

Mr. Agustin J. Barrera, Chair

**SUBJECT: RATIFICATION OF CONTRACT OF EMPLOYMENT FOR THE
SUPERINTENDENT OF SCHOOLS**

**LINK TO DISTRICT
STRATEGIC PLAN: IMPROVE STAKEHOLDER SATISFACTION**

In accordance with School Board Rule 6Gx13-2A-1.021 (*Superintendent of Schools—Appointment*), and State laws, when a vacancy in the position of Superintendent occurs, the School Board is authorized to “appoint a Superintendent of Schools; fix his/her salary; (and) enter into a contract of employment to be negotiated with the candidate.”

As a result of a “mutual modification of employment agreement, settlement agreement and mutual general release,” approved by the School Board at its regular meeting of September 10, 2008 (presented pursuant to Agenda Item H-13), Dr. Crew’s tenure as Superintendent concluded on September 12, 2008, creating a vacancy in the position of Superintendent. At the September 10 meeting, pursuant to Agenda Item H-5, presented by Ms. Perla Tabares Hantman, Vice Chair, nominations for candidates for the position of Superintendent of Schools were received by the Board. After being duly nominated, Mr. Alberto Carvalho, Associate Superintendent for Intergovernmental Affairs, was selected by a majority vote of the School Board to succeed Dr. Rudolph Crew, as the next Superintendent of Schools.

Accordingly, the Board authorized the Chair to negotiate the terms of the contract with the new Superintendent, and to bring to the Board an employment agreement for its consideration and approval. Over a period of several days, the Chair negotiated an employment agreement, which was prepared with the assistance of Special Counsel, Murray Greenberg, and is being presented for the Board’s consideration and approval. The finalized contract is attached hereto.

ACTION PROPOSED BY

MR. AGUSTIN J. BARRERA, CHAIR: That The School Board of Miami-Dade County, Florida approve the Superintendent of Schools’ employment agreement and employ Alberto Carvalho as its Superintendent of Schools in accordance with the terms and conditions of the contract.

SP-3

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made effective as of September 12, 2008, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (the "Board") and ALBERTO CARVALHO ("Superintendent").

WHEREAS, the Board is responsible for retaining a Superintendent of Schools for the Miami-Dade County Public Schools ("Schools" or "School District"); and

WHEREAS, the Board has offered and the Superintendent has agreed to be employed by the Board in such capacity, and on the terms and conditions provided herein, given the Superintendent and the Board's mutual commitments to the furtherance of the Schools.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Board and Superintendent hereby agree as follows:

1. Employment and Term. In accordance with Agenda Item _____ duly adopted by the Board at its Special Board meeting held September 12, 2008, the Board hereby employs Superintendent as Superintendent of Schools, and Superintendent hereby accepts and agrees to such employment, for an initial term of three (3) years commencing on September 12, 2008, and ending on September 11, 2011 ("Original Term"), unless earlier terminated as provided in this Agreement. The term of this Agreement shall be automatically extended and continue in full force and effect for additional one (1) year terms ("Extension Term"), unless one party shall deliver a notice of nonrenewal to the other party at least ninety (90) days prior to the end of the Original Term or the Extension Term then in effect. For purposes of this Agreement, the "Term of this Agreement" shall mean the Original Term and all Extension Terms, if any.

2. Duties. During the Term of this Agreement, the Superintendent will comply faithfully with all applicable laws relating to the performance of his duties as Superintendent, including without limitation, all of the applicable provisions of the laws of the State of Florida, as may be amended, and any successor provision thereto ("School Laws"), the rules and regulations of the State of Florida Board of Education ("State Board Rules"), and the rules and regulations of the Board (the "Board Rules"), all as may be amended and any successor provisions thereto, and he will perform all duties which may be lawfully required of him by the Board. During the term of employment hereunder, Superintendent shall not, without the prior consent of the Board or except as provided in this Agreement, render services to anyone other than the School District and will devote his full business time, attention and best efforts to the business of the School District and fulfillment of his duties as Superintendent hereunder.

The Board shall provide Superintendent, and Superintendent shall take, execute and file, all oaths of office or other documents required under federal, state or local law for the Superintendent's assumption of his duties hereunder, payroll tax purposes and personnel records requirements.

3. Compensation. For all services rendered by the Superintendent pursuant to this Agreement, the Board shall pay to and provide for the Superintendent the following salary and retirement and the other benefits described in this Agreement.

