

**SECOND EMPLOYMENT AGREEMENT BETWEEN
DR. MORTON SHERMAN AND THE
ALEXANDRIA CITY SCHOOL BOARD**

THIS SECOND EMPLOYMENT AGREEMENT ("Second Agreement") is made and entered into this 22nd day of September 2011, by and between the Alexandria City School Board (the "Board") and Dr. Morton Sherman (the "Division Superintendent").

Recitals

WHEREAS, the Board at its meeting on June 2, 2008, pursuant to Section 22.1-60 of the Code of Virginia, appointed Dr. Morton Sherman as the Division Superintendent of the Alexandria City Public Schools ("ACPS") for a period of three years, ten and one-half months, commencing August 15, 2008 through and until June 30, 2012 (the "First Agreement"); and

WHEREAS the First Agreement has been amended in various respects via First, Second, Third, Fourth and Fifth Amendments thereto; and

WHEREAS the Board desires to enter into a new employment agreement with the Division Superintendent, replacing the First Agreement, in order to recognize the contributions of the Division Superintendent to date, and to enhance administrative stability and continuity within the school system, which the Board believes generally enhances the quality of its overall educational program; and

WHEREAS, the parties hereto wish to replace the First Agreement, and enter into a Second Agreement setting forth a new period of employment extending through June 30, 2015, and making certain modifications of the terms of the employment during such period;

NOW THEREFORE, the Board and the Division Superintendent agree as follows:

I. Employment and Term

Based upon their respective entering into this Second Agreement, the Board and the Division Superintendent agree to terminate by mutual consent the First Agreement, effective September 22, 2011, and simultaneously to enter into this Second Agreement as of that same date. This Second Agreement voids and renders of no further force or effect the First Agreement, and any amendment thereto.

The Board agrees to employ the Division Superintendent and the Division Superintendent agrees to work for the Board, subject to the terms and conditions contained herein, for the period from September 22, 2011 through June 30, 2015.

II. Compensation

A. Subject to the terms and conditions contained in this Second Agreement, beginning on September 22, 2011, and continuing through the duration of this Second Agreement, the Division Superintendent will receive a Base Salary of \$250,000 per year.

B. The annual salary of the Division Superintendent will be paid in equal monthly installments in accordance with the standard policy of the Board governing payment of professional staff members in the school division.

C. Tax Sheltered Annuity. The Board will pay \$40,000 per year towards a tax sheltered annuity, or annuities, of the Division Superintendent's choice, effective with the current fiscal year. Since a \$27,500 payment for the current fiscal year has already been made pursuant to the First Agreement, as amended, a supplemental payment shall be made by the Board on or before January 15, 2012. For subsequent fiscal years, this contribution will be paid in a lump sum on July 1 of each of contract year, beginning on July 1, 2012. It will be reported to the Virginia Retirement System as a part of the compensation to be counted towards retirement.

D. Transportation. The Board will pay a transportation allowance of \$650 per month to the Division Superintendent. Mileage reimbursement will be provided for out-of-city travel on ACPS business.

III. Vacation Leave, Sick Leave, Personal Leave and Other Benefits

A. Vacation and Personal Leave. Consistent with current policies applicable to ACPS senior administrative personnel, the Division Superintendent will receive a total of eighteen calendar days' vacation leave, and four days personal leave, annually, exclusive of legal holidays. The Division Superintendent may carry over from one year to the next vacation and personal leave on a basis consistent with the policies which apply to ACPS employees generally.

B. Sick Leave. Consistent with current policies applicable to ACPS senior administrative personnel, the Division Superintendent will be advanced up to thirty days of sick leave as necessary. Unused accrued sick leave accrued during service in ACPS will be accumulated on a basis consistent with the policies which apply to ACPS employees generally.

C. Payment for Vacation or Sick Leave. At the time of his retirement or separation from the school division, the Division Superintendent will be eligible for payment for up to 100 days of accrued sick leave, and up to 45 days of vacation leave on the conditions, and on the basis, consistent with the policies which otherwise apply to ACPS employees generally at the time of such retirement or separation, provided, however that only vacation and sick leave days earned within ACPS shall be eligible for payment.

D. Insurance. The Board will pay, on behalf of the Division Superintendent, the total premium for family hospitalization, medical, and dental insurance. The Division Superintendent will be covered by disability insurance applicable to other ACPS professional employees, and at no cost to himself, during the term of this Agreement.

E. Education. Upon the request of the Division Superintendent the Board will review an application of the Division Superintendent for continuing education costs.

F. Retirement. The Board will pay the employer and employee share of costs for the Division Superintendent's membership and for group life insurance in the Virginia Retirement System. In addition, for each year the Division Superintendent is employed by the Board under this Second Agreement, the Board will pay to or on behalf of the Division Superintendent ninety-five percent of the cost of the purchase of one year of prior service credit from the Virginia Retirement System, in an amount not to exceed \$1200 per month, commencing not later than August 1, 2011, and continuing during the remaining term of this Second Agreement.

