

SEPARATION AGREEMENT, COVENANT NOT TO SUE AND RELEASE

This Separation Agreement, Covenant Not to Sue and Release (“Agreement”) is entered into this 3rd day of April, 2014, by and between Randy Rutherford (“Employee”) and the Bryant School District, a public school district organized and existing pursuant to the laws of the State of Arkansas (“District”).

RECITALS

(a) Employee is currently employed by the District for the 2013-2014 school year as Superintendent of the District pursuant to written contract issued on April 19, 2010 for the period of July 1, 2010 – June 30, 2013, and as subsequently extended by the District (the “Contract”); and

(b) The parties hereto desire to enter into this Agreement in order to provide for the voluntary resignation of Employee from his employment with the District, a covenant not to sue, and other consideration upon the terms and conditions as set forth herein, and this Agreement is not to be construed as an admission of any fault or liability by any party with respect to any existing or potential claims which may be or have been asserted by any party, such claims being hereby expressly denied.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

1. Withdrawal of Termination Recommendation and Request for Hearing. In consideration of the release and payments set forth herein, the District agrees to withdraw the recommended termination of Employee’s employment with the District. Employee agrees not to request a hearing on the recommended termination.

2. Release. In consideration of the withdrawals recited herein, the covenant not to sue and other consideration recited herein, Employee does hereby and for his successors and assigns, release, acquit and forever discharge the District and its agents, employees, officers, directors, insurers, attorneys, successors, servants, heirs, executors, administrators, parents, subsidiaries and affiliates (the "Released Parties") from any and all known and unknown claims, actions, causes of action, demands, rights, damages, wages, salaries, commissions, bonuses, back pay, front pay, job assignments, promotions, transfers, past employment, benefits, including but not limited to health, dental, and life insurance, pension, retirement, stock plan benefits, profit sharing and retirement plan benefits, 401(k) benefits, accrued leave, costs, loss of service, attorneys' fees, expenses and compensation whatsoever which Employee now has or which may hereafter accrue on account of or in any way relating to the facts, circumstances and transactions arising out of or in any way relating to Employee's employment with the District, including without limitation any facts, circumstances, transactions, allegations or other matters of any kind, from the beginning of time up to and including the date hereof; provided, however, that Employee is not releasing the Released Parties from the indemnification provision of section 12 of the Contract. It is the express intention of Employee to reserve any rights, claims or causes of actions that Employee may have against any person or entity other than the Released Parties, but to release fully and completely the Released Parties. Therefore, for the consideration hereinabove described, Employee agrees to a reduction of the damages recoverable against all other tortfeasors to the extent of the pro rata share of the liability of the Released Parties, and further agree to indemnify, protect and hold harmless the Released Parties from all judgments, claims, losses or expenses arising out of or by reason of any action, claim or demand by any person on account of the damages sustained by Employee, in any capacity, resulting from the facts and circumstances relating to Employee's employment with

the District, or any liability or alleged liability under Act 315 of the Acts of Arkansas for 1941, as amended, being the Uniform Contribution Among Tortfeasors Act.

In addition to the above, Employee specifically releases any and all claims that he has or may have had against the Released Parties as of the date of his execution of this Agreement under:

