

SUPERINTENDENT'S CONTRACT OF EMPLOYMENT

STATE OF TEXAS :

: KNOWN BY ALL MEN THESE PRESENTS

COUNTY OF GALVESTON :

This SUPERINTENDENT'S CONTRACT OF EMPLOYMENT ("Contract") is made and entered into effective this 10th of July, 2020, by and between the **BOARD OF TRUSTEES OF TEXAS CITY INDEPENDENT SCHOOL DISTRICT** ("Board") and **DR. MELISSA MACHESKA-DUARTE, Ed.D.** ("Superintendent").

WITNESSED:

NOW, THEREFORE, the Board and the Superintendent, for and in consideration of the terms hereinafter established and pursuant to the authority of Section 11.201 of the Texas Education Code and the general laws of the state of Texas, have agreed, and do hereby agree, as follows:

1. TERM

1.1 The Board, by and on behalf of the Texas City Independent School District (the "**District**"), employs the Superintendent, and the Superintendent accepts employment as Superintendent of Schools for the District for a term of three (3) years, commencing on July 14, 2020 and ending on June 30, 2023. In all years of this Contract, the contract year shall be from July 1st through June 30th of the following calendar year.

2. 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 Board policy, the Texas Education Code or as lawfully assigned by the Board. The Superintendent shall also comply with all lawful Board directives, state and federal law, district policy, rules, and regulations as they exist or may hereafter be adopted or amended. Except as provided for in this Contract, the Superintendent agrees to perform the duties of the Superintendent of Schools for the District with reasonable care, diligence, skill, and expertise and in a reasonably thorough, prompt, and efficient manner. The Superintendent agrees to devote appropriate and reasonable time, skill, labor, and attention during each contract workday to performing her duties.

Specifically, the duties of the Superintendent shall include the following:

- (a) The Superintendent shall assume administrative responsibility and leadership for the planning, operation, supervision, and evaluation of the education programs, services, and facilities of the District and for the annual performance appraisal of the District's staff.
- (b) The Superintendent shall assume administrative authority and responsibility for the assignment and evaluation of all personnel of the District other than the Superintendent.

- (c) The Superintendent shall make recommendations regarding the selection of personnel of the District other than the Superintendent, as provided by Texas Education Code § 11.163.
- (d) The Superintendent shall initiate the termination or suspension of an employee or the nonrenewal of an employee's term contract.
- (e) The Superintendent shall manage the day-to-day operations of the District as its administrative manager.
- (f) The Superintendent shall prepare and submit to the Board a proposed budget as provided by Texas Education Code § 44.002.
- (g) The Superintendent shall prepare recommendations for policies to be adopted by the Board and oversee the implementation of adopted policies.
- (h) The Superintendent shall develop or cause to be developed appropriate administrative regulations to implement policies established by the Board.
- (i) The Superintendent shall provide leadership for the attainment of student performance in the District based on the indicators adopted under Texas Education Code § 39.051 and other indicators adopted by the State Board of Education or the District's Board.
- (j) The Superintendent shall organize the District's central administration.
- (k) The Superintendent shall perform any other duties assigned by the Board.

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 Records.** This Contract is conditioned on the Superintendent's providing a valid certification to act as superintendent in the state of Texas as prescribed by the laws of the state of Texas and the rules and regulations of the Texas Education Agency. 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 in the state of Texas. Further, the Superintendent shall provide the Board of the District with experience records, college transcripts, verification of earned degrees, medical records, proof of criminal records check, her Social Security Number, and other records reasonably required and specifically requested by the District for the personnel files or payroll purposes. Failure to provide such Superintendent certification shall render this Contract void, and any material misrepresentation by the Superintendent in such records may be grounds for termination.

2.3 **Reassignment.** The Superintendent shall not be reassigned from the position of Superintendent to another position without the Superintendent's express written consent.

