



Professional Services Agreement

The School Board of Flagler County, Florida, ("School Board") does hereby retain the services of Florida School Boards Association, Inc., with an address of 203 South Monroe Street, Tallahassee, Florida 32301, (hereinafter called "FSBA") to furnish professional services.

WHEREAS, pursuant to the terms and conditions of this Agreement the School Board desires to engage FSBA, and FSBA desires to be engaged by the School Board, to render professional services in connection with assisting the School Board in its search for a new Superintendent.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, it is agreed by and between the School Board and FSBA as follows:

1. **Description of Services.** FSBA shall perform the following services:

FSBA will provide the Board consulting services to select an effective Superintendent who will collaborate with the School Board as to the future direction and priorities of the School District. FSBA will guide and assist the School Board through a pre-search activities identifying District criteria and priorities in relation to the needs of the district and the qualities desired in a Superintendent; assist the School Board with development of recruitment materials, application procedures, and an advertisement plan; develop a plan for receiving applications and how they will be processed; conduct reference checks through legal counsel, and determine a process for selecting candidates for the interview phase; and assist the Board as applicable in other items that lead to the selection of a final candidate for Superintendent and negotiation of contract with chosen candidate.

FSBA and its sub-consultants will perform all services specified above, except as provided otherwise herein. All intellectual property, work product, outcomes, or processes specially developed for the delivery of services described above shall be the property of the School Board.

2. **Term of Agreement.** The term of this Agreement shall be from the date last signed by both parties until January 31, 2024 or the selection of a Superintendent by the School Board if earlier, unless terminated as provided herein. At the completion of this engagement, FSBA will have no further responsibility to the School Board.

3. **Termination.** Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. FSBA shall be paid for services performed and completed under this Agreement up to the date of termination only.

4. **Compensation and Payment.** Based on the completion of services described in paragraph 1 above, FSBA shall receive payment as listed below:

A fixed fee of \$35,000.00 shall be paid for the services provided. Additionally, any travel and on-site expenses related to the services being provided shall be paid by the School Board. Travel expenses shall only be incurred as authorized by School Board and as provided for by section 112.061, Florida Statutes. The School Board shall also be responsible for costs associated with comprehensive background searches on finalist candidates.



## Florida School Boards Association

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School Board's payment will be made pursuant to the provisions of the Local Government Prompt Payment Act after receipt of FSBA's invoice and completion of services. The Local Government Prompt Payment Act requires the School Board to pay a correct and undisputed invoice within forty-five (45) days of the School Board's Accounts Payable Department's receipt of said invoice.

5. **Independent Consultant.** FSBA certifies that it is an independent Consultant and shall not employ, contract with, or otherwise use the services of any officer or employee of the School Board. FSBA certifies that its owner, officers, directors or agents, or members of their immediate family, do not have an employee relationship or other material interest with the School Board, its members or staff.

6. **Insurance.** FSBA shall, throughout the performance of its services pursuant to this Agreement, maintain and provide to the School Board the following insurance coverage:

**Professional Liability Insurance.** The professional liability insurance shall provide protection from negligent act, errors, and omissions of FSBA from and in connection with the performance of work under the Agreement. The policy shall provide coverage for negligent acts or omissions of FSBA in a minimum amount of \$1,000,000.00 per claim. The policy shall contain a maximum deductible of \$1,000.00 per claim.

7. **Governing Law and Venue.** This Agreement, and all extensions, supplements and modifications thereto, and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the state of Florida. Venue for any legal disputes, legal proceedings or actions arising out of or in connection with this Agreement shall be brought in the circuit courts of Leon County, Florida. The parties shall not violate the code of ethics for public officers and employees, Chapter 112, Florida Statutes.

8. **Modification.** No change or modification of this Agreement shall be valid or enforceable unless the same shall be in writing and signed by both of the parties hereto.

9. **Assignability.** This contract is for the professional services of FSBA and may not be assigned by FSBA in any fashion, whether by operation of law, or by conveyance of any type without the prior written consent of the School Board which consent the School Board may withhold in its sole discretion.

10. **No Taxes.** The School Board is not obligated and does not agree to pay any federal, state, or local tax as a result of this Agreement.

