

SUPERINTENDENT'S EMPLOYMENT CONTRACT

THE STATE OF TEXAS I

COUNTY OF WHARTON I

KNOW ALL MEN BY THESE PRESENTS:

THIS SUPERINTENDENT'S EMPLOYMENT CONTRACT ("Contract") is made and entered into effective the 1st day of July, 2018, by and between the Board of Trustees (the "Board") of the Wharton Independent School District (the "District") and Tina Herrington (the "Superintendent").

WITNESSETH:

NOW, THEREFORE, the Board and the Superintendent, for and in consideration of the terms hereinafter established and pursuant to Section 11.201(b) and Chapter 21, Subchapter E of the Texas Education Code, have agreed, and do hereby agree, as follows:

I. Term

1.1 **Term.** The Board, by and on behalf of the District does hereby employ the Superintendent, and the Superintendent does hereby accept employment as Superintendent of Schools for the District for a term commencing on July 1, 2018 and ending June 30, 2021. The district may, by action of the Board, and with the consent and approval 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 expressed or implied, is created in continued employment beyond the Contract term.

II. Employment

2.1 **Duties.** The Superintendent is the chief executive of the District and shall faithfully perform the duties of the Superintendent of Schools for the District as prescribed in the job description and as may be lawfully assigned by 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. Specifically, it shall be the duty of the Superintendent to recommend for employment all professional employees of the District subject to the Board's approval. It shall be the further duty of the Superintendent to employ all other personnel consistent with the Board's policies. It shall be the further duty of the

Superintendent to direct, assign, reassign, and evaluate all of the employees of the District consistent with Board policies and federal and state law. It shall be the further duty of the Superintendent to organize, reorganize, and arrange the staff of the District, and to develop and establish administrative regulations, rules, and procedures which the Superintendent deems necessary for the efficient and effective operation of the District consistent with the Board's lawful directives, the Board's policies, and state and federal law. It shall be the further duty of the Superintendent to accept all resignations of employees of the District consistent with the Board's policies, except the Superintendent's resignation, which must be accepted by the Board. The Superintendent shall perform the duties of the Superintendent of Schools for the District with reasonable care, diligence, skill and expertise. All duties assigned to the Superintendent by the Board shall be appropriate to and consistent with the professional role and responsibility of the Superintendent.

2.2 Professional Certification. The Superintendent shall at all times during the term of this Contract, and any renewal or extension thereof, hold and maintain a valid certificate required of a superintendent by the State of Texas and issued by the State Board for Educator Certification or the Texas Education Agency and any other certificates required by law. If the Superintendent's certification expires, is cancelled or revoked, this Contract is void.

2.3 Representations/Record Information. The Superintendent represents that she has disclosed to the Board, in writing, any arrest, and any indictment, conviction, no contest or guilty plea, deferred adjudication, or other adjudication of the Superintendent for any felony, any offense involving moral turpitude, and any of the offenses set forth in District Policy DH(Local). At the beginning of this contract, and at any time during this contract, the Superintendent specifically agrees to submit to a review of her national criminal history record information if required by the District, TEA, or SBEC. The Superintendent understands that a criminal history record acceptable to the Board, at its sole discretion, is a condition precedent to this Contract. The Superintendent also agrees that, during the term of this contract, the Superintendent will notify the Board in writing of any arrest or any indictment, conviction, no contest or guilty plea, deferred adjudication, or other adjudication of the Superintendent for any felony, any offense involving moral turpitude and any other offenses set forth in District Policy DH(Local). The Superintendent agrees to provide such notification in writing within seven (7) calendar days of the event or any shorter period specified in Board policy. The Superintendent further represents that any material records or information provided in connection with her employment application are true and correct. Any false

statements, misrepresentations, or omissions of requested information knowingly made by the Superintendent in or concerning any required records or in the employment application may be grounds for termination or nonrenewal, as applicable.

2.4 Reassignment. The Superintendent cannot be reassigned from the position of Superintendent to another position without the Superintendent's express written consent.

2.5 Board Meetings. The Superintendent shall attend all meetings of the Board, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on the Superintendent's Contract, or the Superintendent's evaluation, or for purposes of resolving conflicts between individual Board members, or privileged communication between the Board and its legal counsel in cases where an actual conflict has arisen between the Board and Superintendent, or when the Board is acting in its capacity as a tribunal. In the event of illness or Board-approved absence, the Superintendent's designee shall attend such meetings.

