

NORTHWEST INDEPENDENT SCHOOL DISTRICT  
SUPERINTENDENT EMPLOYMENT CONTRACT

This Superintendent Employment Contract (“Contract”) is made and entered into by and between the Board of Trustees (the “Board”) of the NORTHWEST INDEPENDENT SCHOOL DISTRICT (the “District”) and DR. MARK FOUST (the “Superintendent”), effective January 10, 2023 (“Effective Date”).

NOW, THEREFORE, the Board and the Superintendent, for and in consideration of the terms hereinafter established and pursuant to Chapter 11, Subchapters D and E, Section 11.201 and Chapter 21, Subchapter E of the Texas Education Code, do hereby agree as follows:

**I. Term**

**1.1 Employment.** 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 January 10, 2023 and ending on January 10, 2026. 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 Right to 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 and instructional leader 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 and consistent with Board policy and state and federal law. 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 and Records.** The Superintendent shall, 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. Any conscious misrepresentation by the Superintendent relative to necessary certification and experience records, and other records required for the personnel files or payroll purposes may be grounds for dismissal.

**2.3 Reassignment.** The Superintendent is employed specifically and solely to perform the duties of Superintendent of Schools for the District and cannot be reassigned from the position of Superintendent to another position without the Superintendent's express written consent.

**2.4 Board Meetings.** Except for illness or other absences in accordance with District policies, the Superintendent 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 performance and/or evaluation, or when the Board is acting in its capacity as a tribunal, or for purposes of resolving conflicts between individual Board members. Further, the Superintendent shall provide recommendation(s) and/or information as to each of the items of business considered at each meeting as needed or requested by the Board.

**2.5 Criticisms, Complaints, and Suggestions.** The Board, individually and collectively, shall refer all substantive criticisms, complaints, and suggestions from staff and/or third parties to the Superintendent for review and appropriate action. The Superintendent will refer such matter(s) (i) to the appropriate District employee for investigation or investigate such

matter(s) and inform the entire Board of the results of such action or, (ii) refer such matter(s) to the appropriate complaint resolution procedure as established by District Board policies. Provided, however, nothing herein shall be construed to prevent the right of a District employee to communicate directly with a Board member pursuant to Board policy and law. The Board retains the right to receive and address complaints about the Superintendent subject to Board policies and applicable law. The Superintendent shall refer all substantive complaints from staff and/or third parties regarding a Board member to the Board President for review and action. If the complaint is about the Board President, then the Superintendent shall refer the complaint to the next most senior non-implicated Board officer or, if necessary, Board member.

**2.6 Consulting or Personal Services.** 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. The Superintendent will comply with all federal and state laws and regulations and 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. Any such consulting services shall not conflict or interfere with the Superintendent's professional responsibilities to the District and shall be performed during the work days only to the extent that the Superintendent has available vacation or personal leave days to cover his absences.

**2.7 Residence.** The Board shall provide the Superintendent until July 1, 2023 to establish a residence within the District. The parties may extend this timeframe by mutual agreement. Thereafter, the Superintendent shall maintain a residence in the District while employed as the Superintendent.

**2.8 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 with intent to violate a person's clearly established legal rights, 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. 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, which agreement shall not be unreasonably withheld. A legal defense may be provided through insurance coverage, in which case Superintendent's right to agree to legal counsel provided for his will depend on the terms of the applicable insurance contract. To the extent this Section 2.8 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 2.8 shall survive the termination of this Contract.

### **III. Representations.**

The Superintendent makes the following representations:

**3.1 Beginning of Contract.** At the beginning of this Contract, and at any time during this Contract, the Superintendent specifically agrees to submit to a review of his national criminal history record information (NCHRI) 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.

**3.2 During Contract.** The Superintendent also agrees that, during the term of this Contract, the Superintendent will notify the Board in writing of any arrest or of any indictment, conviction, no contest or guilty plea, or other adjudication of the Superintendent for any offense classified as a Class B misdemeanor or greater. The Superintendent agrees to provide such notification in writing as prescribed by Board Policy.