A. Salary. The Superintendent shall receive an annual base salary of Two Hundred and Seventy-Five Thousand Dollars (\$275,000.00) per annum for the first year of this Agreement, less appropriate deductions for federal, state and local tax withholding. Such Salary shall be paid in accordance with the Board's normal payroll practices.

B. Salary Increases. On each anniversary of the effective date of this Agreement, the Superintendent's annual salary shall be increased by a percentage equal to the increase (if any) in the Consumer Price Index published by the U.S. Department of Labor for the 12-month period ending on the immediately preceding August 31. Such salary increases (if any) shall become effective as of such anniversary date.

C. Retirement. The Superintendent may continue to participate in the Florida Retirement System, as provided for in Chapter 121 of the Florida Statutes, as may be amended, and all other retirement programs for which he is or may become eligible during the Term of the this Agreement.

4. Superintendent's Expenses.

A. In recognition that the Superintendent is required, in the performance of his duties, to travel extensively, attend meetings and conferences and otherwise perform functions that involve unreimbursed expenses, the Board will pay to the Superintendent a monthly supplement of Nine Hundred Dollars (\$900.00) payable to the Superintendent on the first day of each calendar quarter for the term of this Agreement. The first such payment will be made on or before October 1, 2008, and on the first day of each calendar quarter thereafter for the Term of this Agreement. The Superintendent shall not be required to submit receipts or expense reports for such amounts.

B. In addition, Superintendent shall be reimbursed for his reasonable and necessary expenses incurred in the performance of his duties hereunder in accordance with applicable Board Rules. Without limiting the generality of the foregoing, the Board shall pay all expenses for the Superintendent to attend professional and official meetings, seminars, conventions, and other meetings and functions that the Superintendent deems relevant to the performance of his duties hereunder, including, without limitation, those expenses incurred for coach airline tickets, hotels, meals, rental cars, taxi, and other reasonable expenses incurred by the Superintendent in the performance of the business of the School District, and shall pay all membership fees and dues of the Superintendent in such organizations as the Superintendent deems appropriate and in furtherance of the performance of his duties hereunder including, but not limited to, the American Association of School Administrators and the Florida Association of District School Superintendents. The Board shall provide the Superintendent a credit card for his use in paying such expenses. To the extent that the credit card cannot be used, then the Superintendent shall request a check for such purposes or submit an expense reimbursement request in accordance with Board Rules. All expenses that are payable or reimbursable under

this paragraph 4.B. shall be governed by Section 112.061, Fla. Stat. and Board Rule 6Gx13 - 4C-1.07.

5. Automobile and Cell Phone. The Board shall provide the Superintendent an automobile for his exclusive use, and shall pay all expenses related to the operation of the automobile including expenses for fuel, oil, insurance, maintenance and repairs for the Term of this Agreement. The automobile initially provided for the Superintendent's use shall be the automobile used by the predecessor superintendent of the School District. On or prior to the second anniversary of the original purchase or lease of such automobile by the School District, the Board shall provide a new automobile for the Superintendent's use which shall be of a medium price range type, namely a Crown Victoria or comparable vehicle. The Superintendent shall be required to use such new automobile for no more than two (2) consecutive years, at which time the automobile provided to Superintendent shall be replaced with a comparable new automobile. The Board shall also pay for and provide a cellular telephone to the Superintendent, and shall pay all monthly usage and other recurring charges for the use of such telephone for the Term of this Agreement

6. Superintendent's Benefits.

A. Employee Benefits. For the Term of this Agreement, the Superintendent shall be provided with Board-paid benefits for himself, his spouse and eligible dependents on the same terms and conditions as such benefits are provided to other administrative employees covered by the Managerial Exempt Personnel (MEP), pursuant to Board Rule 6Gx13- 4D-1.022. The Superintendent shall be entitled to participate in all benefit plans made available to the School District's other administrative employees, all without cost to the Superintendent.

B. Insurance. In addition to the benefits provided in paragraph 6.A. above, the Board shall contribute a sum for additional insurance coverage for the Superintendent in the amount of Six Thousand Dollars (\$6,000.00) per annum, which amount shall be applied at the direction of the Superintendent to purchase supplemental life insurance or disability insurance as follows:

(1) Life Insurance. The Board shall, at the discretion and direction of the Superintendent, contribute a portion of the amount set forth above per year for the Term of this Agreement toward the payment of premiums for an individual life insurance policy, insuring the life of the Superintendent. The exact amount, if any, to be contributed to pay premiums for such life insurance policy will be determined by the Superintendent. Such life insurance policy will be chosen by the Superintendent and may be purchased pursuant to an insurance program designed to achieve current income tax advantages for the Superintendent without detriment to the Board. Policy ownership and beneficiary designation shall be at the option of the Superintendent. The Board hereby agrees to reimburse the Superintendent for such premiums or remit premium payments to the insurance carrier in accordance with the terms and conditions of the life insurance policy, as the Superintendent may direct.

