

**AMENDED AND RESTATED SUPERINTENDENT'S
EMPLOYMENT CONTRACT**

This Amended and Restated Superintendent's Employment Contract is made as of September 30, 2013, by and between the **BOARD OF TRUSTEES** ("Board") of the **McALLEN INDEPENDENT SCHOOL DISTRICT** ("District") and **James Joseph Ponce, Ed.D.** of Hidalgo County, Texas ("Superintendent").

WITNESSETH:

WHEREAS, the District employed Superintendent by vote of the Board of District at a meeting of the Board of District held on April 28, 2009, and executed that certain Superintendent's Employment Contract between the District and the Superintendent on May 5, 2009 (the "Employment Contract");

WHEREAS, the District, effective January 24, 2011, extended the term of the Employment Contract by three years;

WHEREAS, the District, effective December 19, 2011, amended the Employment Contract to provide the Superintendent all insurance benefits as are available to full time employees of District,

WHEREAS, the District, effective March 5, 2012 extended the term of the Employment Contract;

WHEREAS, the District effective September 24, 2012, amended the Employment Contract to increase the Superintendent's Compensation and the auto allowance provided to the Superintendent in the Employment Contract; and

WHEREAS, the District desires to amend and restate the Employment Contract incorporating the previous amendments and provide for the increase in the Superintendent's compensation each year by the same percentage increase in salary received by Texas Education Code Chapter 21 employees of the District, to add longevity provisions to Employment Contract, to add TRS benefits to the Employment Contract, and to provide a contingency should the District convert from a self insured medical plan to a fully insured medical plan.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, it is agreed to that on and after ~~September~~³⁰, 2013 the Employment Contract is amended and restated to read as follows:

I. Term

1.1 **Term.** Superintendent does hereby accept employment as Superintendent of Schools for the District for a term of ~~six (6) years and fifty-seven (57) days, commencing on May 5, 2009, and ending on June 20, 2016.~~ 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 as may be lawfully assigned by the Board, and shall comply with all lawful Board directives, state and federal law, district policy, rules, and regulations as they exist or may hereafter be amended. Specifically, it shall be the duty of the Superintendent to recommend for employment all professional employees of the District subject to the Board's approval. It shall be the further duty of the Superintendent to employ all other personnel consistent with the Board's policies. It shall be the further duty of the Superintendent to direct, assign, reassign, and evaluate all of the employees of the District consistent with Board policies and federal and state law. It shall be the further duty of the Superintendent to organize, reorganize, and arrange the staff of the District, and to develop and establish administrative regulations, rules, and procedures which the Superintendent deems necessary for the efficient and effective operation of the District consistent with the Board's lawful directives, the Board's policies, and state and federal law.

It shall be the further duty of the Superintendent to accept all resignations of employees of the District consistent with the Board's policies, except the Superintendent's resignation, which must be accepted by the Board. The Superintendent shall perform the duties of the Superintendent of Schools for the District with reasonable care, diligence, skill, and expertise. All duties assigned to the Superintendent by the Board shall be appropriate to and consistent with the professional role and responsibility of the Superintendent.

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

2.3 **Reassignment.** The Superintendent cannot 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 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-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 Indemnification. To the extent it may be permitted to do by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the District does hereby agree to defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Superintendent in the Superintendent's individual or official capacity as an employee and as Superintendent of the District, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Superintendent as an employee of the District, acting within the course and scope of Superintendent's employment with the District; excluding, however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that Superintendent committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the District or by Superintendent. 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 2.6 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 2.6 shall survive the termination of this Contract.

III. Compensation

3.1 Salary. The District shall provide the Superintendent with an annual salary in the sum of Two Hundred Forty Two Thousand Four Hundred Sixty Eight Dollars (\$242,468.00). This annual salary rate shall be paid to the Superintendent in equal installments consistent with the Board's policies. Effective with the 2014-2015 school year and continuing for each subsequent school year thereafter occurring during the term of this Employment Contract contingent on Texas Education Code Chapter 21 full time employees of the District receiving a raise in compensation whether as a percentage increase or a fixed dollar amount, the Superintendent shall receive a raise for such school year equal to either the percentage increase or the fixed dollar amount increase whichever is applicable given by the District to Texas Education Code Chapter

21 full time employees of the District.

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

3.3 Vacation, Holiday and Personal Leave. The Superintendent may take, at the Superintendent's choice, the same number of days of vacation authorized by policies adopted by the Board for administrators on twelve month contracts, the days to be in a single period or at different times. The 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.