**3.3 False Statements and Misrepresentations.** The Superintendent represents that any records or information provided in connection with his employment application are true and correct. Any false statements, misrepresentations, omissions of material information knowingly made, or fraud by the Superintendent in or concerning any required records or in the employment application may be grounds for termination or nonrenewal, as applicable.

#### **IV. Compensation**

**4.1 Salary.** The District shall provide the Superintendent with an annual salary in the sum of THREE HUNDRED THIRTY THREE THOUSAND and No/100 Dollars (\$333,000), the amount of which shall be approved in the annual budget. This annual salary shall be paid to the Superintendent in equal installments consistent with the Board's policies. Beginning July 1, 2023 the Superintendent shall receive a raise consistent with the same salary increase as all professional staff receive for the 2023-2024 school year and each year on July 1<sup>st</sup> thereafter.

**4.2 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 4.1 of this Contract. Such adjustments, if any, shall be in the form of a new contract. Subject to and without waiving any Constitutional and/or other challenges by the Superintendent, the Superintendent acknowledges that the District may have certain rights pursuant to Education Code Sections 21.4021 and/or 21.4032.

**4.3 Business Expenses.** The District shall pay or reimburse the Superintendent for reasonable business expenses incurred by the Superintendent in the continuing performance of his duties under this Contract. The District agrees to pay the actual and incidental costs incurred by the Superintendent for District-related travel. Such actual or incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, and rental car expenses incurred in the performance of the business of the District, but shall not include alcohol or entertainment expenses (unless the entertainment expenses are pre-approved by the Board). The Superintendent shall comply with all policies, procedures and documentation requirements regarding these expenses in accordance with Board policies and established procedures, as required by the District's independent auditors, and/or state and federal laws and regulations regarding such

business expenses, which shall be subject to review by the District's independent auditors.

**4.4 Insurance.** The District shall pay the same premiums for health, hospitalization, and dental and vision insurance for the Superintendent as it does for other administrators pursuant to the group health plan provided by the District for all employees.

**4.5 Vacation, Holidays, Sick Leave.** The Superintendent shall be provided leave days as all other 12-month employees are granted, the days to be in a single period or at different times. The leave days taken by the Superintendent will be taken at such time or times that 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. Accrued but unused leave days shall accumulate and carry forward from year to year during the term of this Contract. The Superintendent shall be reimbursed for unused local leave as permitted by board policy. The Superintendent shall not be reimbursed at his daily rate for unused leave days accumulated at other districts.

**4.6 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 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 to attend such seminars, courses or meetings. The District agrees to provide in the District's budget during the term of this Contract, for the benefit of the Superintendent, a professional development budget per Contract year to be used for registration, travel, meals, lodging, and other related expenses. The Superintendent shall comply with all policies, procedures and documentation requirements regarding these expenses in accordance with Board policies and established procedures, as required by the District's independent auditors, and/or state and federal

laws and regulations regarding such business expenses, which shall be subject to review by the District's independent auditors. The District shall pay the Superintendent's membership dues to the American Association of School Administrators and Texas Association of School Administrators, as well as other memberships that the Board approves and determines is necessary to maintain and improve the Superintendent's professional skills. The District shall bear the reasonable cost and expense for such attendance and membership. The Superintendent shall notify the Board President when he intends to be out of the District traveling on District business or vacation. The Superintendent is required to attend the annual TASA/TASB convention with the Board and other such training and professional development as deemed necessary by the Board and Superintendent for the Team of Eight.

**4.7 Texas Teacher Retirement System.** For performance of Superintendent duties, the District shall supplement the Superintendent's salary by an amount equal to the Superintendent's portion of the member contribution to the Texas Teacher Retirement System ("TRS") beginning on the first day of the Term and continuing throughout the Term of this Contract, including any extensions thereof. This supplement shall include both the retirement and TRS-Care parts of the TRS member contribution, as applicable. This additional salary supplement for services rendered shall be paid to the Superintendent in regular monthly payroll installments and shall be reported as "creditable compensation" by the District for purposes of TRS, to the extent permitted by TRS.