G. Other Benefits. In order to encourage the continuing professional and civic growth of the Division Superintendent, the Board will, upon prior approval by the Board Chairman or other designated member of the Board, and within the allowance of the approved budget, permit a reasonable amount of leave and will reimburse reasonable expenses actually incurred and timely submitted by the Division Superintendent for membership and participation in:

1. the operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations;
2. seminars and courses offered by public or private educational institutions;
3. informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of the Division Superintendent to perform his professional responsibilities for the Board; and
4. professional and civic organizations.

IV. Duties of the Division Superintendent

The Division Superintendent will perform all duties and abide by all laws, policies and regulations contained in the Code of Virginia, the regulations of the Virginia State Board of Education, (the "State Board of Education") and the policies of the Board. The Division Superintendent will serve as the chief administrative officer of ACPS pursuant to the laws of the Commonwealth of Virginia, the regulations adopted by the State Board of Education, and the lawful directives of the Board. The Division Superintendent will devote all of his time, skill, labor, and attention to his duties as the chief administrative officer of ACPS. The duties of the Division Superintendent include the responsibility and authority to organize, reorganize, and arrange the teachers, administrative and supervisory staffs, and other employees so as to best serve the students of ACPS. Further, the administration of instruction and business affairs will be lodged with the Division Superintendent and administered by him with the assistance of the administrative staff. The Division Superintendent shall fully and completely inform the Board of any and all information that is relevant to the functioning of the Board. The Division Superintendent agrees that he will perform any other legally permissible duties or functions which the Board may see fit to assign to him at any time during the term of this Agreement consistent with the office of Division Superintendent.

V. Evaluations and Criticisms

Using an instrument consistent with the performance objectives set forth in Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Administrators, and Superintendents pursuant to Section 22.1-60.1 of the Code of Virginia, the Board shall evaluate annually the Superintendent. The Board will devote at least a portion of a Board meeting in each year to a discussion of the performance of the Division Superintendent and of the working relationship between the Division Superintendent and the Board. The Board will provide evaluative feedback and establish performance criteria which can be used constructively by the Division Superintendent. The evaluation discussion referenced herein will be held in closed session and treated confidentially by the Board and the Division Superintendent so long as doing so does not violate the laws of the Commonwealth of Virginia including, but not limited to, the Virginia Freedom of Information Act as the same may be amended from time to time.

VI. Renewal

The Board shall endeavor to communicate to the Division Superintendent its intent with respect to renewal or extension of this Agreement by December 31, 2014. This Agreement may be renewed and extended upon such terms and the parties may mutually and in writing agree. Provided, however, that this provision shall not be deemed to create any automatic renewal or extension of this Agreement, and provided further that this contract may not be renegotiated during the period following the election or appointment of new school board members and the dates such members are qualified and assume office.

VII. Residency and Qualifications

A. Residency. The Superintendent shall maintain legal residency in the City of Alexandria continuously during the term of this Second Agreement. Failure to maintain such legal residency within that period without prior approval by the Board shall be good and sufficient cause to terminate this Agreement.

B. Professional qualifications. The Division Superintendent agrees to furnish to the Board during the term of this Second Agreement evidence that he continues to be legally qualified to serve as Division Superintendent pursuant to the laws of the Commonwealth of Virginia and the regulations of the State Board of Education.

C. Medical examination. The Division Superintendent agrees to undergo a comprehensive medical examination at least once every two years and to file a statement or medical report certifying his fitness for duty with the Chairman. Each such medical report will be treated as confidential information by the Board to the full extent that such confidentiality is permitted by law, provided however, that the medical report may be communicated to the Board if it is deemed germane to the termination, renewal and leave provisions of this Second Agreement. The cost of such examination and medical report will be paid by the Board.

VIII. Other Work Activities

The Division Superintendent covenants and agrees to devote his time, attention, skills and labor during the term of this Second Agreement toward the fulfillment of his duties as described herein. The Division Superintendent shall engage in other business or employment during his term of office only with the prior express approval of the Board. The Board may approve activities of the Division Superintendent to include consultative work, speaking engagements, writing, lecturing, teaching, or other professional activities for compensation provided that such activities do not cause any conflict of interest, and that they are undertaken during annual or personal leave, or at other times which, in the opinion of the Board, do not reduce the availability of the Division Superintendent for fulfilling his full-time responsibilities hereunder. Pursuant to Section 22.1-66 of the Code of Virginia, the office of Superintendent shall be deemed vacant upon the Superintendent engaging in any other business or employment without such prior approval by the Board.

IX. Discipline and Termination

This Agreement may be terminated as follows:

A. **Sufficient Cause.** The Board may assess a reasonable fine upon, suspend from office, or discharge the Division Superintendent for sufficient cause in accordance with the provisions of Section 22.1-65 of the Code of Virginia or any successor provision of any future enactment of the Virginia Code. As employed herein, "sufficient cause" may include, but is not limited to, material breach of this Agreement, forfeiture of office, immorality, non-compliance with school laws and regulations, willful non-compliance with Board policies and regulations, conviction of a felony or a misdemeanor as set forth in Section 22.1-296.1 of the Code of Virginia (or an equivalent offense in another state or under federal law), or any other good and sufficient cause which renders the Superintendent unfit to continue his duties. In the event the Superintendent is terminated for sufficient cause pursuant to Section 22.1-65 of the Code of Virginia, then all salary and benefits shall cease as of the effective date of such termination.

