

## **FORNEY ISD**

### **Superintendent Term Contract**

This Superintendent Term Contract ("Contract") is entered into effective the 1<sup>st</sup> day of February, 2022, by and between the Board of Trustees (the "Board") of the FORNEY INDEPENDENT SCHOOL DISTRICT (the "District") and DR. JUSTIN TERRY (the "Superintendent").

The Board and the Superintendent, for and in consideration for the terms stated in this Contract, and pursuant to Chapter 11, Subchapters D and E, Section 11.201 and Chapter 21, Subchapter E of the Texas Education Code, have agreed, hereby agree as follows:

1. **Term.** The Board agrees to employ the Superintendent for a term of five (5) years, beginning July 1, 2022, and ending June 30, 2027.
2. **Certification.** The Superintendent agrees to maintain the required certification throughout the term of employment with the District. If the Superintendent's certification expires, is canceled, or is revoked, this Contract is void.
3. **Representations.** The Superintendent makes the following representations:
  - 3.1 **Beginning of Contract.** The Superintendent represents that he has disclosed to the Board, in writing, any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the Superintendent for a felony or offenses involving moral turpitude as defined by Texas law. The Superintendent understands that a criminal history record acceptable to the Board and free of any convictions for a felony or offenses involving moral turpitude as defined by Texas law, 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, indictment, conviction, no contest or guilty plea, or other adjudication of the Superintendent for any felony, any offense involving moral turpitude, and any of the other offenses as indicated in Policy DH (Local). The Superintendent agrees to provide such notification in writing within seven (7) calendar days of the event.
  - 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 knowing or conscious false statements, misrepresentations, omissions of requested information, 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.
4. **Duties.** The Superintendent shall be the educational leader and chief executive officer of the District. The Superintendent agrees to perform his duties as follows:
  - 4.1 **Superintendent**

4.1.1 **Authority.** The Superintendent shall perform the duties and have the powers prescribed by the law and the Board. 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. The Board may assign additional duties to the Superintendent and change the Superintendent's responsibilities or work at any time during this Contract, but all duties assigned or changes in responsibilities or work shall be appropriate to and consistent with the professional role of the Superintendent.

4.1.2 **Standard.** Except as otherwise permitted by this Contract or Board action, the Superintendent agrees to devote his full time and energy to the performance of his duties. The Superintendent shall perform his duties with reasonable care, skill, and diligence. The Superintendent shall comply with all Board directives, state and federal laws and rules, Board policy, and regulations as they exist or may hereafter be amended.

4.3 **Reassignment.** The Superintendent is employed specifically and solely to perform the duties of Superintendent of Schools for the District and may not be reassigned from the position of Superintendent to any other position in the District except by mutual written agreement of the parties.

4.4 **Board Meetings.** The Superintendent shall attend all meetings of the Board, both public and closed, except for 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 performance, 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-approved absence, the Superintendent's designee shall attend such meetings. 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.

- 4.5 **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 to the Superintendent for review and appropriate action. The Superintendent will either refer such matter(s): (a) 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 Board policies.

5. **Compensation.**

- 5.1 **Salary.** The District shall pay the Superintendent an annual salary of Two Hundred Seventy-Three Thousand Five Hundred and Twenty AND NO/100 Dollars (\$273,520.00). The annual salary shall be paid to the Superintendent in equal monthly installments consistent with the Board's policies. 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 5.1 of this Contract except by mutual written agreement of the parties. Such adjustments, if any, shall be effective on the July 1 following approval of the adjustment unless the parties agree on another date, and shall be in the form of a written addendum to this Contract, or a new contract shall be executed.
- 5.2 **Annual Salary Increase.** The Superintendent's salary shall automatically increase on July 1 of each year, as provided in the schedule below:
- i. On July 1, 2023, the Superintendent's salary shall be increased by an amount equal to 4% of his base salary.
  - ii. On July 1, 2024, the Superintendent's salary shall be increased by an amount equal to 5% of his base salary.
  - iii. On July 1, 2025, the Superintendent's salary shall be increased by an amount equal to 6% of his base salary.
  - iv. On July 1, 2026, the Superintendent's salary shall be increased by an amount equal to 7% of his base salary.