**4.8 Benefits.** In addition to the benefits expressly set forth herein, the District shall provide other benefits to the Superintendent as provided to District employees by state law and Board policies. The Board reserves the right to amend its policies at any time during the term of this Contract to reduce or increase such other benefits not expressly provided herein, at the Board's sole discretion.

**4.9 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 his 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 his duties as Superintendent.

**4.10 Technology.** The District shall provide the Superintendent with a laptop computer for both professional and personal use. The Superintendent shall maintain a personal account for mobile telephone service and shall not open an account in the name of the District. The Superintendent shall have total responsibility for payment of such personal account and the District shall have no obligation or responsibility related to said mobile telephone account. The Superintendent understands that information stored in his cell phone, computer or other device, whether owned by the District or Superintendent, is subject to public disclosure if such information is related to the public business of the School District or to his duties as Superintendent. Notwithstanding the location of personal data on the cell phone, computer or other device, whether owned by the District or Superintendent, the parties agree that any personal or private information of the Superintendent contained on such devices containing such data or information shall be deemed private and the Superintendent's sole property; provided it shall be the responsibility of the Superintendent to assert, and to bear any costs of asserting, privacy or other confidentiality privileges or rights as to any such data or information.

**4.11 Moving/Relocation Expense.** In connection with the Superintendent's necessary relocation to the District, the District shall provide to the Superintendent a one-time relocation expense in the amount of TEN THOUSAND AND NO/100 (\$10,000.00) which includes but is not limited to expenses for moving his furniture and belongings from his current residence to the District, expenses for travel to and from the Superintendent's current residence and the District to locate and secure housing in the District, expenses for mileage, hotels, meals and incidentals until the Superintendent secures permanent residence within the District. The one-time payment shall be made to the Superintendent no later than January 15, 2023.

**4.12 Consulting Services.** The Board and Superintendent agree that between January 3, 2023 and January 9, 2023, the Superintendent may provide consulting services to the District. For each day the Superintendent works as a consultant, the District shall pay the Superintendent a daily rate of ONE THOUSAND FOUR HUNDRED SEVENTEEN AND 02/100 DOLLARS (\$1,417.02) representing his base salary divided 235 days. Further, the District will pay or reimburse the



Superintendent for reasonable and necessary costs incurred by the Superintendent for travel to the District, lodging, and meals while performing these consulting duties.

**V. Annual Performance Goals and Review of Performance**

**5.1 Development of Goals.** The Superintendent shall submit to the Board preliminary 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 goals. The Superintendent shall submit to the Board for its approval a plan to implement the goals. The Superintendent and the Board shall meet biannually to assess the goals and may adjust or revise the goals either by action of the Board with input from the Superintendent or upon recommendation of the Superintendent and approval of the Board. The goals approved by the Board shall be reduced to writing ("District Goals"), shall be the goals for the District and Superintendent and shall be among the criteria on which the Superintendent's performance is reviewed and evaluated. The District Goals approved by the Board shall be specific, definitive and measurable, to the extent feasible. The Board agrees to work with and support the Superintendent in achieving the District Goals.

**5.2 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 as outlined in the Superintendent's job descriptions, Board policies, lawful Board directives, and shall be based on the District's progress towards accomplishing the District Goals.

**5.3 Confidentiality.** Unless the Superintendent expressly requests otherwise in writing, the evaluation of the Superintendent shall always 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.

**5.4 Evaluation Format and Procedures.** 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. If the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be

delivered to the Superintendent. 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. That response shall become a permanent attachment to the evaluation in the Superintendent's personnel file. Within sixty (60) days of the delivery of the written evaluation to the Superintendent, the Board shall meet with the Superintendent to discuss the evaluation. The Board shall devote a portion of, or all of, one executive session annually to a discussion of the working relationship between the Superintendent and the Board. If 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, such modifications must be adopted with input from the Superintendent and the Superintendent shall be provided a reasonable period to demonstrate such expected performance before being evaluated.