2.6 Criticisms, Complaints, and Suggestions. The Board, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Board's attention either: (a) to the Superintendent for study and/or appropriate action, and the Superintendent shall refer such matter(s) to the appropriate District employee or shall investigate such matter(s) and shall within a reasonable time inform the Board of the results of such efforts; or (b) to the appropriate complaint resolution procedure as established by District Board policies.

2.7 Indemnification. To the extent it may be permitted to do by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the District does hereby agree to defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Superintendent in the Superintendent's individual or official capacity as an employee and as Superintendent of the District, 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 as an employee of the District, acting within the course and scope of Superintendent's employment with the District; excluding, however any such demand, claim, suits, actions, judgments, 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 act or omission constituting gross negligence, or acted in bad faith; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the District or by Superintendent. During the term of this Contract, the Superintendent agrees to fully cooperate with the District in the defense of any and all demands, claims, suits, actions, and legal proceedings brought against the District, regardless of whether the Superintendent is named as a party. The District's obligation to indemnify does not apply to criminal investigations or criminal proceedings. Further, the District shall not be required to pay any costs of any legal proceeding in the event the District and the Superintendent are adverse parties in such litigation. The selection of Superintendent's legal counsel shall be with the mutual agreement of Superintendent and the District if such legal counsel is not also District's legal counsel. A legal defense may be provided through insurance coverage, in which case Superintendent's right to agree to legal counsel provided for her will depend on the terms of the applicable insurance contract. To the extent this Section 2.7 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. Unless otherwise provided herein, the provisions of this Section 2.7 shall survive the termination of this Contract.

III . Compensation

3.1 Salary. The District shall provide the Superintendent with an annual salary in the sum of One Hundred Fifty Four Thousand Four Hundred and Forty Dollars and No/100 Dollars (\$154,440.00). This annual salary rate shall be paid to the Superintendent in equal installments consistent with the Board's policies.

3.2 Salary Adjustments. At any time during the term of this Contract, the Board may, in its discretion, review and adjust the salary of the Superintendent, but in no event shall the Superintendent be paid less than the salary set forth in Section 3.1 of this Contract except by mutual agreement of the two parties or as otherwise required by law. Such adjustments, if any, shall be made pursuant to a lawful Board resolution. In such event, the parties agree to provide their best efforts and reasonable cooperation to execute a new contract or addendum to the existing contract incorporating the adjusted salary.

3.4 Vacation, Holiday and Personal Leave. The Superintendent may take the same number of days of vacation/non-duty authorized by policies adopted by the Board for administrators on twelve-month contracts, the days to be in a single period or at different times. The Superintendent shall observe the same legal holidays as provided by Board policies for administrative employees on twelve-month contracts. The

Superintendent is hereby granted the same personal leave benefits as authorized by Board policies for administrative employees on twelve-month contracts.

3.4 Insurance. The District shall pay the same premiums for hospitalization and major medical insurance coverage for the Superintendent pursuant to the group health care plan provided by the District for its administrative employees.

3.5 Professional Growth. The Superintendent shall devote the Superintendent's time, attention, and energy to the direction, administration, and supervision of the District. The Board, however, 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 District. In its encouragement of the Superintendent to grow professionally, the Board shall permit a reasonable amount of release time for the Superintendent as the Superintendent and the Board deem appropriate, to attend such seminars, courses, or meetings. The District shall pay the Superintendent's membership dues to the American Association of School Administrators and the Texas Association of School Administrators, as well as other memberships necessary to maintain and improve the Superintendent's professional skills from funds budgeted by the Board for that purpose. The District shall bear the reasonable cost and expense for registration, travel, meals, lodging, and other related expenses for such attendance and membership from funds budgeted by the Board for that purpose.

3.6 Civic Activities. The Board encourages the Superintendent to become a member of and participate in community and civic affairs, including the chamber of commerce, civic clubs, governmental committees, and educational organizations. The Board concludes that such participation will serve a legitimate purpose related to the educational mission of the District. The Superintendent may hold offices or accept responsibilities in these professional organizations, provided that such responsibilities do not interfere with the performance of her duties as Superintendent. Prior to engaging in these activities, the Superintendent will notify the Board in writing of the activity. The Board

will notify the Superintendent if the activity presents a conflict or interferes with the performance of her duties as Superintendent. The District shall reimburse the Superintendent for the cost of membership in all local civic organizations in which the Superintendent participates and related travel outside of the District, subject to advance Board approval.