11. **Public Records Act/Chapter 119 Requirements.** FSBA agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

- (a) FSBA and its sub-consultants shall keep and maintain public records that ordinarily and necessarily would be required by the School Board in order to perform the service.
- (b) FSBA and its sub-consultants shall provide the public with access to such public records on the same terms and conditions that the School Board would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- (c) FSBA and its sub-consultants shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law; and
- (d) FSBA and its sub-consultants shall meet all requirements for retaining public records.



## Florida School Boards Association

THE VOICE OF EDUCATION IN FLORIDA

12. **Confidentiality.** Unless otherwise required by law, any reports, data or other similar information given to or prepared or assembled by FSBA under this Agreement which the **School Board** requests to be kept as confidential shall not be made available to any individual or organization by FSBA without prior written approval of the **School Board**. The parties hereto acknowledge the applicability of Chapter 119, Florida Statutes, to this Agreement.

13. **No Waiver.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

14. **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.

15. **Access to and Retention of Documentation.** The **School Board**, the United States Department of Education, the Comptroller General of the United States, the Florida Department of Education or any of their duly authorized representatives shall have access to any books, documents, papers, and records of FSBA which are directly pertinent to work and services to be performed under this Agreement for the purpose of audit, examination, excerpting and transcribing. The parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of five years after the **School Board** has made final payment and all services have been performed under this Agreement.

16. **Debarment.** By signing this Agreement, FSBA certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- (b) Have not, within the preceding five-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- (d) Have not within the preceding five-year period had one or more public transactions (federal, state or local) terminated for cause or default.

FSBA agrees to notify **School Board** within thirty (30) days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, information, or terminations as described in paragraphs 18(a) - (d) above, with respect to FSBA or its principals.

17. **Severability.** In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

18. **Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent to, or waiver of, any other breach or default by that party. Except as otherwise provided in this Agreement, failure on



## Florida School Boards Association

THE VOICE OF EDUCATION IN FLORIDA

the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.

19. **No Third-Party Beneficiaries.** There are no third-party beneficiaries created or entitled by this Agreement and only the specific parties hereto shall have any rights or standing to enforce this Agreement or any provision thereof.

20. **No Partnership or Joint Venture.** It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the School Board, FSBA or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.

21. **Mediation.** Prior to initiating any litigation related to this Agreement, the parties agree to submit the dispute to nonbinding mediation by a mediator who is certified in Florida in an effort to resolve the dispute in an expedient manner. Each party shall bear their own attorney's fees and costs incurred by such mediation.

22. **Waiver of Jury Trial.** The parties expressly waive the right to a jury trial for any claims or disputes arising out of, and in connection with, this Agreement and the performance of services in accordance with this Agreement.

23. **Entire Agreement.** This Agreement represents the entire understanding between the parties and supersedes all prior agreements, whether written or oral, relating to the subject matter hereof. In the event any terms contained in any attachments, exhibits, subsequent purchase order (or similar document) sent or received in connection with this Agreement are inconsistent with the terms of this Agreement, the terms of this Agreement shall prevail.

24. **Notices.** All notices shall be in writing, and all payments shall be by check, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) transmitting by facsimile to the numbers set forth below for each party, or (c) delivering the same in person to such party by (i) personal delivery or (ii) overnight courier. Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

School Board:

**Attention: Kristy J. Gavin, School Board Attorney**

1769 East Moody Blvd., Bldg. 2

Bunnell, FL 32110

Telephone: (386)437-7526

Fax: (386)586-2641

[gavink@flaglerschools.com](mailto:gavink@flaglerschools.com)

FSBA

**Attention: Ms. Andrea Messina**

Executive Director

Florida School Boards Association, Inc.

203 S. Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 414-2578

Fax: (850) 414-2585

[messina@fsba.org](mailto:messina@fsba.org)



# Florida School Boards Association

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By giving the other party at least fifteen (15) days written notice, each party shall have the right to change its address and specify as its new address any other address in the United States of America.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**THE SCHOOL BOARD OF  
FLAGLER COUNTY, FLORIDA:**

By: 

Print Name: Cheryl Massaro

Title: Chairperson Flagler County School Board

Date: May 16, 2023

**FLORIDA SCHOOL BOARDS ASSOCIATION:**


By: \_\_\_\_\_

Print Name: Andrea D. Messina

Title: Executive Director

Date: \_\_\_\_\_

**ATTEST (WITNESS):**

By: 

Print Name: Kirsty J. Gavin

Title: School Boards Attorney

**ATTEST (WITNESS):**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_