(2) Disability Insurance. The Board shall, at the discretion and direction of the Superintendent, contribute a portion of the amount set forth above, during each year for the Term of this Agreement, toward the payment of premiums for an individual

disability income policy insuring the Superintendent. The exact amount, if any, to be contributed to pay premiums, if any, for such policy will be determined by the Superintendent. Such disability insurance policy shall be chosen by the Superintendent and shall be on such terms and conditions and from a carrier deemed acceptable to the Superintendent. The Board hereby agrees to reimburse the Superintendent for such premiums or remit premium payments to the insurance carrier in accordance with the terms and conditions of the disability insurance policy as the Superintendent may direct.

C. Federal Income Tax Liability. The Board shall provide the Superintendent with additional compensation equal in amount to any federal income tax liability incurred by the Superintendent in connection with all of the Superintendent's benefits as provided for in paragraphs 4, 5, and 6 of this Agreement. (For this purpose, the Superintendent's rate of tax shall be at the maximum rate and shall be adjusted accordingly in the event tax rates change.) Payment of the additional compensation required hereby shall be made to the Superintendent on or before December 31 of each year for the Term of this Agreement.

D. Liability Policy Benefits. The Board hereby agrees to include the Superintendent in its existing personal third-party liability policy, School Leaders Errors and Omissions Policy, Public Official Liability Policy, or any equivalent policy in effect on the date of the execution of this Agreement (the "Policy"), as an additional insured. The Board hereby represents and warrants to the Superintendent that the terms of such Policy shall, furthermore, in addition to the complete defense and indemnification provided for in paragraph 14, entitled Indemnification hereunder, or as otherwise provided for in this Agreement, also provide for the complete defense of the Superintendent from and against any liability, including attorneys' fees and costs, in connection with any proceedings arising out of the Superintendent's performance of his duties hereunder. The Board hereby covenants and agrees to maintain any Policy referred to in this paragraph 6.D. in full force and effect for the Term of this Agreement and the Superintendent shall be covered for a minimum of four (4) years should the Board continue any renewal policy after expiration or termination of this Agreement. In the event such policy is not renewed, the Superintendent shall be covered under paragraph 14, entitled Indemnification, and Board Rule 6Gx13 - 1C-1.021. In addition, any other benefits afforded to exempt managerial employees will be incorporated into the Superintendent's package of benefits automatically.

7. Vacation and Sick Leave. Upon execution of this Agreement, the Superintendent shall be credited with the vacation days and sick leave which he has already accrued for the current year. During the Term of this Agreement, Superintendent shall be entitled to accrue vacation leave, sick leave and personal days in accordance with applicable Board Rules. Upon termination of employment hereunder, the Superintendent or his beneficiary and in the absence of a designated beneficiary, his estate, shall receive a lump sum payment equal to the Superintendent's per diem Salary at that time multiplied by the Superintendent's accrued vacation and sick days, in accordance with applicable Florida law and Board Rules. Such lump sum payment shall be in addition to any other amounts payable to the Superintendent upon termination of employment under this Agreement and applicable law and shall be made within sixty (60) days of the termination. Without limiting the provision of any benefits hereunder, the Superintendent shall be entitled to participate in all benefits programs available to employees of the Miami-Dade County Public Schools.

8. Disability or Death.

A. Termination for Disability. The Board shall have the right to terminate the Superintendent's employment hereunder in the event of his Disability (as hereinafter defined) to perform fully his duties hereunder. For purposes of this Agreement, "Disability" is herein defined as the Superintendent's permanent and total disability such that the Superintendent is unable to perform his duties as Superintendent as set forth in paragraph 2, entitled Duties, herein for a period in excess of six (6) consecutive months. During the period of any temporary disability, and until Superintendent is terminated by the Board hereunder, the Board shall pay Superintendent all Salary and benefits to which he is otherwise entitled hereunder. Upon termination pursuant to this provision, Superintendent may elect to purchase continued medical insurance or other benefits, if any, in accordance with applicable federal or state law or Board Rule (e.g. COBRA).

