SUPERINTENDENT'S AMENDED EMPLOYMENT CONTRACT

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF CAMERON	§	

THE SUPERINTENDENT'S EMPLOYMENT CONTRACT ("Contract") was made and entered into effective the 27nd day of June 2019, by and between the Board of Trustees (the "Board") of the Brownsville Independent School District (the "District") and Dr. Rene Gutierrez ("Superintendent"). This SUPERINTENDENT'S AMENDED EMPLOYMENT CONTRACT is now effective on October 1, 2019. All provisions of the June 27, 2019 SUPERINTENDENT'S EMPLOYMENT CONTRACT remain in effect.

W I T N E S S E T H:

NOW, THEREFORE, the Board and the Superintendent, for and in consideration of the terms hereinafter established and pursuant to Section 11.201 and other provisions of the Texas Education Code, and the general laws of the State of Texas, 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 commencing on July 15, 2019 and ending on June 30, 2022. With the exception of the first year, all years of this Contract shall be from July 1st through June 30th. The contract is for 226 days per contract year. In the event that the Superintendent works more than 226 days in the Contract year, he will be not be entitled to additional compensation or compensatory work credit in future years. 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, express 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 Board policy 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, evaluate and

accept resignations of the employees of the District consistent with Board policies and federal and state law, except that only the Board may evaluate and accept the resignation of the Superintendent. 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. In the case of administrative assignment and/or reassignment, the Superintendent shall advise the Board of administrative assignment and/or reassignment. 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. The Superintendent shall, from time to time, suggest policy, regulations, rules and procedures deemed necessary for the well ordering of the school district; and, in general, the Superintendent shall perform all duties incident to the office of the Superintendent, and such other duties as may be prescribed by the Board.

2.2 **Consulting.** During the term of this Contract, the Superintendent will not engage in any consulting activities for a fee, or in any outside employment without the prior written consent of the Board. The Superintendent will comply with all District policies, rules and regulations regarding conflict of interest and fraud as they exist or may hereafter be amended or adopted during the term of this Contract.

2.3 **Professional Certification.** The Superintendent shall at all times during the term of this Contract, and any renewal or extension thereof hold and maintain valid and appropriate certifications or permits required to act as a Superintendent as prescribed by the laws of the State of Texas and the rules and regulations of the Texas Education Agency and/or the State Board for Educator Certification and all other certificates required by law. The Superintendent shall provide evidence of such certifications or permits to the Board upon request at any time. The Superintendent shall also provide evidence of educational attainment, degrees earned, previous professional experience, and other records required for personnel files of the District. Failure to maintain valid and appropriate certifications or permits shall render this Contract void, and any material misrepresentation in any records provided to the District shall be grounds for termination.

2.4 **Reassignment.** The Superintendent cannot be reassigned by the Board from the position of Superintendent to another position without the Superintendent's expressed written consent.

2.5 **Board Meetings.** Unless otherwise prohibited by law, 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, the Superintendent's evaluation or to discuss the duties and responsibilities of the Superintendent, for purposes of resolving conflicts between individual Board members, when the Board is acting in its capacity as a tribunal, or if there is a legal dispute between the Board and the Superintendent. There may also be times when the Board deems it appropriate for the Superintendent not to attend a Board meeting or a portion of a Board meeting. In that case, the Superintendent will be excused from attending the meeting or portion of the meeting. In the event of illness, a Board Majority may approve the absence of the Superintendent and the Superintendent's designee shall attend such

meetings.

2.6 **Criticisms, Complaints, and Suggestions.** The Board, individually and collectively, shall refer all substantive criticisms, complaints, and suggestions which are called to the Board's attention to the Superintendent for study and appropriate action. The Superintendent shall investigate such matters and inform the Board of the results of such action.

2.7 **Legal Defense/Indemnification**. The District agrees that, to the extent permitted by state law, it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Superintendent in his individual capacity or in his official capacity as agent and employee of the District if the incident in question arose while the Superintendent was acting within the course and scope of his employment and in conformity with the policies of the District. This defense and indemnity excludes criminal or other illegal acts and any other act, action or omission of the Superintendent which is determined to have been done, taken, or committed with malice or with intent to cause the injury or damage suffered by the claimant. This provision does not apply if the Superintendent is found to have materially breached his contract, to have acted with gross negligence or with intent to have violated a person's clearly established legal rights, to have acted outside the course and scope of his employment, to have engaged in criminal conduct, or to have engaged in official misconduct. This provision also does not apply to criminal investigations or proceedings. At its sole discretion, the District may fulfill the obligation under this paragraph by purchasing insurance coverage for the benefit of the Superintendent or by including the Superintendent as a covered party under any contract providing errors and omissions insurance coverage purchased for the protection of the Board and the professional employees of the District. The Board may retain attorneys to represent the Superintendent in any proceeding for which he could seek indemnification under this paragraph, to the extent that damages are recoverable or a defense is provided under any such contract of insurance. 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. The Board shall not be required to pay any costs of any legal proceedings in the event the Board and the Superintendent are adverse to each other in any such proceedings. The Superintendent shall reasonably cooperate with the District in the defense of any and all demands, claims, suits, actions and legal proceedings brought against the District. The Superintendent's obligation under this paragraph and the obligation of the District under this paragraph shall continue after the termination of this Contract.