- a. The Family and Medical Leave Act;
- b. Title VII of the Civil Rights Act of 1991 (42 U.S.C. §§ 2000(e), *et seq.*);
- c. The Age Discrimination in Employment Act, as amended;
- d. The Civil Rights Acts of 1866, 1871, 1964 and 1991;
- e. The Americans with Disabilities Act of 1990 (42 U.S.C. § 1211 *et seq.*);
- f. The Rehabilitation Act of 1973 (29 U.S.C. § 701, *et seq.*);
- g. The Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*);
- h. The Equal Pay Act of 1973 (29 U.S.C. Chapter 8, §§ 206(d), *et seq.*);
- i. The Consolidated Omnibus Budget and Reconciliation Act of 1985, (29 U.S.C. § 1161, *et seq.*, as amended);
- j. The Employee Retirement Income and Security Act (29 U.S.C. § 1001, *et seq.*, as amended);
- k. The Older Workers' Benefit Protection Act;
- l. The Arkansas Civil Rights Act;
- m. The Arkansas Teacher Fair Dismissal Act, Ark. Code Ann. §§ 6-17-1501, *et seq.*;
- n. Any and all claims under the laws of any state, county, municipality, or other governmental subdivision of the United States or any state, including but not limited to, the State of Arkansas;
- o. Any and all other relevant Federal and/or State statutory and/or common laws including, but not limited to, intentional infliction of emotional distress, assault and battery, defamation, intentional interference with a contractual/business relationship, and wrongful discharge.

3. Covenant Not to Sue. From the date hereof, Employee covenants not to sue the Released Parties (and not to file any judicial or administrative charge against the Released Parties) with respect to any such liability. From the date hereof, Employee agrees not to commence any action, file any complaint, or otherwise initiate any action or complaint, either individually or as a representative of any group or class, of any nature whatsoever against the Released Parties before any federal, state, or local court, agency, bureau, commission, or similar office having jurisdiction to consider issues as he might otherwise allege. Not by way of limitation of the general applicability of the foregoing, from the date hereof Employee specifically agrees not to commence

or participate in any manner in the commencement of any action or investigation pertaining to the Released Parties. It is the full intent of Employee to grant a full, complete and unconditional release of all matters from the beginning of time up to the date of this Agreement involving the Released Parties.

4. Review of Agreement. Employee agrees that he has had adequate and legally sufficient time to review and seek legal guidance concerning this Agreement. Specifically, Employee acknowledges that this Agreement was provided to him on or about April 3, 2014, and that he has twenty-one (21) days to consider this Agreement. If Employee chooses to execute this Agreement before the end of the twenty-one (21) days, it is solely his choice. Employee may revoke, i.e. cancel, this Agreement within seven (7) days following his signing of this Agreement by providing written notice to Jay Bequette, attorney for the District, within the seven (7) day period, so long as Employee's revocation occurs prior to the time he receives the consideration described in paragraph 6. If Employee chooses to accept such consideration, he may not revoke this Agreement and shall be bound by its terms. Employee understands and agrees that if he revokes this Agreement within the seven (7) days, the Released Parties are not obligated to fulfill the obligations as described in paragraph 6 below and will not otherwise be bound by this Agreement. Employee acknowledges that he has been advised to consult with an attorney or advisor concerning this Agreement and has done so. Employee understands the rights that have been waived by this Agreement, including rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, as amended. Employee further represents and warrants that he freely negotiated the terms of this Agreement and enters into it and executes it voluntarily. Employee understands that this is a voluntary waiver of any and all claims which he may have against the Released Parties, including, but not limited to, any claims under the laws and orders stated above, that relate in any way to his

relationship with, complaints about, compensation and benefits due, or separation from the Released Parties.

5. Resignation. Employee hereby agrees to immediately submit his resignation, such resignation to be dated effective as of June 30, 2014. Employee shall have no further obligation or duties to the District as of the date hereof. Effective as of the date hereof, Employee shall have removed all personal property or belongings from District property and have returned to the District any keys to District property and all District-issued personal property in his possession.