The Board may temporarily suspend this annual salary increase on a good faith determination by the Board that the District's financial health necessitates such action (e.g., adoption of a deficit budget; freezing of employee salaries). Such action by the Board regarding this provision shall take effect on the July 1 immediately following the action and shall continue only for the time in which the event necessitating the suspension (i.e., deficit budget or freezing of employee salaries) is in effect. Any increase to the Superintendent's contract after July 1, 2026 shall be at the discretion of the Board.

- 5.3 **Teacher Retirement System (TRS).** 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") during the Term of this Contract, including any extensions thereof. 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.
- 5.4 **Benefits.** In addition to the benefits expressly set forth herein, the District shall provide other benefits to the Superintendent as provided by state law and Board policies. Except for those benefits specifically set forth in this Contract, 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 provided, at the Board's sole discretion.
- (a) Vacation, Holidays, Personal Leave. The Superintendent shall receive the same number of personal leave days, holidays and other leave as other twelve-month employees of the District, the days to be in a single period or at different times.
  - (b) Health Insurance. The District shall pay the same premiums for health insurance coverage for the Superintendent pursuant to the group health care plan provided by the District as for other twelve-month employees.
  - (c) Civic Activities. The Superintendent is encouraged to 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. 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.
  - (d) Outside Consulting Activities. Subject to prior Board approval for each consulting activity, the Superintendent may undertake consulting work, speaking engagements, writing, lecturing and other professional duties and obligations that do not conflict or interfere with the Superintendent's professional services to the District or result in any financial cost 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.

- (e) Professional Liability Insurance/Indemnification. The District shall pay the cost of appropriate Professional Liability Insurance for the Superintendent. To the extent it may be permitted to do so 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. 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 the terms of the applicable insurance contract. To the extent this Section 5.3(e) 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 5.3(e) shall survive the termination of this Contract.
- (f) 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 under the same expense reimbursement provisions applicable to all District employees. The District agrees to pay the actual and incidental costs incurred by the Superintendent for travel. Such actual or incidental costs may include, but are not limited to, gasoline/mileage, 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.
- (g) 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. The District shall bear the reasonable cost and expense for registration, travel, meals, lodging, and other related expenses for such attendance and membership.

- 5.5 **Supplemental Retirement Plan.** The District shall contribute annually to a Supplemental Retirement Plan (SRP) for the benefit of the Superintendent in an amount equal to 10% of the Superintendent's annual salary and in accordance with the schedule below. The District shall contribute to the SRP on or before June 30th of each year during the term of this Contract, beginning August 1, 2022. The contributions to the SRP and earnings thereon shall become vested according to the schedule listed below. If, on or before the Superintendent achieves 100% vestment in the Annuity, this Contract is terminated in accordance with Sections 9.3 or 9.5, the vesting status shall be frozen as of the date of the last contribution to the Annuity. If this Contract is terminated in accordance with Sections 9.1 or 9.2, the Superintendent shall be immediately 100% vested in all contributions on deposit including the earnings thereon, as of the termination date.

<u>Date</u>	<u>Vested Percentage</u>
Prior to August 1, 2023	0%
August 1, 2023	20%
August 1, 2024	40%
August 1, 2025	60%
August 1, 2026	80%
August 1, 2027	100%

The SRP shall be a plan established under Section 403(b) of the Internal Revenue Code (the "Code"). The 403(b) plan shall be established as employer-paid with non-discretionary contributions by the District and the Superintendent shall have no right to receive such contributions in cash. The 403(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are hereby incorporated herein by reference. The funds

for the 403(b) plan shall each be invested as determined solely by the Superintendent in such investment vehicles as are allowable under the Code for the applicable type of plan.

The SRP shall be a plan established under Section 403(b) of the Code, a plan established under Section 401(a) of the Code, and/or a plan established under Section 457(b) of the Code where appropriate. The 403(b) and 401(a) plans shall be established as employer-paid plans with non-discretionary contributions by the District, and the Superintendent shall have no right to receive such contributions in cash. The 403(b) plan, 401(a) plan, and 457(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are incorporated herein by reference. The funds for the 401(b) plan, 401(a) plan, and 457(b) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