2.8 **Residency.** The Superintendent shall maintain a residence within the jurisdictional limits of the Brownsville Independent School District within 90 days of the execution of this contract and through the remainder of this contract.

III. Compensation

3.1 **Salary.** The District shall provide the Superintendent with an annual salary in the sum of Three Hundred and Fifty Four Thousand and One Hundred and Twenty Eight Dollars ($354,128.00) for the contract years 2019-2020, and the sum of Three Hundred and Fifty Four

Thousand and One Hundred and Twenty Eight Dollars ($354,128.00) for the contract years 2020-2021, and the sum of Three Hundred and Fifty Four Thousand and One Hundred and Twenty Eight Dollars ($354,128.00) for the contract years 2021-2022. This annual salary rate shall be paid to the Superintendent in equal installments consistent with the Board's policies. In computing a daily rate under a provision of this Contract, it shall be computed using the annual salary, as adjusted, without inclusion of any other amount of compensation, and using a 226 day contract year.

3.2 **Salary Adjustments.** Beginning with the 2020-21 school year, and continuing thereafter for each succeeding school year for which this contract is effective, the Superintendent shall, commencing on July 1, of each year of this Agreement be entitled to receive a pay raise for the fiscal year beginning on July 1 of such year, equal to the average percentage teacher pay raise applicable to Brownsville ISD teachers for that school year.

At any other 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, if done in accordance with Sections 21.4032 or 21.212 of the Texas Education Code, or to implement a furlough program applicable to the Superintendent in accordance with state law. Such adjustments shall be made pursuant to a lawful Board action. In such event, the parties agree to provide their best efforts and reasonable cooperation to execute a new contract or contract amendment or addendum incorporating the adjusted salary.

3.3 **Leave.** The Superintendent may take, at the Superintendent's choice, with prior notice to the Board President, the same number of days of leave authorized by policies adopted by the Board for administrators on a 226 day per twelve-month contract. The vacation days taken by the Superintendent will be taken at such time or times as will least interfere with the performance of the Superintendent's duties as set forth in this Contract. 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. The Superintendent may accrue and carry over unused vacation days and personal leave days from year to year and carried over into subsequent years of this Contract in accordance with Board policy or with the approval of the Board. Not including state accumulated leave, the Superintendent may request in writing that any accumulated vacation local days, ten (10) per year, and local days, six (6) per year, not used during the term of this contract be paid at the Superintendent's daily rate in exchange for the unused vacation local days and local days. The Superintendent shall be entitled to all approved school holidays. The Superintendent shall be provided ten (10) paid vacation local days per year and six (6) local days per year. This amendment in leave from the original contract shall become effective beginning June 27, 2019 through the remainder of this contract.

3.4 **Sick Leave.** Upon termination of this contract because of death, retirement, resignation, or permanent disability of the Superintendent and to the extent allowed by applicable law, the District shall purchase all of the Superintendent's unused leave days at the Superintendent's daily rate at the time of purchase.

3.5 **Insurance.** The Superintendent shall be responsible for any spouse or family premiums under the health care plan provided by the District. The District shall also provide the Superintendent with a term life insurance policy of the Superintendent's choice, with a death benefit not to exceed $500,000.00 (Five Hundred Thousand Dollars and 00/100). The annual premium for such life insurance policy shall not exceed three thousand and six hundred Dollars ($3,600.00). The Superintendent shall designate the beneficiary of the proceeds of this life insurance policy.

3.6 **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, the Board shall permit a reasonable amount of release time for the Superintendent to attend to such matters, and reasonable and necessary fees for travel and subsistence expenses for such matters shall be paid by the District in accordance with the expenses provisions (Section 3.8) herein.

3.7 **Civic Activities.** The Superintendent is encouraged to participate in community and civic affairs. The expense of such activities, subject to Board approval, shall be paid by the District.

3.8 **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. The District agrees to pay the actual and incidental costs incurred by the Superintendent for travel outside the boundaries of the District and the City of Brownsville for school district business. 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 procedures and documentation requirements in accordance with Board policies.

3.9 **Organizational Membership Dues.** The District will annually pay dues/membership in selected key professional organizations that will benefit the Superintendent and the school district. 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, specifically approved by the Board from time to time, as necessary to maintain and improve the Superintendent's professional skills or to represent the school district's interests.

3.10 **Automobile.** In light of the unique nature of the professional duties of the Superintendent of Schools, Board shall provide Superintendent with an automobile allowance of Nine Thousand Dollars ($9,000.00) annually for local travel and expenses to be paid equally over twelve (12) months Seven Hundred Fifty Dollars ($750.00) per month. These automobile expenses shall be

payable beginning July 15, 2019 through the remainder of this contract.