6. Payment. In consideration of the release, covenant not to sue, and other consideration recited herein, the District agrees to pay to Employee as follows:

- (a) the remaining monthly installments of Employee's salary, including Employee's monthly telephone and automobile allowances through June 30, 2014, due and payable under the terms of the Contract pursuant to customary District policy up to and including June 30, 2014, less applicable taxes and withholding, at which time Employee shall have no further right to any salary payments from the District pursuant to the Contract;
- (b) by on or before June 30, 2014, payment for nine and one-half (9½) accrued vacation days at Employee's daily rate of pay of \$645.83 in the gross sum of \$6,135.49, less applicable taxes and withholding;
- (c) by on or before June 30, 2014, payment for the purchase of twelve (12) accrued sick leave days at the substitute teacher rate of pay of \$60.00 per day in accordance with applicable District policy and practice in the gross sum of \$720.00, less applicable taxes and withholding;

- (d) by on or before June 30, 2014, payment for two (2) accrued personal leave days at Employee's daily rate of pay of \$645.83 in the gross sum of \$1,291.66, less applicable taxes and withholding;
- (e) by on or before June 30, 2014, payment of \$5,000.00 to Kutak Rock LLP, for which the District shall issue an appropriate IRS Form 1099 for such payment;
- (f) (1) Employee covenants and warrants and agrees to indemnify and hold the District harmless for the payment of any taxes or penalties related to the sums paid to Employee pursuant to this Agreement or for any proceedings, including attorney's fees and costs incurred by the District, brought to recover taxes or penalties pertaining to the sums paid to Employee; and
(2) Kutak Rock LLP covenants and warrants and agrees to indemnify and hold the District harmless for the payment of taxes or tax penalties pertaining to the \$5,000.00 paid to it pursuant to this Agreement or for any proceedings, including attorney's fees and costs incurred by the District, brought to recover taxes or tax penalties pertaining to the \$5,000.00 paid to Kutak Rock LLP pursuant to this Agreement.

7. Future Employment and Contract Work. Employee agrees to never apply for a position with the Released Parties or engage in any contract work for the Released Parties, or take any temporary employment at any of the Released Parties' worksites. Employee acknowledges that he is not entitled to such employment and understands that he will not be hired or permitted to work on any of the Released Parties' worksites. If Employee applies for employment, and any of the Released Parties inadvertently hire him or he is inadvertently assigned to a project by an

entity providing contracted employees to work with the any of the Released Parties, any of the Released Parties may immediately terminate that employment without cause and without liability.

8. Indemnification by Employee. With the exception of testimony compelled by subpoena, Employee will indemnify and save harmless the entities and persons referred to in paragraph 1 above from any loss, claim, expense, attorneys' fees, costs, demand, or causes of action of any kind or character through the assertion by any person of a claim or claims connected with the subject matter of this Agreement caused, counseled, initiated, aided, assisted or advanced by Employee, and from any loss incurred directly or indirectly by reason of a falsity or misrepresentation herein by Employee.

9. Construction by Arkansas Law. This Agreement is entered into in the State of Arkansas and shall be construed and interpreted in accordance with its laws.

10. Additional Documents. All parties agree to cooperate fully and to execute with promptness and diligence any and all supplementary documents and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

11. Remedies. Employee and his attorneys acknowledge that any breach of this Agreement would result in irreparable and continuing injury to the Released Parties for which an adequate remedy at law would not exist. Accordingly, if either Employee or his attorneys breaches any provision of this Agreement, the Released Parties, without excluding or limiting any other available remedy, will be entitled to entry of an order granting an injunction or specific performance compelling Employee to comply with this Agreement, without proof of monetary damages or an inadequate remedy at law. Employee will reimburse the Released Parties to enforce this Agreement, including but not limited to reasonable attorney's fees. Employee agrees with the

Released Parties that it may be difficult, if not impossible, to accurately determine the amount of damages the Released Parties may incur if Employee breaches this Agreement.

12. Consultation with Counsel. The parties acknowledge to each other that each of them has read the full contents of this Agreement, understands that this Agreement constitutes a contract, has fully informed themselves of the terms, contents, conditions and effects of the Agreement, that no promises or representations of any kind have been made by or on behalf of the parties to this Agreement except as expressly stated herein, that each of them has relied solely on his, her, or its own judgment in executing this Agreement, and represents that he, she, or it, as the case may be, has freely consulted with counsel and enters into this Agreement voluntarily and under no duress. Each party to this Agreement agrees to bear its own costs and attorney's fees incurred in this matter and no party shall be responsible to any other for any costs or attorney's fees which may have been expended in connection with this matter.