B. Payment in the Event of Death. In the event of the death of the Superintendent at any time during the Term of this Agreement, the Board shall pay to his surviving spouse, if any, or if the Superintendent does not have a surviving spouse, to the Superintendent's estate, an amount equal to the portion of the Superintendent's Salary, together with all benefits to which he was entitled through the date of his death. Such payment shall be made within one (1) month of the date of his death, together with such payments or benefits as are authorized by applicable law or the Board Rules.

9. Annual Evaluation. Annually, prior to the end of each fiscal year, the Board may evaluate the Superintendent's performance of his duties. The Board shall provide the Superintendent periodic opportunities to discuss Superintendent-Board relationships and each Board member may meet individually with the Superintendent to inform the Superintendent from time-to-time of any inadequacies in such relationships perceived by the Board member, and to advise of those areas of the Superintendent's performance deserving of commendation and accolades. Evaluations of the Superintendent's job performance shall be based upon the Superintendent's job description, the powers and duties of a Superintendent of Schools as described in Florida Statutes, the goals and performance objectives established under or pursuant to this Agreement, the Superintendent's management of the School District, the Superintendent's working relationship with the Board and the contractual expectations of the Board.

The Superintendent and Board shall mutually develop an evaluation format and an evaluation form acceptable to both parties for use in the evaluation of the Superintendent. For each year subsequent to the first year of this Agreement, the Board and the Superintendent shall develop and amend the evaluation format and evaluation form at the time the Board establishes the goals and performance objectives for the upcoming year.

The Board at a public meeting may discuss the Superintendent's performance. The Superintendent shall have the right to submit to the Board a written or oral response to the evaluation. In the event that a majority of the members of the Board determine the performance of the Superintendent to be unsatisfactory, the Board shall specify in reasonable detail the unsatisfactory performance and include recommendations for improvement in all areas in which the Board determines the Superintendent's performance to be unsatisfactory or in need of improvement. In the event of a determination by a majority of the Board of unsatisfactory

performance, the Board may establish a probationary period of not less than four (4) nor more than six (6) months. At the end of such probationary period, the Board shall reevaluate the performance of the Superintendent. If, upon reevaluation, a majority of the Board members determine that the performance of the Superintendent continues to be unsatisfactory, the Board may, in its sole discretion, extend the probationary period or terminate the employment of the Superintendent pursuant to paragraph 10 of this Agreement.

Not later than thirty (30) days prior to June 1 of each year, the Superintendent shall submit to the Board a written self-assessment of his performance in meeting the established goals and objectives and his total performance. The Superintendent shall be provided an opportunity to discuss his self-assessment with the Board.

The Superintendent and the Board shall cooperate to establish the appropriate evaluation timelines and to schedule the meetings required to complete the evaluation process in a timely manner.

10. Termination without Cause. The Board may terminate the employment of the Superintendent at any time during this Agreement without any reason or for unsatisfactory performance upon an affirmative vote of a majority of the members of the Board. Nothing in this Agreement shall prevent the Board from exercising its discretion to terminate this Agreement and the services of the Superintendent. The Superintendent expressly waives any right he might otherwise have to reasons for his termination, prior notice and/or a hearing in connection with the termination of his employment, except as expressly provided in this Agreement. In the event that the Superintendent's employment is terminated by the Board pursuant to this paragraph 10, and in addition to all Salary and benefits then due, the Board agrees to pay the Superintendent a lump sum equal to his (then current) Salary for one (1) year or his (then current) Salary for the remaining term of this Agreement, whichever period of time is less. All compensation and benefits paid by the Board to the Superintendent under the provisions of this paragraph 10 shall be considered liquidated damages. In the event that the Board terminates the Superintendent's employment pursuant to this paragraph 10, the Board agrees to provide the Superintendent thirty (30) days notice prior to the date this Agreement is to be terminated. All lump sum payments required to be made hereunder shall be paid by the Board to the Superintendent within sixty (60) days of the effective date of the termination provided in such notice.

