

**DUNCANVILLE 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 DUNCANVILLE INDEPENDENT SCHOOL DISTRICT (the "District") and DR. MARCELL SMITH (the "Superintendent").

NOW, THEREFORE, the Board and the Superintendent, for and in consideration of the terms hereinafter established and pursuant to Sections 11.201(b) and Chapter 21, Subchapter E of the Texas Education Code, do hereby agree as follows:

I. Term.

1.1 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 on a twelve-month basis per school year for a term of four (4) years, six (6) months, and seventeen (17) days commencing on December 13, 2016, and ending on June 30, 2021. 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 The Board has not adopted any policy, rule, regulation, law, or practice for tenure. No right of tenure is created by this Contract. No property interest, express or implied, is created in continued employment beyond the term of this Contract.

II. Employment.

2.1 Duties. The Superintendent is the chief administrator and executive officer 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 administer the District in accordance with all Board directives, policies, rules, and regulations and state and federal law, as they exist or may hereinafter be amended or adopted. As such, the Superintendent shall assign the administrative and supervisory staff in the manner that, in his judgment, best serves the public schools of the District. The responsibility for selection and/or promotion of personnel shall be vested in the Superintendent and his staff, subject to the approval of the Board. Except as provided in this Contract, the Superintendent agrees to devote his full time and energy to the performance of these duties in a faithful, diligent, conscientious and efficient manner. The Superintendent shall perform the duties of the Superintendent of Schools for the District with reasonable care, skill and expertise and in a thorough, prompt and efficient manner. 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 at all times during the term of this Contract, and any renewal thereof, hold and maintain a valid certificate required of a superintendent by the State of Texas and issued by the Texas Education Agency and any other certificates required by law. The Superintendent also shall provide evidence of educational attainment, degrees earned, previous professional experience and other records required for the personnel files of the District. If the

Superintendent's certification expires, is canceled, or is revoked, this Contract is void.

2.3 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 another position in the District except by mutual written agreement of the parties.

2.4 Board Meetings. The Superintendent shall attend, and 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 to consider interpersonal relationships between individual Board members.

2.5 Criticisms, Complaints, and Suggestions. The Board, individually and collectively, shall refer all substantive complaints from staff and/or third parties to the Superintendent for review and appropriate action. The Superintendent will refer such matter(s) to the appropriate District employee for investigation or investigate such matter(s) and inform the entire Board of the results of such action or, refer such matter(s) to the appropriate complaint resolution procedure as established by District Board policies. Substantive complaints include allegations of possible wrongdoing by staff and/or students, complaints of possible criminal behavior by staff and/or students, and complaints about personnel that, if true, would require action by the Superintendent and/or administration. 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. The Board retains the right to investigate complaints about the Superintendent. 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 Nepotism. With the exception of any individuals already employed for the statutorily-allowed time periods by the District as of the date of this Contract, the District will not employ, and the Superintendent will not recommend for employment, any individual related to the Superintendent within any prohibited degree under the Texas nepotism law, regardless of whether or not the nepotism law applies to the Superintendent.

2.7 Consulting or Personal Services. During the term of this Contract, the Superintendent will not provide any personal services for a financial benefit, engage in any consulting activities for a fee, or engage in any outside employment for any business entity that conducts or solicits business with the District. Any financial benefit received by the Superintendent for performing personal services for any other entity must receive prior Board approval, on a case-by-case basis, in an open meeting. 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 or personal 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. The Board has sole authority to determine whether the consulting or personal

services conflict with the Superintendent's duties to the District.

2.8 Residence. While the Superintendent is employed as Superintendent of Schools of the District, he will reside within the boundaries of the District.

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. The Superintendent agrees to provide such notification in writing within seven (7) calendar days of the event or any shorter period specified in 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 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.

IV. Compensation and Benefits.

4.1 Salary. The District shall provide the Superintendent with an annual salary, 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. This Contract begins before the adoption of the next budget and the annual base salary shall be in the sum of TWO HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$275,000.00).

4.1.1 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.

4.2 Benefits. The District shall provide benefits to the Superintendent as provided 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 these benefits, at the Board's sole discretion.

4.3 Expense Benefits for Travel Outside of District. 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 reasonable actual and incidental costs necessarily incurred by the Superintendent for travel of more than a fifty (50) mile radius from the District Administration Building located at, 710 S. Cedar Ridge Drive, Duncanville, TX 75137.; such 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 and District policies.

