

## SUPERINTENDENT'S EMPLOYMENT CONTRACT

STATE OF TEXAS           §  
  §  
COUNTY OF KERR       §

THIS SUPERINTENDENT'S EMPLOYMENT CONTRACT ("Contract") is made and entered into effective the 1st day of January, 2017, by and between the BOARD OF TRUSTEES ("Board") of the KERRVILLE INDEPENDENT SCHOOL DISTRICT ("KISD") and DR. MARK FOUST ("Superintendent"), as authorized by Board action taken at the December 12, 2016, and September 28, 2020 Board meetings.

### WITNESSETH:

#### I. TERM

- 1.1 **Term.** The Superintendent shall be employed for a minimum of 228 days in each 12-month period, for a term of 3 (three) years, commencing on January 1, 2021 and ending on December 31, 2023. KISD may, by action of the Board, and with the consent of the Superintendent, extend the term of this Contract as permitted by state law.
- 1.2 **No Tenure.** The Board has not adopted any policy, rule, regulation, law, or practice providing for tenure. No right of tenure is created by this Contract. No property interest, express or implied, is created in continued employment beyond the Contract term.

#### II. EMPLOYMENT

- 2.1 **Duties.** The Superintendent is the educational leader and chief executive of the district and shall faithfully perform the duties of the Superintendent of Schools for the KISD, as prescribed in the job description and as may be lawfully assigned by action of the Board, and shall comply with all lawful Board directives, state and federal law, district policy, rules and regulations as they exist or may hereafter be amended. The Superintendent shall perform the duties of the Superintendent of Schools for the KISD with reasonable care, diligence, skill, and expertise and shall devote substantially all of his time, skill, labor, and attention to his employment and the performance of these duties during the term of this Contract.

Specifically, it shall be the duty of the Superintendent to:

- (1) Assume administrative responsibility and leadership for the planning, operation, supervision, and evaluation of the education programs, services, and facilities of the KISD and for the annual performance appraisal of the KISD staff.
- (2) Assume administrative authority and responsibility for the assignment and evaluation of all personnel other than the Superintendent.

- (3) Make recommendations regarding selection of KISD personnel, subject to Board approval.
- (4) Initiate the termination or suspension of an employee's employment or the nonrenewal of an employee's Contract.
- (5) Manage the day-to-day operations of KISD as its administrative manager.
- (6) Prepare and submit to the Board annually a proposed budget covering all estimated revenue and proposed expenditures of the KISD for the following fiscal year.
- (7) Prepare recommendations for policies to be adopted by the Board and oversee the implementation of adopted policies.
- (8) Develop appropriate administrative regulations to implement adopted policies.
- (9) Provide leadership for the attainment of student performance based on the academic excellence indicators adopted by the State Board of Education and other indicators adopted by the Board of Trustees of KISD.
- (10) Organize the district's central administration.

2.2 **Professional Certification.** The Superintendent shall at all times during employment by KISD hold and maintain a valid certificate required of a superintendent by the State of Texas and issued by the Texas Education Agency or the State Board for Educator Certification and all other certificates required by law. The Superintendent represents that he has made written disclosure to the Board of any conviction for a felony or for any offense involving moral turpitude.

2.3 **Reassignment.** The Board may reassign the Superintendent to another position only if the Superintendent expressly consents in writing.

2.4 **Board Meetings.** The Superintendent shall attend all meetings of the Board; both open to the public and closed. The Superintendent generally shall be excluded from all or a portion of those closed meetings devoted to the consideration of any matter regarding the Superintendent's employment, the Superintendent's salary and benefits, and the Superintendent's evaluation and from those closed meetings devoted to interpersonal relationships between, or evaluation of, individual Board members. In the event of illness or Board President approved absence, the Superintendent's designee shall attend such meetings.

2.5 **Criticisms, Complaints and Suggestions.** Individual Board members shall refer to the Superintendent all substantive criticisms, complaints, and suggestions brought to their attention by KISD employees or members of the public. The Superintendent shall look into the matter and direct a complainant to the appropriate policy for resolution of the complaint. When the matter is a substantive criticism or suggestion, the Superintendent shall investigate and make a report to the Board for its consideration.