11. Termination for Cause. Aside from the Board's rights to terminate the Superintendent (as is provided for in paragraph 8.A., entitled Termination for Disability, paragraph 10, entitled Termination without Cause, or paragraph 12, entitled Resignation), the Board may dismiss the Superintendent for Cause. For purposes of this Agreement, "Cause" is herein defined and shall be limited to the grounds set forth in Section 1012.33(4)(c), Florida Statutes, as may be amended or any successor provisions thereto. The Board agrees that at least three (3) business days prior to any vote by the Board to dismiss the Superintendent for Cause, the Board shall provide to the Superintendent a written notice describing in reasonable detail the Board's grounds for a dismissal for Cause. In the event the Board intends to dismiss the Superintendent for Cause, the Superintendent shall have full right to contest such action pursuant to the Administrative Procedure Act, as is provided for in Chapter 120 of the Florida Statutes, as may be amended or any successor provision thereto. Upon any such termination, the

Superintendent may elect to purchase continued medical insurance or other benefits, if any, in accordance with applicable federal or state law or Board Rule (e.g. COBRA).

12. Resignation. If the Superintendent at any time elects to resign his position, the Superintendent agrees to provide the Board not less than ninety (90) days prior written notice of such resignation. If the Superintendent elects to resign in accordance with this paragraph 13, the Board shall pay to the Superintendent an amount equal to the portion of the Superintendent's Salary then in effect on the date of resignation, together with such payments or benefits as would accrue, through the effective date of the Superintendent's resignation and irrespective of any earlier date that the Board might terminate the Superintendent as allowed hereunder. Upon any such termination, the Superintendent may elect to purchase continued medical insurance or other benefits, if any, in accordance with applicable federal or state law or Board Rule (e.g. COBRA).

13. Outside Activities. The Superintendent shall devote his full time, labor and attention to the performance of his official duties. The Superintendent may engage in outside professional activities including, without limitation, teaching, consulting, speaking and writing, only if such outside activities: (a) are undertaken by the Superintendent on the Superintendent's vacation days, personal days, holidays or other non-duty days; (b) do not conflict with any stated policy of the Board; and (c) do not interfere with the performance of the Superintendent's duties under this Agreement. The Superintendent may receive honoraria for such outside activities to the extent permitted by State law and Board Rules.

14. Indemnification. In addition to any insurance coverage provided by the Board to the Superintendent pursuant to the terms and conditions of the Policy referred to in paragraph 6.D. herein or any other insurance coverage, the Board shall indemnify and defend the Superintendent to the fullest extent permitted by applicable law in effect on the execution date of this Agreement or at any time during the Term of this Agreement, whichever is greater. Without in any way diminishing the scope of the indemnification provided by this paragraph 14, the Board will indemnify and defend the Superintendent if and whenever the Superintendent is involved in any manner (including, without limitation, as a party or as a witness) in any threatened, pending, or completed proceeding by reason of the fact that the Superintendent is or was employed by, or otherwise was an agent or acted as an agent, of the Board, or by reason of anything done or not done by the Superintendent in those capacities. The defense and indemnification obligations of the Board under this paragraph 14 shall include a full defense and indemnification for any and all reasonable expenses and fees incurred by the Superintendent or on his behalf in connection with the investigation, defense, settlement or appeal of any such proceeding. Any and all reasonable expenses and fees incurred by or on behalf of the Superintendent pursuant to this paragraph 14 shall be advanced by the Board within twenty (20) days after the receipt by the Board of a written request for such payment. No initial finding by the Board, its counsel, independent counsel, arbitrators or any other person or body shall be effective to deprive the Superintendent of the protection of the defense and indemnification provisions of this paragraph 14, as it is intended that the Board shall pay promptly all amounts necessary to effectuate the full defense and indemnification provisions provided by this paragraph 14. Notwithstanding the obligation of the Board to pay for the defense and indemnification provided by this paragraph 14, the Superintendent shall retain the complete right to retain the counsel of his choice and oversee, direct and control every aspect of the defense, settlement or appeal of any proceeding that is the subject of this paragraph 14. However, in any

19. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any legal actions arising out of this Agreement, including the enforcement, interpretation or alleged breach hereof, shall lie exclusively in the Circuit Court of Miami-Dade County, Florida. The prevailing party in any litigation that arises out of this Agreement, including for the enforcement, interpretation or alleged breach hereof, shall be entitled to recovery of their reasonable attorneys' fees and costs incurred, including in connection with any appellate or bankruptcy proceedings.

20. Paragraph Headings. The paragraph headings contained herein are for reference only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the _____ day of September, 2008.

SUPERINTENDENT OF SCHOOLS

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY,
FLORIDA

By: _____
ALBERTO CARVALHO
1450 NE 2nd Avenue
Miami, FL 33132

By: _____
AGUSTIN J. BARRERA, Chair
1450 NE 2nd Avenue
Miami, FL 33132

APPROVED AS TO FORM:

By: _____
Attorney for the Board