4.4 Automobile Allowance. The District shall provide the Superintendent with an automobile allowance in the sum of FIVE HUNDRED DOLLARS AND NO/100 (\$500.00) per month. This allowance is paid in lieu of mileage expense reimbursement for the Superintendent's business travel in his personal vehicle to destinations within a fifty (50) mile radius from the District Administration Building located at, 710 S. Cedar Ridge Drive, Duncanville, TX 75137.

4.4 Insurance Benefits. The District shall pay the premiums for health, hospitalization, and dental insurance for the Superintendent pursuant to the group health plan provided by the District for its twelve-month administrative employees.

4.6 Vacation, Holidays, and Leave Benefits. The Superintendent may take, at the Superintendent's choice, ten (10) days of vacation authorized by policies adopted by the Board for administrative employees 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 provided by Board policies for administrative employees on twelve-month contracts. The Superintendent is hereby granted the same sick and personal leave benefits as authorized by Board policies for administrative employees on twelve-month contracts. The District shall pay the Superintendent for all accrued, unused local leave days upon separation of Superintendent's employment with the District, up to a maximum of thirty-five (35) days, in accordance with Board Policy DEC (LOCAL).

4.7 Professional Growth Benefits. 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 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 Board deem appropriate, to attend such seminars, course(s), 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 costs and expenses for such attendance or membership.

4.8 Civic Activities Benefits. 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. The District shall pay to the Superintendent a monthly allowance of TWO HUNDRED AND NO/100 DOLLARS (\$200.00) to be used for Civic activities.

4.9 Telecommunications. In addition to the base compensation reflected in Section 3.1, the Superintendent shall receive a TWO HUNDRED AND NO/100 DOLLAR (\$200.00) allowance per month during the Superintendent's employment with the District to cover the reasonable and necessary costs of telecommunication access such as mobile phone service and internet access. The Superintendent shall maintain a personal account for mobile telephone service and home internet access ("Personal Accounts") and shall not open any home account in the name of the District. The Superintendent shall have total responsibility for payment of his Personal Accounts and the District shall have no obligation or responsibility for payment of the Superintendent's Personal Accounts other than the monthly payment to the Superintendent of the telecommunications allowance state herein.

4.10 Annuity. The District shall make contributions of Fifteen Thousand and no/100 Dollars (\$15,000.00) per year to a qualified annuity of the Board's choice (based on the recommendation of the Superintendent), for the benefit of the Superintendent. The Superintendent shall become vested in the annuity account at a rate of twenty percent (20%) per year, with a result that at the end of five (5) years, the Superintendent shall have full ownership of the account. Vesting computations shall begin on April 4, 2016. Any unvested fund in the account will revert to the District if the superintendent ceases to be employed by the District in the capacity of Superintendent.

V. Superintendent Evaluation, Board Meetings, Complaints, Indemnification, Outside Employment and Residence.

5.1 Superintendent Evaluation.

5.1.1 Development of Goals. The Superintendent shall submit to the Board a preliminary list of 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 list of 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 or upon recommendation of the Superintendent and approval of the Board. 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.

5.1.2 Time and Basis of Evaluation. The Board shall evaluate and assess in writing the performance of the Superintendent at least once each contract 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 description.

5.1.3 Confidentiality. Except as otherwise provided by law, the evaluation of the

Superintendent shall at all times be conducted in executive session of the Board and shall be considered confidential. Nothing herein shall prohibit the Board or the Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel.

5.1.4 Evaluation Format and Procedure. The evaluation format and procedure shall be in accordance with the Board's policies and state and federal law. In the event that 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. 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.

5.2 Indemnification. The District shall indemnify, defend, and hold the Superintendent harmless regarding any and all claims, demands, suits, duties, actions, judgements or other legal proceedings brought against the Superintendent, or damages incurred by the Superintendent, including expenses, court costs and reasonable attorney's fees, in his individual or official capacity for any act or failure to act within the normal course and scope of his duties or employment as Superintendent of the District, to the extent and to the limits permitted by law. This paragraph does not apply if the Superintendent is found by a court or tribunal of competent jurisdiction to have materially breached this Contract, to have acted with gross negligence or with intent to violate a person's clearly established legal rights, or to have engaged in official misconduct or criminal conduct. The District may, at its discretion, fulfill its obligation under this paragraph by purchasing appropriate 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 and the Superintendent shall work cooperatively to select the Superintendent's legal counsel by agreement if such legal counsel is not also the District's legal counsel. Under any such contract of insurance the Superintendent's right to agree to legal counsel provided for the Superintendent will depend on the terms of the applicable insurance contract. No individual member of the Board shall be personally liable for indemnifying and defending the Superintendent under this paragraph. The District's obligation under this paragraph shall survive the termination of this Contract for qualifying acts or failures to act occurring during the term of this Contract or any extension thereof.