Contributions to the SRP shall first be made to the 403(b) plan. To the extent that the Board contributions provided in this Agreement would result in a contribution to the 403(b) plan during a calendar year in excess of the limit under the Code, contributions in excess of such limit for the 403(b) plan shall be made to the 401(a) plan. To the extent that the Board contributions provided in this Agreement, including those already made to the 403(b) plan, would result in a contribution to the 401(a) plan during a calendar year in excess of the limit under the Code, contributions in excess of such limit for the 401(a) plan shall be made to the 457(b) plan. To the extent that the Board contributions provided in this Agreement, including those already made to the 403(b) and 401(a) plans, would result in a contribution to the 457(b) plan during a calendar year in excess of the limit under the Code, contributions in excess of such limit for the 457(b) plan shall be paid to the Superintendent as taxable compensation. However, the Superintendent shall have no discretion as to the payment of any amounts to him as taxable compensation; such decision shall be at the sole discretion of the Board.

6. **Annual Performance Goals.** The Superintendent shall submit to the Board each year, for the Board's consideration and adoption, a preliminary list of goals for the District. The goals approved by the Board shall be reduced to writing ("District Goals") 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 objectively measurable, to the extent feasible. The Board agrees to work with and support the Superintendent in achieving the District Goals.

7. **Review of Performance.**

- 7.1 **Time and Basis of Evaluation.** The Board shall evaluate and assess in writing the performance of the Superintendent annually. The evaluation and assessment 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.

- 7.2 **Confidentiality.** Unless the Superintendent expressly requests otherwise in writing, the evaluation of the Superintendent shall 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.
- 7.3 **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 7 of this Contract, the Board's policies, and state and federal law. 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. In the event the Board deems that the evaluation instrument, format and/or procedures is to be modified by the Board, such modifications must be adopted with input from the Superintendent at least one (1) year prior to its implementation unless there is an agreement between the Superintendent and Board for an earlier implementation date; provided however that the Superintendent shall be provided a reasonable period to demonstrate such expected performance before being evaluated.
8. **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.
9. **Termination and Nonrenewal of Contract.**
- 9.1 **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.
- 9.2 **Retirement or Death.** This Contract shall be terminated upon the retirement or death of the Superintendent.
- 9.3 **Nonrenewal or Dismissal for Good Cause.** Termination or nonrenewal of this Contract, or resignation under this Contract, will be pursuant to Texas Education Code chapter 21 and Board Policies. The Board may dismiss the Superintendent during the term of the Contract for good cause in accordance with Chapter 21 of the Texas Education Code and Board Policies. The term "good cause" is defined generally as failure to perform duties or responsibilities within the scope of employment or as set forth under the terms and conditions of this Contract that a Texas school superintendent of ordinary prudence would have done under the same or similar circumstances.

9.4 **Termination Procedure.** If the Board terminates or proposes to terminate 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.

9.5 **Resignation of Superintendent.** 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 not later than the 45th day before the first day of instruction of the following year. The Superintendent may resign with the consent of the Board at any other time.

10. **General Provisions.**

10.1 **Amendment.** This Contract may not be amended except by written agreement of the Board and the Superintendent (the “Parties”).

10.2 **Severability.** If any provision in this Contract is, for any reason, held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of the Contract. This Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been a part of the Contract.

10.3 **Entire Agreement.** All existing agreements and contracts, both verbal and written, between the Parties regarding the employment of the Superintendent for a term covered herein shall be superseded by this Contract upon the start of the Contract term, July 1, 2022. This Contract and any addenda constitute the entire agreement between the Parties.

10.4 **Applicable Law and Venue.** Texas law shall govern this Contract. 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’ administration building is located.

10.5 **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.

10.6 **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.

10.7 **Authority.** The Board President has 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 10, 2022.

11. **Notices.**

11.1 **To Superintendent.** The Superintendent agrees to keep a current address on file with the District's human resources office and 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.

11.2 **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.

I have read this Contract and agree to abide by its terms and conditions:

SUPERINTENDENT: \_\_\_\_\_

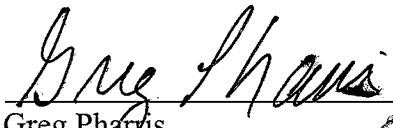
  
Justin Terry, Ed. D.

Date signed: \_\_\_\_\_

4/12/22

FORNEY INDEPENDENT SCHOOL DISTRICT:

By: \_\_\_\_\_

  
Greg Pharris,  
President, Board of Trustees

Date signed: \_\_\_\_\_