twenty (20) days after the date of selection of the hearing officer. The hearing officer shall hear the charges and evidence supporting the charges and make findings of fact and recommendations with respect to the disposition of any charges filed. The BOARD shall make the final binding determination as to guilt and termination of his services after review of the hearing officer's findings of fact and recommendations as to the charges against the SUPERINTENDENT. If the SUPERINTENDENT chooses to be accompanied by legal counsel at the hearing, his legal expenses shall be the sole responsibility of the SUPERINTENDENT. The BOARD may elect to suspend the SUPERINTENDENT from the performance of his duties with full pay and benefits during the pendency of the termination procedures provided hereunder but not for longer than four (4) months from the first hearing date.

11. Inability to Perform.

Should the SUPERINTENDENT be unable to perform his duties by reason of illness, accident or other cause beyond his control and said disability continues for a period of more than three (3) months, or he is absent for ninety (90) days during any twelve (12) month period, and if

such disability appears to be permanent, irreparable or of such nature as in the judgment of the BOARD will make the performance of his duties impossible, the BOARD may, at its option, terminate this agreement whereupon the respective duties, rights and obligations herein shall terminate, except that the BOARD agrees to continue payment of salary for any remaining sick leave days in the SUPERINTENDENT'S accumulation of sick days.

12. Indemnification and Legal Representation.

In addition to those rights provided by law, the BOARD agrees to provide legal counsel and to indemnify the SUPERINTENDENT against all uninsured financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person, or damage to the property of any person, committed while the SUPERINTENDENT is acting within the scope of his employment, or under the direction of the BOARD. This obligation shall supplement and be in addition to any rights which the SUPERINTENDENT may have arising under the laws of the State of New York including, but not limited to, Education Law §§3023, 3028, 3811, 3813 and §18 of the Public Officers Law.

13. Evaluation.

With the exception of the 2022-2023 school year, the BOARD shall devote at least a portion of one meeting during the month of May in each year of the SUPERINTENDENT'S employment to an evaluation in executive session of his performance and his working relationship with the BOARD. The evaluation shall be based upon written performance criteria, procedure and evaluative forms mutually agreed upon by the parties, which criteria, procedure and forms shall be established before June 30, 2023. Notwithstanding the failure of the parties to agree upon the aforesaid criteria, procedure and forms by said date, the BOARD shall prepare the annual

evaluation of the SUPERINTENDENT based upon its own review of the SUPERINTENDENT'S performance as of April of each year of this agreement.

14. Contract Renewal.

The SUPERINTENDENT shall be entitled to written notice of at least one year prior to the expiration of this agreement as to whether or not the BOARD will enter into a new contract of employment with the SUPERINTENDENT. The SUPERINTENDENT shall respond, in writing, to a BOARD offer of continued employment. Said response shall be delivered to the BOARD within thirty (30) days of the date of its offer.

15. Superintendent's Notice.

(a) The SUPERINTENDENT shall give the BOARD at least 180 day's notice of his decision to terminate his employment with the DISTRICT prior to expiration of this agreement.

(b) Should the SUPERINTENDENT fail to provide 180 days written notice of his decision to terminate the Agreement shall cause him to forfeit any rights he may otherwise have herein for the payment of benefits at the time he ceases to be employed including but not limited to accrued vacation and sick time, and or the DISTRICT contribution toward health care benefit premium costs during retirement, if any. In the event that the DISTRICT provides health care coverage pursuant to the NYSHIP plan at the time of the Superintendent's failure to provide notice of his termination, the DISTRICT'S premium contribution shall not be any greater than the minimum DISTRICT contribution required by the NYSHIP plan, subject to the Rules and Regulations of the NYSHIP plan.

16. Savings Clause.

If any provision of this agreement is determined to be contrary to law, it is understood and agreed that such provision shall be deemed deleted and the balance of this agreement without such deleted provision, if otherwise lawful, shall remain in full force and effect. If any such deleted provision involves compensation or a fringe benefit, the undersigned parties agree to negotiate as part of this agreement in place of such deleted provision, a substitute of comparable value thereto, and in the event of an impasse exceeding forty-five (45) days, either party hereto may submit the issue for final disposition, to arbitration by the American Arbitration Association pursuant to its rules for Voluntary Labor Arbitration. The arbitrator shall be empowered to make an award of comparable value or compensation as reasonably implements the intent of the parties under the deleted provision.

17. Jurisdiction.

This Agreement will be construed in accordance with the laws of the State of New York.

18. Entire Agreement.

The parties agree that all negotiable items have been discussed during the negotiation of this contract and this Agreement contains the entire understanding between the parties and there are no representations, conditions, understandings, promises, or considerations of any nature whatsoever, except as herein expressed.

19. No Reopener.

The parties agree that this contract may not be reopened to negotiations on any item except by mutual consent. Either party to the contract may request in writing to the other party that the contract be reopened to negotiations on any item or groups of items. Within thirty (30) days after receiving said request, the other party will reply to the request, in writing, either agreeing to or

refusing to reopen the contract to negotiation. This contract may not be orally changed or modified; any and all changes must be in writing and executed by the parties thereto.

20. Contract Execution.

The parties have agreed that the foregoing employment contract may be executed and submitted electronically via email by sending such document to the counsel for each party at the following email addresses:

dspencer@guerciolaw.com

jacinda@nyscoss.org

Douglas A. Spencer is Counsel to the BOARD and is authorized to receive this Agreement from counsel to Kenneth E. Graham that will have been electronically executed by Kenneth E. Graham. Jacinda Conboy is counsel to Kenneth E. Graham and is authorized to receive this contract from counsel to the BOARD that will have been electronically executed by the BOARD. This electronic record will have the same force and effect as those records not produced by electronic means. Likewise, facsimile, or electronic signatures will have the same force and effect as originals thereof. The parties have also agreed that this contract may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the BOARD has caused this instrument to be signed by its President of the BOARD, as duly authorized by resolution, and the SUPERINTENDENT has hereunto set his signature, all on the day and year written below.

BOARD OF EDUCATION OF
THE NORTH BABYLON UNION FREE
SCHOOL DISTRICT

By:


MATTHEW LUCCHETTI, President

Dated: 01/26/23

SUPERINTENDENT OF SCHOOLS


KENNETH E. GRAHAM

Dated: 1/26/2023