**VI. Termination, Nonrenewal, Suspension or Resignation of Employment Contract**

**6.1 Renewal/Nonrenewal.** Renewal or nonrenewal shall be in accordance with Board policy and applicable law. Notwithstanding anything to the contrary in Section 21.212(a) of the Texas Education Code, the Superintendent shall be entitled to written notice, containing reasonable notice of the reason for the proposed nonrenewal, not later than the 30th day before the last day of the Contract term, containing reasonable notice of the reason(s) for the proposed nonrenewal of the Superintendent's Contract with the District.

**6.2 Suspension.** In accordance with Texas Education Code Chapter 21, the Board may suspend the Superintendent without pay during the term of this Contract for good cause as determined by the Board.

**6.3 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.

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

**6.5 Resignation.** The Superintendent may leave the employment of the District at the end of a school year without penalty by filing a written resignation with the Board. The resignation must be addressed to the Board and filed no later than the forty-fifth (45<sup>th</sup>) day before the first day of instruction of the following school year. The Superintendent may resign, with the consent of

the Board, at any other time.

**6.6 Dismissal for Good Cause.** The Board may dismiss the Superintendent during the term of this Contract for good cause. The term "good cause" shall include, but not be limited to the following:

- a) Failure to fulfill duties or responsibilities as set forth under the terms and conditions of this Contract;
- b) Incompetency 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 consists of conduct determined by the Board to not conform 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) Criminal 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;
- q) Failure to fulfill the requirements of a deficiency plan under an Emergency Permit;
- r) Any other reason constituting "good cause" under Texas law.

**6.7 Termination Procedure.** In the event the Board proposes to suspend or terminate this Contract for "good cause", the Superintendent shall be afforded all the rights as set forth in the Board's policies, state and federal law.

## **VII. Miscellaneous**

**7.1 Controlling Law.** This Contract shall be governed by the laws of the State of Texas and shall be performable in Denton County, Texas. Venue for any legal proceeding under this Contract shall be in state district court in Denton County, Texas, unless a different venue is mandatory under the provisions of the Texas Education Code.

**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.

**7.3 Conflicts.** If there is a 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.

**7.4 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 for a term covered by this Contract 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.

**7.5 Legal Representation.** Both Parties have been represented by legal counsel of their choice, or have had the opportunity to consult with legal counsel, in the negotiation and execution of this Contract.

**7.6 Paragraph Headings.** The headings used at the beginning of each numbered paragraph in this Contract are not intended to have any legal effect; the headings do not limit or expand the meaning of the paragraphs that follow them.

**7.7 Multiple Originals.** This Contract is executed in two (2) originals, one for the Board and one for the Superintendent, each of which shall constitute but one and the same instrument.

**7.8 Authority.** The Board President and Secretary have been authorized to execute this Contract on behalf of the District by action of a majority of a quorum of the Trustees present at a properly called and posted meeting on January 9, 2023.

#### **VIII. Notices**

**8.1 To Superintendent.** The Superintendent agrees to keep a current address on file with the Board President. The Superintendent agrees that the Board may meet any legal obligation it has to give the Superintendent written notice by delivering the notice through hand-delivery, certified mail, regular mail, and/or express delivery service to the Superintendent's address of record.

**8.2 To Board.** The Board agrees that the Superintendent may meet any legal obligation to give the Board written notice by providing one copy of the notice to the President of the Board and one copy 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 and Vice President's addresses of record, as provided to the District.

*(Signatures on the following page)*

EXECUTED this 9<sup>th</sup> day of January, 2023

NORTHWEST INDEPENDENT SCHOOL DISTRICT



Dr. Anne Simpson, President  
Board of Trustees

ATTEST:



Dr. Lillian Rauch, Secretary  
Board of Trustees

SUPERINTENDENT:



Dr. Mark Foust, Superintendent