3.7 7 Outside Consultant Activities. With prior written approval from the Board, the Superintendent may serve as a consultant or undertake speaking engagements, writing, teaching or other professional duties and obligations outside the District (referred to collectively herein as "Consulting Services") that do not conflict or interfere with the Superintendent's professional responsibilities to the District. The Superintendent may accept a reimbursement of expenses for such Consulting Services at no expense to the District. Consulting Services provided by the Superintendent under the terms and conditions of this paragraph must be consistent with state and federal law.

3.8 Expenses. The District shall pay or reimburse the Superintendent for reasonable reimbursable expenses incurred by the Superintendent in the continuing performance of the Superintendent's duties under this Contract, from funds budgeted for that purpose by the Board. Reimbursable expenses will include, but are not limited to, travel costs, mileage reimbursement for use of a personal vehicle outside the District, and professional development costs, costs of memberships in civic organizations, and dues paid for membership in professional organizations. The Superintendent shall comply with all procedures and documentation requirements in accordance with Board policies.

3.9 Supplemental Pay. The District shall indemnify the Superintendent additional compensation for an additional one (1) year commitment of the Superintendent to remain as the Superintendent of Wharton Independent School District as supplemental pay. The additional compensation is agreed upon by the Parties to ensure stability in the leadership of the District. The supplemental compensation is payable in one lump sum payments on June 15, 2019 which coincides with the district payroll date. The amount of such compensation shall be calculated as follows:

- a. For the year July 1, 2018 -June 30, 2019 twelve (12%) percent of annual salary of \$154,440; amount Of \$18,532.80.

The District and Superintendent stipulate, agree and contract that should the Board of Trustees approve a raise for certified professional employees for the 2018/2019 school year or the 2019/2020 school year, the

Superintendent's annual salary would be increased to include such raise in the year given and the supplemental pay due for that year would be based on the increased salary. For example, if the Board of Trustees approves a 2% raise for certified professional employees for the 2018/2019 school year, the Superintendent's annual salary would be increased by 2% (\$3,088.80) to \$157,538.80 before any applicable taxes or deductions. The 12% supplemental pay due in June of 2019 would be 12% of the increased salary or \$18,903.46.

The District and Superintendent also stipulate, agree and contract that should the Superintendent leave the employment as Superintendent of the District for any reason whatsoever, prior to the payment date of the supplemental payment, the Superintendent will forfeit any claim to the remaining supplemental payment that would otherwise be due and the District will be released and excused from the payment of any part thereof.

IV. Annual Performance Goals

4.1 Development of Goals. The Superintendent shall submit to the Board a preliminary list of goals for the District each year for the Board's consideration and adoption. The Superintendent and the Board shall then meet and the Board shall approve or revise the list of goals. The goals approved by the Board shall at all times be reduced to writing ("District Goals") and shall be among the criteria on which the Superintendent's performance is reviewed and evaluated. The Board agrees to work with and support the Superintendent in achieving the District Goals.

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 Board's evaluation and assessment of the Superintendent shall be reasonably related to the duties of the Superintendent as outlined in the Superintendent's job description and shall be based on the District's progress towards accomplishing the District Goals. The Board may also engage in periodic discussions in which informal assessment of the Superintendent's performance and feedback to the Superintendent is provided.

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 Procedures. The evaluation format and procedure shall be in accordance with the Board's policies, and state and federal law. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, the Superintendent shall have the right to make a written response to the evaluation within thirty (30) days of receipt of the written evaluation from the Board. 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 of Employment Contract

6.1 Extension/Nonrenewal. Extension and/or non-renewal shall be in accordance with Board policy, Texas Education Code Chapter 21, Subchapter E, and applicable law.

VII. Termination of Employment Contract

7.1 Mutual Agreement. This Contract may be terminated by the mutual agreement of the Superintendent and the Board in writing, upon such terms and conditions as may be mutually agreed upon.