2.4 **Board Meetings.** The Superintendent shall attend, and shall be permitted to 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 salary and benefits as set forth in this Contract, or the Superintendent's evaluation, or for purposes of resolving conflicts between individual Board members, or when the Board is acting in its capacity as a tribunal. In the event of illness or Board President approved absence, the Superintendent's designee shall attend such meetings.

2.5 **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.

2.6 **Residence.** No later than January 1, 2021, the Superintendent shall establish her primary residence within the geographic boundaries of the District and shall maintain such primary residence within the District at all times during the term of this Contract or any extension thereof.

3. **COMPENSATION AND SALARY**

3.1 **Annual Base Salary.** The Superintendent shall be paid an annual base salary in the sum of Two Hundred Sixteen Thousand and No/100 Dollars (\$216,000.00) effective July 14, 2020. This amount will be paid in installments in accordance with Board policy, if any, applicable to district-wide administrative staff or school district administrative procedures applicable to district-wide administrative staff.

3.2 **Salary Adjustments.** At any time during the term of this Contract, the Board may, at 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 Subsection 3.1 of this Contract except by mutual written agreement of the Board and the Superintendent. Such adjustments, if any, shall be in the form of a written addendum to this Contract or a new contract, and such adjustment shall be exclusive of any insurance policy or other benefits unless specifically provided in the addendum or new contract. During the month of June in 2021 and for each subsequent contract year, the Board shall review the salary of the Superintendent and consider any appropriate adjustment.

3.3 **Business Expenses.** The District 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 pursuant to Board policy or Board approval. The District agrees to pay reasonable actual and incidental costs incurred by the Superintendent for travel outside of the District. 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 comply with all policies, procedures, and documentation requirements in accordance with Board policies and established procedures which shall be subject to review by the District's independent auditors. The Board shall retain the authority to refuse any reimbursement request that is determined to be excessive or which the Board reasonably believes falls outside the scope of the Superintendent's duties.

4. OTHER BENEFITS

4.1 **Administrative Benefits.** The Board shall provide the Superintendent with all the same benefits, including the same premium coverage under the District's group health care plan, applicable to twelve-month administrative employees in accordance with Board policy unless otherwise stated in this Contract, in which case this Contract supersedes such administrative benefits.

4.2 **Personal and Sick Leave.** The Superintendent shall have the same sick and personal leave benefits as authorized by Board policy for administrative employees who are employed under twelve-month contracts. The Superintendent shall be entitled to the use of and accumulation of sick leave in accordance with state law and Board policy.

4.3 **Vacation, Non-Duty Days, and Holidays.** The Superintendent may take, at his choice, the same number of vacation days authorized by District policy for administrative employees who are employed under twelve-month contracts. The Superintendent's accrued and unused vacation days may be accumulated from year to year and carried over into subsequent years of this Contract up to a fifteen (15) day limit. Vacation days should be taken by the Superintendent, in the Superintendent's reasonable discretion, at a time or times that will least interfere with the performance of the Superintendent's duties set forth in this Contract. The Superintendent shall provide timely notice to the Board President of her use of vacation days. The Superintendent shall observe the same legal holidays and non-duty days as those observed by other administrative employees who are employed under twelve-month contracts. The Superintendent shall work at least two hundred twenty-six (226) days during each year of this Contract.

4.4 **Annual Physical Examination.** The Superintendent shall annually undergo a physical examination performed by a licensed physician mutually acceptable to the Board and the Superintendent. The examination will determine the Superintendent's continuing physical fitness to fulfill the duties and responsibilities of the position. The healthcare professional who performs the examination shall submit confidential reports to the Board regarding the Superintendent's fitness to perform the functions of the job. These reports will be maintained as confidential medical records to the extent required by law. The District shall pay all reasonable costs of the examination. The examination shall be conducted in May or June of 2021 and of each subsequent year of the Contract or any extension thereof, or at such other time during each contract year as requested by the Superintendent and agreed to by the Board, such agreement not to be unreasonably withheld or delayed.

4.5 **Moving Expenses.** On or before September 1, 2020, the District shall pay the Superintendent a flat sum in the total amount of Ten Thousand Dollars (\$10,000.00) to cover all of the Superintendent's reasonable moving expenses related to the Superintendent's move to Texas City, Texas.