3.4 Insurance. The Superintendent shall be entitled to all insurance benefits available to full time employees of District. If for any reason, the District discontinues District's self insured medical insurance plan and converts to a fully insured medical insurance plan for District employees District shall pay on behalf of the Superintendent and Superintendent's spouse and dependent children the premiums under such fully insured medical insurance plan for medical, dental and vision insurance.

3.5 Professional Growth. The Superintendent shall devote the Superintendent's time, attention, and energy to the direction, administration, and supervision of the District. The Board, however, encourages the continued professional growth of the Superintendent through the Superintendent's active attendance at and participation in appropriate professional meetings at the local, regional, state and national levels. The Board shall encourage the use of data and information sources, and shall encourage the participation of the Superintendent in pertinent education seminars and courses offered by public or private institutions or by educational associations, as well as the participation in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Superintendent to perform the Superintendent's professional responsibilities for the District. In its encouragement of the Superintendent to grow professionally, the Board shall permit a reasonable amount of release time for the Superintendent as the Superintendent and the Board deem appropriate, to attend such seminars, courses or meetings. The District does hereby agree 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 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 such attendance and membership. 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. The Superintendent will notify the Board in writing of the acceptance of any office or responsibility in these professional organizations.

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

The District shall reimburse the Superintendent for the cost of membership in all local civic organizations in which the Superintendent participates and related travel outside of the District, subject to advance Board approval.

3.7 Outside Consultant Activities. The Superintendent may, with Board approval, 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. 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. If the Superintendent receives compensation for outside consultation in excess of travel expenses, the Superintendent shall use vacation time, holidays, or other non-duty days for such consultation. Consulting Services provided by the Superintendent under the terms and conditions of this paragraph must be consistent with state and federal law.

3.8 Expenses. The District shall pay or reimburse the Superintendent for reasonable 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 of the Region 1 Education Service Center area. 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 Automobile Allowance. The District shall pay the Superintendent Seven Hundred dollars and no Cents (\$700.00) per month to defray the expenses of an automobile for travel in the Region 1 Education Service Center Area. This payment is in lieu of mileage expense

reimbursement for travel, gasoline, insurance or other associated charges related to all travel expenses incurred within the Region 1 Education Service Center Area. This automobile may be used by the Superintendent for business and personal purposes inside and outside the Regional 1 Education Service Center area. The Superintendent, at his expense, shall maintain liability, property damage and comprehensive insurance on the automobile, and he shall provide fuel, oil and repairs.

3.10 Moving and Relocation Expense. In connection with the necessary relocation of the Superintendent and his family to the area, the District shall reimburse the Superintendent for necessary and reasonable expenses incurred in moving the Superintendent, the Superintendent's family and belongings, and for the actual cost of a onetime move of all the Superintendent's household goods and possessions from Seagoville, Texas to a location designated by the Superintendent within the geographic boundaries of the District. The Superintendent shall document all expenses with receipts, cancelled checks, or credit card statements, and the District shall reimburse the Superintendent for all documented expenses. Prior to relocating, the Superintendent shall obtain and submit to the Board President three (3) written bids for the onetime cost of moving the Superintendent's possessions and the Board President shall select the bid to accept. The District further agrees to reimburse the Superintendent for lodging accommodations during his relocation to the area for up to sixty (60) days of such accommodations, if necessary or until relocation is completed to a maximum of Six Thousand Dollars and no Cents (\$6,000.00). The District shall reimburse the Superintendent for his travel expenses for commuting between the District and his former residence during the period of relocation, between May 5, 2009 and July 3, 2009 up to a maximum of one thousand five hundred dollars and no cents (\$1,500.00).

3.11 Personal Data Assistant (PDA)/Cellular Telephone. The District shall pay Superintendent a PDA/cellular telephone allowance of one hundred fifty dollars and no cents (\$150.00) per month during the term of this contract.

3.12 Life Insurance. The District shall provide the Superintendent with a term life insurance policy in the amount of one million dollars and no cents (\$1,000,000.00). The District shall pay the premiums for the life insurance policy for the duration of this contract until the resignation, termination or retirement of the Superintendent, whichever comes first. The life insurance policy shall be owned by the District on the life of the Superintendent, but the Superintendent shall have the sole right to determine the beneficiary under the policy.