IV. Annual Performance Goals

4.1 **Development of Goals.** On or before October 15, 2019, and September 1st of every succeeding year during the term of this Contract, the Superintendent shall submit in writing a list of articulated District goals, District priorities, and Major District initiatives. The Board in conjunction with the Superintendent may further develop and adopt these prioritized goals which shall be specific, definitive, measurable, and reduced to writing for the District. The Board shall then conduct a formative evaluation of the Superintendent before October 30, 2019 and September 15th of every year during the term of this contract. These goals may be reevaluated by the Board for purposes of this Contract by February 15 of every year during the term of this contract. The parties may, by mutual written agreement, change the date to set goals. 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.

V. Review of Performance

5.1 **Time and Basis of Evaluation.** It shall be the responsibility of the Superintendent to plan and calendar both the formative and the summative yearly evaluations. By October 15, 2019 and September 15th of every succeeding year during the term of this contract the Board shall evaluate with specific written expectations, written evaluations and assessment of the performance of the Superintendent. By May 15th of every year covered by this contract the Board shall conduct a summative evaluation of the Superintendent. The parties may, by mutual agreement, change the time period to complete the summative evaluation, but said summative evaluation shall be completed by June 30th of every year covered by this contract. 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 4.1. The evaluation format and procedure shall be in accordance with the Board's policies and state and federal law. Unless the Superintendent specifically requests otherwise in accordance with applicable law, all meetings, conferences, and discussions by the Board concerning the Superintendent's performance shall be held in closed, 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. Nothing herein shall prohibit the Board or the Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel.

5.2 **Performance Benchmarks**. The Board and the Superintendent further agree to establish written performance benchmarks for the Superintendent by October 15th of each year of the Contract. The parties may, by mutual written agreement, change the date to establish performance benchmarks. The purpose of the benchmarks is to provide additional information and data to the Board and Superintendent to aid in the Superintendent's annual summative evaluation. The Board and the Superintendent shall meet and collaborate in establishing the performance benchmarks. The final draft shall be agreed to and approved by both the Board and the Superintendent and signed by the Board President or a Board Majority and the Superintendent.

VI. Termination or Amendment 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 **Retirement, Disability, or Death.** This Contract shall be terminated upon the retirement, disability preventing performance of duties, or death of the Superintendent.

6.3 **Dismissal for Good Cause.** The Board may dismiss the Superintendent during the term of the Contract for good cause in accordance with state law and Board policy.

6.4 **Disability of Superintendent.** Should the Superintendent be unable to perform any or all of the duties of her position by reason of illness or accident, he may use all accumulated state sick leave days, local sick leave days, nonduty days and vacation days. After exhausting all accrued paid leave days, if the Superintendent cannot resume his duties, a determination of disability will be made by the Board based on a physical examination performed by a licensed physician selected by the Superintendent. The Board may obtain a second opinion from another licensed physician of its choosing. If the Superintendent is determined to be disabled and incapable of resuming all of his material duties and obligations of employment, the District and the Superintendent hereby mutually agree that this Contract will terminate at that time without the necessity of any further action by the Board or the Superintendent, and the Superintendent hereby waives all his rights to a hearing in consideration for the lump-sum payment of three months salary and benefits by the District upon termination of this Contract due to disability.

6.5 **Termination Procedure.** In the event the Board proposes the termination of 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.

6.6 **Resignation of Superintendent.** The Superintendent may leave the employment of the District at the end of a school year without penalty by providing written notice to the Board as provided by state law. The Superintendent may resign, with the consent of the Board, at any other time.

6.7 **Financial Exigency**. In the event of a financial exigency declared under Section 44.011 of the Texas Education Code that requires reduction in personnel, the District may choose to amend the terms of the contract of the Superintendent. If the contract is amended under this Code section, the Superintendent may resign without penalty by providing reasonable notice to the Board of Trustees and may continue employment during this notice period under the terms of the Contract before amendment.

Article VII. Miscellaneous

7.1 **Controlling Law.** This Contract shall be governed by the laws of the State of Texas and shall be performable in Cameron County, Texas, unless otherwise provided by law.

7.2 **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. Superintendent expressly acknowledges that he sought and received advice, as he has deemed necessary or appropriate relative to this contract, including, but not limited to, seeking the advice of legal or other counsel. Superintendent acknowledges that he has entered this contract freely and is knowledgeable about and understands the terms and conditions governing this contract.

7.3 **Conflicts.** In the event of any conflict between the terms, conditions and provisions of this Employment 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.

7.4 **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.

BROWNSVILLE INDEPENDENT SCHOOL DISTRICT

Minerva M. Peña

Minerva Peña,
President Board of Trustees, Brownsville ISD

SUPERINTENDENT

René Gutierrez

Dr. Rene Gutierrez,
BISD Superintendent

ATTESTED BY AND EXECUTED on this 1st day of October 2019.

Prisci Roca Tipton

By: Dr. Prisci Roca Tipton
Secretary Board of Trustees, Brownsville ISD