4.6 **Automobile Allowance.** The Superintendent shall receive an automobile allowance of Six-hundred and No/Dollars (\$600.00) under this Contract. The Superintendent shall purchase and maintain in force appropriate liability insurance for her vehicle at all times during the term of this Contract or any extension thereof. The Superintendent shall be reimbursed for reasonable and

necessary business travel in her vehicle outside of the District at the District's established mileage reimbursement rate.

4.7 **Professional Growth.** The Superintendent may attend and participate in appropriate professional meetings at the local, state, and national level. Membership fees shall be paid for the Superintendent for the National School Board Association, the American Association of School Administrators, the Texas Association of School Boards, and the Texas Association of School Administrators. Reasonable travel expenses will be paid for the Superintendent to attend the annual conventions of these associations each calendar year and any other conventions or meetings selected by the Board of Trustees and the Superintendent, including the Commissioner's Mid-Winter Conference, TASA's Superintendent's Summer Conference and meetings of the TASA State UIL Advisory Committee. Attendance at or participation in area, regional and state meetings of the aforementioned associations or groups by the Superintendent shall not interfere with the required duties of the Superintendent within the District. The Superintendent shall also be reimbursed for at least two (2) membership fees for local civic clubs or organizations such as the local Chamber of Commerce or local Rotary Club.

5. **EMPLOYMENT PERFORMANCE**

5.1 **Development of Goals.** On or before September 1st of every year during the term of this Contract, the Superintendent and the Board shall develop the goals for the District. The goals approved by the Board shall be reduced to writing and shall be among the criteria on which the Superintendent's performance will be reviewed and evaluated.

5.2 **Review of Performance.** The Board shall evaluate and assess in writing the performance of the Superintendent annually in June of each year during the term of this Contract or any extension thereof. The evaluation and assessment shall be related to the duties of the Superintendent as outlined in the Superintendent's job description and to the adopted annual goals outlined in Subsection 5.1. The Superintendent shall provide a written reminder to the Board of its evaluation obligation at least 30 days prior to the Regular Called Board Meetings in June. The evaluation format and procedure shall be in accordance with the Board's policies and state and federal law. Unless the Superintendent and the Board specifically agree otherwise in writing, in accordance with applicable law all meetings, conferences, and discussions concerning the Superintendent's performance shall be held in closed or executive session and shall be considered confidential to the extent permitted by 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.

6. **TERMINATION OF EMPLOYMENT CONTRACT**

6.1 **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.

6.2 **Death, Retirement.** This Contract shall be terminated upon the death or retirement of the Superintendent.

6.3 **Dismissal for Good Cause.** The Board may dismiss the Superintendent at any time for good cause in accordance with any applicable state and federal law and any relevant Board policies. The Board agrees that consolidation with another school district, if such consolidation were to occur, does not constitute good cause for termination or non-renewal of this Contract

The term "good cause" is defined as follows:

- (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 a 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;
- (f) 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;
- (j) 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.

6.4 **Procedure for Good Cause Dismissal.** In the event the Board proposes to terminate the Contract for good cause, the Superintendent shall be afforded the rights set forth in the Board's policies and applicable state and federal law.

6.5 **Termination for Disability.** In the event that the Superintendent becomes physically or mentally disabled and is no longer able to perform the essential functions of his position under this Contract with reasonable accommodation that does not cause materially undue hardship to the

District, the Board may terminate this Contract and the employment of the Superintendent; provided, however, that the Board may terminate this Contract pursuant to this Section 6.5 only following (a) the Superintendent's use of all then accrued and unused state and local sick leave and personal leave days and (b) the Superintendent's continued physical or mental disability and inability to perform the essential functions of her position under the terms outlined above following the Superintendent's use of all such accrued and unused sick and personal leave days. Verification of the illness or disability of the Superintendent shall be required, at the District's sole expense, whenever a majority of the Board requests it, but no more frequently than once per Contract year. Verification shall be by a physician designated by the Board and Superintendent; however, should the Board and Superintendent be unable to agree, the physician shall be the physician (or such physician's designee) chosen under Subsection 4.4. Should the Superintendent be terminated under this Section due to such physical or mental disability, the Superintendent shall be entitled to six (6) months of her annual base salary set out in Subsection 3.1. Except for the payments set out herein, the District shall have no further liability to the Superintendent for any other compensation or benefits.