Prior to imposition of a fine, suspension from office, or discharge for sufficient cause, the Division Superintendent will be entitled to written notice and will have the right to (i) appear before the Board in Closed Session; (ii) be represented at the hearing by a representative of the Division Superintendent's choice provided that the cost of any such representative shall be paid by the Superintendent personally; (iii) receive a written decision setting forth the decision of the Board; and (iv) appeal any decision of the Board to the Circuit Court of Alexandria City, Virginia. This provision does not constitute any waiver of any rights the Board or the Division Superintendent may have to enforce this Agreement in a court of law.

B. **Mutual Agreement.** The Board and the Division Superintendent may agree in writing to terminate this Second Agreement on such terms as may be mutually acceptable.

C. Death or Disability of the Division Superintendent. In the event of the Division Superintendent's death during the term of this Second Agreement, all obligations of the parties hereunder shall terminate immediately, and the Board shall pay to the Division Superintendent's legal representatives the salary due the Division Superintendent through the date on which his death shall have occurred.

If the Division Superintendent is unable to perform with reasonable accommodation the essential duties of his position due to mental or physical injury, illness, or other disability for a period of 4 consecutive months, or for 4 months in any period of 12 consecutive months, as determined by the Board, this Second Agreement may be terminated by the Board, at its option, by written notice to the Division Superintendent, effective on the termination date specified in such notice, provided such termination date shall not be a date prior to the date of the notice of termination itself. In such case, the Board will pay the Division Superintendent the salary and benefits due him through the date on which the termination is effective and will provide any continuation of benefits as may be required by law.

D. Voluntary resignation. In the event the Division Superintendent voluntarily resigns, all salary and benefits such as unused vacation and sick leave provisions shall cease as of the effective date of such resignation. The Division Superintendent agrees to give the Board ninety (90) days written notice of any voluntary resignation; provided, however, that the Board may, in its sole discretion, waive any or all of this ninety (90) day notice requirement. Such voluntary resignation shall be mutually agreed upon by the Board and the Superintendent.

X. Indemnity

The Board shall indemnify and hold harmless the Division Superintendent from any and all demands, claims, damages, suits, actions, and legal proceedings brought by a third party against the Division Superintendent in his individual capacity in his official capacity, as agent and/or employee of the Board and for any reasonable legal fees and expenses for any act or omission arising from his conduct in discharging his duties or in performing functions or services for the Board, provided that the actions of the Division Superintendent related to such demands, claims, damages, suits, actions and legal proceedings were undertaken in good faith, in accordance with the law, and within the scope of his official authority. This indemnity shall be operative only to the extent that the Division Superintendent is not covered by insurance for such demands, claims, damages, suits or actions and shall expire on the date which is three years after the date of the Superintendent's termination of employment.

XI. Miscellaneous

A. This Second Agreement will be governed by and construed in accordance with laws of the Commonwealth of Virginia, the regulations of the State Board of Education, and the policies of the Board. Any provision of this Second Agreement which is contrary to or violative of such statutes, regulations, or policies will be void and such statutes, regulations, or policies will control and supersede any such invalid provision of this Second Agreement. Additionally, if any provision of this Second Agreement is held void or invalid, all remaining portions of this

Second Agreement will remain in full force and effect so long as they are severable from the invalid or void provision.

B. All changes, amendments and modifications to this Second Agreement will be in writing and executed by both the Division Superintendent and the Board. Subject to the laws of the Commonwealth of Virginia, the regulations of the State Board of Education, and policies of the Board, this Second Agreement constitutes the entire agreement between the parties with respect to its subject matter. This Second Agreement supersedes any prior or other agreement, written or oral, between the parties.

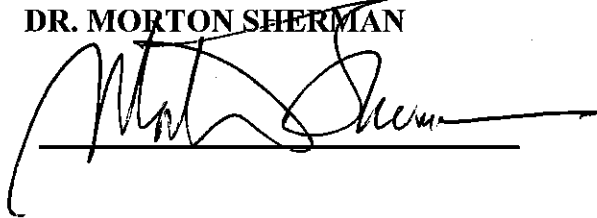
C. The failure of the Division Superintendent to perform the obligations agreed to in this Second Agreement will be reported by the Board to the appropriate state association of administrators and the appropriate authorities of the State Board of Education.

WHEREFORE, this Second Agreement in entered into as of the day and year first above written.


ALEXANDRIA CITY SCHOOL BOARD

By: 
Sheryl Gorsuch, Chairman

DR. MORTON SHERMAN



Attest:


Candra Hodges
Clerk, Alexandria City School Board