- 2.6 **Indemnification.** To the extent it may be permitted by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the KISD does hereby agree to defend, hold harmless, and indemnify Superintendent from any and all administrative or civil demands, claims, suits, actions, judgments, expenses and attorney's fees incurred in any administrative or civil legal proceeding brought against Superintendent in the Superintendent's individual or official capacity as an employee and as Superintendent of the KISD, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Superintendent's employment with the KISD; excluding, however, any such demand, claim, suits, actions, judgment, expenses and attorneys' fees for those claims or any causes of action where it is determined that Superintendent committed official misconduct, or committed a willful or wrongful act or omission, or an action or omission constituting gross negligence, or acted in bad faith, with conscious indifference or reckless disregard; and excluding any costs, fees, expenses or damages that would be recoverable or payable under any applicable insurance contract. A legal defense may be provided through insurance coverage, in which case Superintendent's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. To the extent this Section 2.6 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Section 2.6 shall survive the termination of this Contract.

### III. COMPENSATION

- 3.1 **Salary.** Consistent with the terms of this Contract, effective January 1, 2021, KISD shall provide the Superintendent with an annual salary of not less than Two Hundred Twenty-one Thousand and no/100's dollars (\$221,000.00). The annual salary shall be paid to the Superintendent in equal monthly installments consistent with the Board's policies.
- 3.2 **Salary Adjustments.** The Board will consider all compensation regularly and determine if increases are warranted. In no event, shall the Superintendent be paid less than the salary set forth pursuant to Section 3.1 of this Contract, except by mutual written agreement of the two parties. Such adjustments, if any, shall be in the form of a new contract or addendum executed by the parties hereto, and shall be effective on the date stated in the contract or addendum.
- 3.3 **Benefits Generally.** Superintendent is subject to, and eligible for all benefits of employment provided for other full-time employees of KISD, except as otherwise provided for in this Contract.
- 3.4 **Vacation, Holidays, Leave Benefit.** The Superintendent may take, with prior notice to the Board President, the same number of days of vacation as are authorized by Board policy for administrative employees on twelve-month contracts. These vacation days will be taken at times that will least interfere with the performance of the Superintendent's duties as set forth in this Contract. Accrued but unused vacation days, up to a maximum of five (5) days

annually, shall accumulate and carry forward from year to year during the term of this Contract or any extension thereof, up to a total maximum limit of no more than thirty (30) accrued but unused vacation days. The Superintendent shall observe the same legal holidays as provided by Board policies for administrative employees on twelve-month contracts. The Superintendent shall be subject to the leave policies applicable to all employees as stated in adopted Board policy.

- 3.5 **Expenses.** The KISD shall pay or reimburse the Superintendent for reasonable expenses incurred by the Superintendent in the continuing performance of the Superintendent's duties under this Contract. The District agrees to pay the actual and incidental costs incurred by the Superintendent for out-of-district travel. Such actual or incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the District. The Superintendent shall be compensated for out-of-district travel at actual costs, unless expenses are paid with a district-provided credit card. The Board may review the out-of-district travel expenses, and the Board by policy may limit or require pre-approval for out-of-district travel. The Superintendent shall comply with all procedures and documentation requirements in accordance with Board policies.
- 3.6 **Civic Activities.** The Superintendent is encouraged to participate in community and civic affairs including chamber of commerce, civic clubs, governmental committees, and educational organizations. The cost of membership in such activities, if any, and subject to prior Board approval, shall be borne by the KISD. The Superintendent does not need prior Board approval for the dues of up to two such organizations.
- 3.7 **Professional Growth.** The Board encourages the continued professional growth of the Superintendent through the Superintendent's active attendance at and participation in appropriate professional meetings at the local, regional, state and national levels. The Board shall encourage the use of data and information sources, and shall encourage the participation of the Superintendent in pertinent education seminars and courses offered by public or private institutions or by educational associations, as well as the participation in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Superintendent to perform the Superintendent's professional responsibilities for the KISD. In its encouragement of the Superintendent to grow professionally, the Board shall permit a reasonable amount of release time for the Superintendent, and approve a professional development budget per Contract year to be used for registration, travel, meals, lodging, and other related expenses. The KISD shall pay the Superintendent's membership dues to the Texas Association of School Administrators, as well as the membership dues of one other similar organization. The District shall bear the reasonable cost and expense for such attendance and membership.
- 3.8 **Medical insurance allowance.** The District will pay to the Superintendent an amount equal to the amount paid for all employees for health insurance.