6.6 **Extension of Contract Term by the Board.** The Board may, in its discretion, extend the term of this Contract at any time, but there is no requirement that it do so.

6.7 **Non-Renewal of Contract.** The Board may choose not to renew this Contract upon its expiration. The Board will provide the Superintendent with notice of proposed nonrenewal of this Contract including the reason for nonrenewal not later than the 90th day before the expiration of the Contract as stated in Subsection 1.1. In the event that notice of proposed nonrenewal is not given to the Superintendent on or before the 90th day before the expiration of the Contract, the Superintendent shall be employed in the same professional capacity and upon the same terms described in this Contract other than length of Contract for the following school year. The nonrenewal of this Contract shall be effectuated in accordance with Board policy and applicable state and federal law.

7. **MISCELLANEOUS**

7.1 **Governing Law.** This Contract shall be governed by the laws of the state of Texas, and shall be performable in Galveston County, Texas.

7.2 **Complete Agreement.** This Contract embodies the entire agreement between the parties, and, except as expressly provided herein, cannot be changed, altered, or amended except by written amendment signed by both parties. All parties are responsible for their own attorney fees and costs pursuant to this Contract or any amendment.

7.3 **Professional Liability.** 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, or with conscious indifference or reckless disregard, nor does it apply to criminal investigations or proceedings, nor to any investigations or proceedings in which the District and the Superintendent are adverse to each other; 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. 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 him will depend on and be subject to the terms of the applicable insurance contract. To the extent this Section 7.3 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. In no event shall any individual Board member, present or future, be personally liable for defending or indemnifying the Superintendent against any such demands, claims, suits, actions and legal proceedings.

7.3.1 During the term or any extended term of this Contract, the Superintendent shall cooperate with the District in the defense of any and all demands, claims, suits, actions and legal proceedings brought against the District.

7.3.2. After termination of this Contract, the Superintendent agrees to provide reasonable assistance to and cooperate with the District, its Trustees, agents, and attorneys in response to, or in defense of, any demand, claim, complaint, suite, action or legal proceeding brought against the District, its Trustees, or agents, arising from any acts or events alleged to have occurred during the term of Superintendent's employment with the District, at no additional expense to the District other than reimbursement to Superintendent for her documented reasonable and necessary out-of-pocket expense, plus reimbursement of any salary loss by Superintendent by virtue of her taking time off from her then current employment to assist the District at its request. If Superintendent is no longer employed at the time, the District shall compensate Superintendent at Superintendent's daily rate of pay, calculated by dividing the salary (Section 3.1) under the most current contract by 226. Requests for assistance from Superintendent with respect to such matters shall be made through the Board of Trustees' President, any successor superintendent, and/or legal counsel for the District, and the amount to be reimbursed to Superintendent shall be mutually agreed upon in advance.

7.3.3 Except as expressly set forth herein, both the District's obligation and the Superintendent's obligation under this Section 7.3 shall survive the termination of this Contract.

7.4 **Notification of Board Members.** A copy of this Contract shall be provided to all present members of the Board of Trustees and to each new Trustee as they are elected or appointed.

7.5 **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, 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.

7.6 **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 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.

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WITNESS THE EXECUTION HEREOF IN DUPLICATE ORIGINALS as of this
14th day of July, 2020.

**BOARD OF TRUSTEES
TEXAS CITY INDEPENDENT SCHOOL
DISTRICT**

By: 
Mr. Bryan Thompson
President, Board of Trustees

SUPERINTENDENT

By: 
Dr. Melissa Macheska-Duarte, Ed.D.