5.3.1 The Board shall not be required to pay any costs of any legal proceedings in the event the Board and Superintendent are adverse to each other in any proceedings.

5.3.2 The Superintendent shall fully 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 shall continue after any termination of the Contract for a period of four (4) years.

VI. Termination, Nonrenewal, Suspension, Resignation of Contract.

6.1 Non-Renewal. The Board may non-renew this Contract in conformance with the terms of Subchapter E, §21.201, et seq., Texas Education Code. In the event the Board does not renew this Contract, the Superintendent shall be afforded all the rights set forth in the Board's policies and state and federal law.

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 defined in Section 6.5 and determined by the Board.

6.3 Termination by 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 Termination by Retirement or Death. This Contract shall be terminated upon the retirement or death of the Superintendent.

6.5 Dismissal for Good Cause. The Board may dismiss the Superintendent during the term of this Contract for good cause as that term is applied under Texas law, provided that the Superintendent shall be provided all procedural and substantive rights as set forth in the Board's policies and applicable state and federal law. If the Superintendent chooses to engage the services of legal counsel to represent him in any such manner, he shall pay the costs thereof. The term "good cause" is defined as follows:

6.5.1 Failure to fulfill duties or responsibilities as set forth under the terms and conditions of this Contract;

6.5.2 Incompetence or inefficiency in the performance of required or assigned duties as documented by evaluations, supplemental memoranda, or other written communication;

6.5.3 Insubordination or failure to comply with lawful written Board directives;

6.5.4 Failure to comply with the Board's policies or the District's administrative regulations;

6.5.5 Neglect of duties;

6.5.6 Drunkenness or current excessive use of alcoholic beverages;

6.5.7 Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Controlled Substances Act;

6.5.8 Conviction of a felony or crime involving more turpitude;

6.5.9 Failure to meet the District's standards of professional conduct;

- 6.5.10** Failure to comply with reasonable District professional development requirements regarding advanced course work or professional development;
- 6.5.11** Disability, not otherwise protected by law, that prevents the Superintendent from performing the essential functions of the job;
- 6.5.12** 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;
- 6.5.13** Assault on a Board member, employee, or student;
- 6.5.14** Knowingly falsifying records or documents related to the District's activities;
- 6.5.15** Misrepresentation of facts to the Board or other District officials in the conduct of the District's business;
- 6.5.16** Failure to maintain or fulfill requirements for Superintendent Certification;
- 6.5.17** Failure to fulfill the requirements of a deficiency plan under an Emergency Permit; or
- 6.5.18** Any other reason constituting "good cause" under Texas 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 Dallas County, Texas, unless otherwise provided by law.
- 7.2 Complete Contract.** This Contract embodies the entire agreement between the parties hereto and cannot be varied except by written agreement of the parties, except as expressly provided 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.
- 7.3 Notice.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained herein.

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

7.5 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 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.

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.

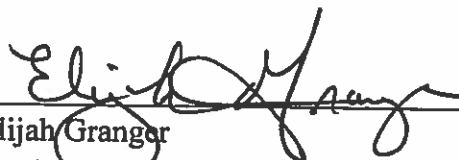
7.8 Notices.

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 regarding this Contract or the Superintendent's employment by hand-delivery, or by certified mail, regular mail, and/or express delivery service to the Superintendent's address of record.

To Board: The Board agrees that the Superintendent may meet any legal obligation to give the Board written notice regarding this Contract or the Superintendent's employment 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.

DUNCANVILLE INDEPENDENT SCHOOL DISTRICT

BY:


Elijah Granger
President, Board of Trustees

Date:

12/19/16

ATTEST:

BY: Carla Fahey
Carla Fahey
Secretary, Board of Trustees

Date: 12/14/2016

BY: Marcell Smith
Dr. Marcell Smith
Superintendent

Date: 12.14.2016