- 3.9 **Annuity payment.** The district will pay an annuity of \$7,500 annually for 5 years, terminating December 31, 2024, into an annuity of the superintendent's choice, effective January 1, 2020 and contributions to this plan and all earnings thereon shall be automatically vested in the Superintendent as of December 31<sup>st</sup> of each calendar year.

#### IV. ANNUAL PERFORMANCE GOALS

- 4.1 **Development of Goals.** The Superintendent, in cooperation with the District-Level Planning and Decision-Making Committee, shall submit to the Board each year, for its consideration and adoption, a preliminary list of goals for the KISD. The goals approved by the Board shall at all times be reduced to writing and shall be among the criteria on which the Superintendent's performance is reviewed and evaluated.

#### V. REVIEW OF PERFORMANCE

- 5.1 **Time and Basis of Evaluation.** The Board shall evaluate and assess in writing the performance of the Superintendent at least once each year during the term of this Contract. The evaluation and assessment shall be reasonably related to the duties of the Superintendent. The Board, at its discretion, may evaluate and assess the performance of the Superintendent as many times during the year as it deems appropriate.
- 5.2 **Confidentiality.** Unless the Superintendent expressly requests otherwise in writing, the evaluation of the Superintendent shall at all times be conducted in executive session and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Board or the Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel.
- 5.3 **Evaluation Format and Procedure.** The evaluation format and procedure shall be in accordance with the evaluation instrument selected by the Board in accordance with the provisions of Article V of this Contract, the Board's policies, and state and federal law. In the event the Board deems that the evaluation instrument, format and/or procedure is to be modified by the Board and such modifications would require new or different performance expectations, the Superintendent shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

#### VI. EXTENSION OR NONRENEWAL

- 6.1 **Extension/Nonrenewal.** Contract Extension or nonrenewal shall be in accordance with Board policy, Texas Education Code, Section 21.212 and such other sections as applicable.
- 6.2 **Appeal.** If the Superintendent is aggrieved by the Board's decision, he may appeal to the Commissioner of Education in accordance with Subchapter G, Chapter 21, of the Texas Education Code.

## VI. TERMINATION OF CONTRACT

- 7.1 **Mutual Agreement.** This Contract may be terminated by the mutual written agreement of the Superintendent and the Board in writing, upon such terms and conditions as are mutually agreed.
- 7.2 **Resignation.** The Superintendent may leave the employment of KISD at the end of a school year without penalty by filing a written resignation with the Board no later than the 45th day before the first day of instruction of the following school year.
- 7.3 **Retirement or Death.** This Contract shall be terminated upon the retirement or death of the Superintendent.
- 7.4 **Dismissal or Suspension without Pay for Good Cause.** The Board may dismiss the Superintendent, or suspend without pay for a period not to extend beyond the end of a school year, during the term of this Contract for good cause, i.e., the failure to perform duties or responsibilities within the scope of employment or as set forth under the terms and conditions of this Contract that a Texas School Superintendent of ordinary prudence would have done under the same or similar circumstances. The following are examples of conduct and situations which may constitute "good cause," but the term is not limited in meaning by this list:
- (1) Any sexual misconduct with a student or employee or any conduct that endangers or has the potential to endanger the health or safety of one or more students or employees;
  - (2) Insubordination or failure to comply with lawful written or oral directives issued by action of the Board or failure to comply with Board policies, such that the needs of students or the effective operation of a campus or KISD are compromised;
  - (3) Incompetence or inefficiency in the performance of required or assigned duties as documented by evaluations, supplemental memoranda, or other written communication from the Board; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Board has provided the Superintendent a reasonable opportunity to remediate any incompetence or inefficiency;
  - (4) Neglect of duties;
  - (5) Drunkenness or excessive use of alcoholic beverages;
  - (6) Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Dangerous Drug Act or the Texas Controlled Substances Act;