13. Authorization. The parties signing this Agreement represent that they are fully authorized to execute this Agreement for and as the act of the respective parties hereto.

14. Severability. If any provision, paragraph, or subparagraph of this Agreement is adjudged by any court to be void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of the Agreement, including any other provision, paragraph, or subparagraph. Each provision, paragraph, and subparagraph of this Agreement is separable from every other provision, paragraph, and subparagraph, and constitutes a separate and distinct covenant.

15. Entire Agreement. This Agreement constitutes the entire agreement among the parties and supersedes all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof.

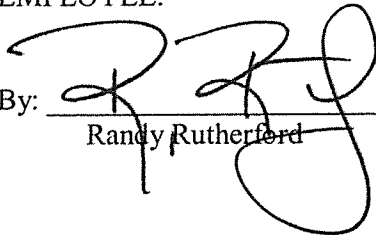
16. Disparaging Remarks. As further consideration for this Agreement, Employee and the District and its Board of Education, corporately and individually, agree that they, nor any of them, shall make any disparaging statements, written or oral, about the other party to this Agreement.

17. Confidentiality. This Agreement is a full settlement of disputed issues. The parties acknowledge that this document may be covered by the Arkansas Freedom of Information Act. However, the parties agree to keep confidential this Agreement, and the specific terms of it, to the extent allowed by law.

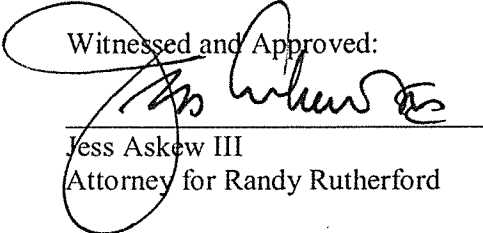
18. Approval. This Agreement is subject to the approval of the District's Board of Directors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 3rd day of April, 2014.

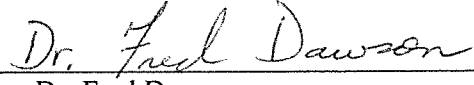
EMPLOYEE:

By: 
Randy Rutherford

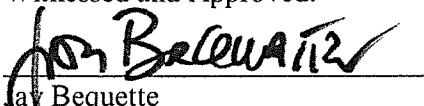
Witnessed and Approved:


Jess Askew III
Attorney for Randy Rutherford

BRYANT SCHOOL DISTRICT

By: 
Dr. Fred Dawson
Title: Interim Superintendent

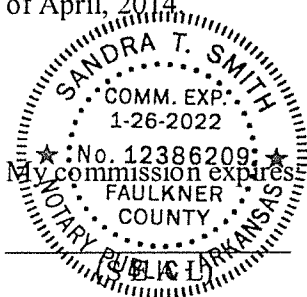
Witnessed and Approved:


Jay Bequette
Attorney for the District

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF)

On this 3RD day of April, 2014, before me, a Notary Public duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Randy Rutherford, to me personally well known, who stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3RD day of April, 2014.



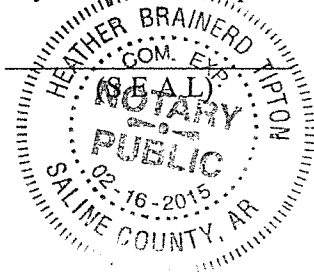
Sandra T. Smith
Notary Public

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF)

On this 7th day of April, 2014, before me, a Notary Public duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Dr. Fred Dawson, to me personally well known, who stated that he is the Interim Superintendent of the Bryant School District, a public school district organized and operating pursuant to Arkansas law, and is duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said school district, and further stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 7th day of April, 2014.

My commission expires:



Heather Brainerd Tipton
Notary Public