7.2 Retirement or Death. This Contract shall be terminated upon the retirement or death of the Superintendent.

7.3 Dismissal for Good Cause. The Board may dismiss the Superintendent during the term of this Contract for good cause. The term "good cause" is defined as follows and any other reason constituting "good cause" under Texas law:

- (a) Failure to fulfill duties or responsibilities as set forth under the terms and conditions of this Contract;
- (b) 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 reasonable opportunity to remediate any incompetency or inefficiency;

- (c) Insubordination or failure to comply with lawful written Board directives;
- (d) Failure to comply with the Board's policies or the District's administrative regulations;
- (e) Neglect of duties;
- (t) Drunkenness or excessive use of alcoholic beverages;
- (g) Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Controlled Substances Act;
- (h) Conviction of a felony or crime involving moral turpitude;
- (i) Failure to meet the District's standards of professional conduct;
- (i) Failure to comply with reasonable District professional development requirements regarding advanced course work or professional development;
- (k) Disability, not otherwise protected by law, that impairs performance of the required duties of the Superintendent;
- (l) Immorality, which is conduct the Board determines is not in conformity with the accepted moral standards of the community encompassed by the District. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency, or depravity;
- (m) Assault on an employee or student;
- (n) Knowingly falsifying records or documents related to the District's activities;
- (o) Conscious misrepresentation of facts to the Board or other District officials in the conduct of the District's business;
- (p) Failure to fulfill requirements for superintendent certification; or,
- (q) Any other reason constituting "good cause" under Texas law.

7.4 **Termination Procedure.** In the event that the Board terminates this Contract for "good cause", the Superintendent shall be afforded all the rights as set forth in the Board's policies and state and federal law.

Article VIII. Miscellaneous

8.1 **Controlling Law.** This Contract shall be governed by the laws of the State of Texas and shall be

performable in Wharton County, Texas, unless otherwise provided by law. The Parties agree that venue for any litigation relating to the Superintendent's employment with the District, including this Contract, shall be the county in which the District's administration building is located. If litigation is brought in federal court, the Parties agree that venue shall be the federal district and division in which the District's administration building is located.

8.2 Complete Agreement. This contract embodies the entire agreement between the parties hereto and cannot be varied except by written agreement of the undersigned parties, except as expressly provided herein.

8.3 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, then, unless otherwise prohibited by law, the terms of this Contract shall take precedence over the contrary provisions of the Board's policies or any such permissive law during the term of the Contract.

8.4 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 thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. All existing agreements and contracts, both verbal and written, between the parties hereto regarding the employment of the Superintendent have been superseded by this Contract, and this Contract constitutes the entire agreement between the parties unless amended pursuant to the terms of this Contract.

8.5 Notice To Superintendent. The Superintendent agrees to keep a current address on file with the District's human resources office. The Superintendent agrees that the Board may meet any legal obligation it has to give the Superintendent written notice regarding this contract or the Superintendent's employment by hand-delivery or by certified mail, regular mail, and/or express delivery service to the Superintendent's address of record.

8.6. Notice To Board. The Board agrees that the Superintendent may meet any legal obligation to give the Board written notice regarding this contract or the Superintendent's employment by providing one copy of the notice to the President of the Board, or in his or her absence, to the Vice President of the Board. The Superintendent may provide such notices by hand delivery or by certified mail, regular mail, and/or express delivery service to the Board President's address of record, as provided to the District.

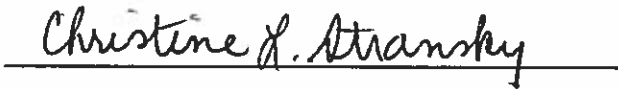
WHARTON INDEPENDENT SCHOOL DISTRICT



Rachel Rust,
President, Board of Trustees

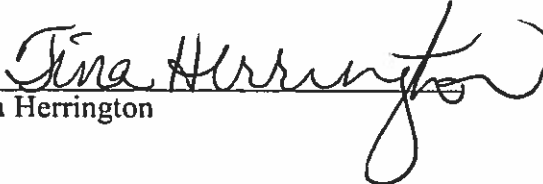
ATTEST:

By:



Christine L. Stransky,
Secretary, Board of Trustees

SUPERINTENDENT

By: 
Tina Herrington

Board Approved on January 23, 2018.