- (7) Conviction of a felony or any crime involving moral turpitude; conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony; or deferred adjudication for a felony or any crime involving moral turpitude, when the conviction or deferred adjudication occurs during the term of employment;
- (8) Failure to meet the KISD's standards of professional conduct;
- (9) Failure to comply with reasonable KISD professional development requirements;
- (10) Disability, not otherwise protected by law, that impairs performance of the required duties of the Superintendent;
- (11) Immorality, which is conduct the Board determines, is not in conformity with the accepted moral standards of the community encompassed by the KISD. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency, or depravity;
- (12) Failure to put forth a reasonable effort to achieve a good rapport with parents, the community, staff, or the Board;
- (13) Assault on an employee or student;
- (14) Knowingly falsifying records or documents related to KISD's activities;
- (15) Conscious misrepresentation of facts to the Board or other KISD officials in the conduct of the KISD's business; or
- (16) Any other reason constituting "good cause" under Texas laws.

7.5 **Termination or Suspension without Pay Procedure.** In the event that the Board proposes to terminate this Contract or suspend the Superintendent without pay for "good cause," the Superintendent shall be afforded all the rights as set forth in Board policies and Subchapter F, Chapter 21, of the Texas Education Code and other applicable law.

## VIII. MISCELLANEOUS

8.1 **Medical Examination.** The District shall pay or reimburse the Superintendent the reasonable expenses of a comprehensive medical examination, which the Superintendent shall obtain once every year. A statement certifying Superintendent's fitness to perform the duties of his job shall be filed with the Secretary of the Board of Trustees and treated as confidential by the Board.

8.2 **Outside Consultant Activities.** The Superintendent may serve as a consultant, lecturer, engage in writing activities and speaking engagements, and engage in other activities

("Consulting Services") that are of a short term duration, and receive a reimbursement of expenses and/or be paid an honorarium for such Consulting Services, provided they are conducted at no expense to the District, and do not conflict with professional responsibilities as Superintendent.

The Superintendent of a school district may not receive any financial benefit for Consulting Services performed by the Superintendent for any business entity that conducts or solicits business with the District. Any financial benefit received by the Superintendent for performing Consulting Services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the Board on a case-by-case basis in an open meeting. For purposes of this subsection, the receipt of reimbursement for a reasonable expense is not considered a financial benefit. Consulting Services provided by the Superintendent under the terms and conditions of this paragraph must be consistent with state and federal law.

8.3 **Controlling Law.** This Contract shall be governed by the laws of the State of Texas, and shall be performed in Kerr County, Texas, unless otherwise provided by law.

8.4 **Complete Agreement.** This Contract embodies the entire understanding between the parties and cannot be varied except by written agreement of the undersigned parties and Board approval of the new or additional writing at a lawfully called meeting. All existing Contracts, both oral and written, between the parties regarding the employment of the Superintendent are superseded by this Contract.

8.5 **Conflicts.** In the event of any conflict between the terms, conditions, and provisions of this Contract and the provisions of the Board's policies or any permissive state or federal law, the terms of this Contract shall take precedence over the contrary provisions of the Board's policies or any such permissive law, unless otherwise prohibited by law.

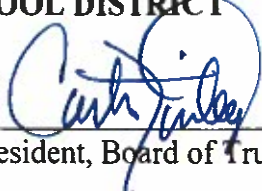
8.6. **Savings Clause.** In the event any one or more of the provisions contained in this Contract shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been included.

EXECUTED on date shown below, pursuant to action of the Board of Trustees at meetings held December 12, 2016 and October 21, 2019, for which there was a properly posted agenda that included an item related to action on Superintendent's Contract.

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**KERRVILLE INDEPENDENT SCHOOL DISTRICT**



\_\_\_\_\_  
President, Board of Trustees

2/22/2021  
Date

ATTEST:



\_\_\_\_\_  
Board Secretary

Date

**SUPERINTENDENT**



\_\_\_\_\_  
Dr. Mark Foust

2/22/2021  
Date

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