3.13 Annual Physical Examination. The Superintendent shall undergo an annual physical examination performed by a licensed physician mutually acceptable to the Board and the Superintendent within sixty (60) days prior to the evaluation provided for in subsection 5.1. The physician shall submit a confidential statement to the Board verifying the Superintendent's fitness to perform the Superintendent's duties prior to the Board's evaluation. Copies of all such statements shall be confidential to the extent permissible by law. Any report of the medical examination other than the certificate certifying the Superintendent's fitness to perform his duties shall be given directly and exclusively by the examining physician to the Superintendent. The District shall pay all costs of the annual physical examination not paid by third party insurance carriers, if any, up to a total of four hundred dollars and no cents (\$400.00).

3.14. **Longevity Plan:** Commencing on June 20, 2014 and continuing for each June 20 thereafter during the term of this Employment Contract until June 20, 2016 the District shall make contributions of Seventeen Thousand Five hundred and no/100ths dollars (\$ 17,500.00) per year to a qualified Supplemental Retirement Plan. The contributions to the Supplemental Retirement Plan and earnings thereon shall become vested to the Superintendent according to the schedule listed below.

Date	Vested Percentage
June 20, 2014	33%
June 20, 2015	66%
June 20, 2016	100 %

The Supplemental Retirement Plan shall be a plan established and/or amended under Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The 403(b) plan shall be established and/or amended 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 be established under a written plan document that meets the requirements of the Code. The funds for the 403(b) plan shall be invested in a manner mutually agreeable to the Superintendent and the Board in such investment vehicles as are allowable under the Code for the applicable type of plan. Any and all unused funds in the account shall revert to the District as indicated above should the Superintendent cease to be employed by the District prior to June 20, 2016.

3.15. **TRS Benefits:** The District agrees to make the total member contribution on behalf of the Superintendent to the Texas Retirement System ("TRS"), including both the employer and the employee contributions. This salary supplement shall be paid to the Superintendent by regular payroll installments and shall be reported as compensation by the District to TRS.

IV. Annual Performance Goals

4.1 **Development of 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 at all times be reduced to writing ("District Goals") and shall be among the criteria on which the Superintendent's performance is reviewed and evaluated. The Board agrees to work with and support the Superintendent in achieving the District Goals.

V. Review of Performance

5.1 **Time and Basis of Evaluation.** The Board shall evaluate and assess in writing the performance of the Superintendent at least once each year during the term of this Contract. The Board's evaluation and assessment of the Superintendent shall be reasonably related to the duties of the Superintendent as outlined in the Superintendent's job description and shall be based on

the District's progress towards accomplishing the District Goals.

5.2 Confidentiality. Unless the Superintendent expressly requests otherwise in writing, the evaluation of the Superintendent shall at all times be conducted in executive session and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Board or the Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel.

5.3 Evaluation Format and Procedures. The evaluation format and procedure shall be in accordance with the evaluation instrument selected by the Board in accordance with Article V of this Contract, the Board's policies, and state and federal 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.

VI. Extension or Nonrenewal of Employment Contract

6.1 Extension/Nonrenewal. Extension and/or nonrenewal shall be in accordance with Board policy, Texas Education Code Chapter 21, Subchapter E, 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 60 days 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.

VII. Termination of Employment Contract

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

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

7.3 Dismissal for Good Cause. The Board may dismiss the Superintendent during the term of the Contract for good cause. 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.

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

7.5 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.

VIII. Miscellaneous

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

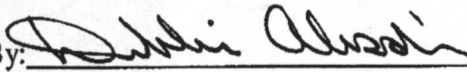
8.2 Complete Agreement. This Contract embodies the entire agreement between the parties hereto and cannot be varied except by written agreement of the undersigned parties, except as expressly provided herein.

8.3 Conflicts. In the event of any conflict between the terms, conditions, and provisions of this Contract and the provisions of the Board's policies, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Contract shall take precedence over the contrary provisions of the Board's policies or any such permissive law during the term of the Contract.

8.4 **Savings Clause.** In the event any one or more of the provisions contained in this Contract shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. All existing agreements and contracts, both verbal and written, between the parties hereto regarding the employment of the Superintendent have been superseded by this Contract, and this Contract constitutes the entire agreement between the parties unless amended pursuant to the terms of this Contract.

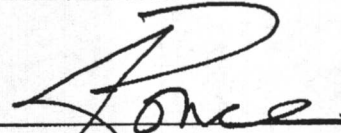
EXECUTED, this the 30th day of September, 2013.

McALLEN INDEPENDENT SCHOOL DISTRICT

By: 

Debbie Aliseda, President
Board of Trustees

SUPERINTENDENT

By: 

James Joseph Ponce, Ed.D.