

## **EMPLOYMENT CONTRACT**

**Between**

**THE BOARD OF EDUCATION OF THE ALBUQUERQUE MUNICIPAL SCHOOL DISTRICT NO. 12, BERNALILLO AND SANDOVAL COUNTIES, NEW MEXICO,**

**and**

**SCOTT ELDER**

This Employment Contract (the "Employment Contract") is made and entered into as of this 27<sup>th</sup> day of April 2020. The Board of Education of the Albuquerque Municipal School District No. 12, Bernalillo and Sandoval Counties, New Mexico, (the "Board") and Scott Elder (the "Acting Superintendent") agree:

(1) Term. The Acting Superintendent shall be employed by the Board as Acting Superintendent of the Albuquerque Municipal School District No. 12, Bernalillo and Sandoval Counties, New Mexico for a period beginning as of July 1, 2020, and ending June 30, 2021, or when a permanent Superintendent is hired by the Board, whichever occurs first. In the event the contract is not renewed or extended, or when a permanent Superintendent is employed, the Acting Superintendent shall continue to be employed by the District until at least June 30, 2022, in the administrative capacity as Chief Operations Officer (COO) at the COO yearly salary for which he was previously employed.

(2) Performance of Duties. The Acting Superintendent shall during the term of his employment under the Employment Contract faithfully perform the duties pertaining to his position, administer the duties assigned by the Board including implementing the educational policies and rules of the state public education department (PED) and the Board; administering and supervising the school district; employing, fixing the salaries of, assigning, terminating or discharging all other employees of the school district; preparing the district's budget, based on public schools' recommendations, for review and approval by the Board and the PED; and performing all other duties as required by law, the PED or the Board.

(3) Cancellation of Contract.

a. This Employment Contract may be canceled by the Board for just cause, provided that any such cancellation may be effected only in accordance with New Mexico law and any applicable rules and regulations of the Board and the state Public Education Department. This Employment Contract and the parties hereto are and shall continue to be subject to applicable laws of the state of New Mexico and the rules and regulations of the state Public Education Department and the Board as those laws, rules and regulations may now exist or as they may exist in the future.

b. Because such an occurrence would interfere with the Acting Superintendent's responsibility to be a proper role model for students, should the Acting Superintendent be charged by any law enforcement agency with a felony, which includes as an element of the offense being under the influence of controlled substances and/or alcohol, including charges which do not involve the Acting Superintendent's conduct while involved in any District activity, he will be required to seek assistance from the District's Employee Assistance Program. The Acting Superintendent shall direct the Director of the Employee Assistance Program to give

a confidential report on the status of the Acting Superintendent's condition to the Board President. Following receipt of the confidential report, the Acting Superintendent will be afforded the opportunity to resign from his position prior to the Board considering appropriate disciplinary action, including, but not limited to, discharge or termination. The Acting Superintendent also acknowledges that substance abuse by the Acting Superintendent that interferes with his ability to perform his duties may be just cause for discharge or termination, regardless of whether criminal charges are filed as a result of such abuse.

c. In the event the Board determines that the Acting Superintendent should be discharged, the Acting Superintendent shall be entitled to the compensation set out in NMSA 1978 § 22-10A-29, and no additional amounts beyond those set forth by the New Mexico School Personnel Act (NMSA 1978 §22-10A-1 et seq.) or otherwise required by law shall be paid.

(4) Resignation. The Acting Superintendent may resign and leave the District without penalty at the end of any school year, or sooner through mutual agreement with the Board provided that he gives the Board written notice of his intent to resign at least ninety (90) days prior to the effective date of his resignation, unless the Board agrees that shorter notice may be given.

(5) Required Documentation. The Acting Superintendent shall maintain (a) a proper New Mexico license for the position to be held; (b) such health certificates as may be required by law; and (c) any other documents as may be required by law. The Acting Superintendent shall be reimbursed for any costs incurred in obtaining the required documents. The Acting Superintendent shall be subject to and have complied with all statutory and District background check requirements, including but not limited to fingerprint and federal bureau of investigation records, as of the effective date of this Agreement. Failure to furnish any of the foregoing items at the required time may result in cancellation of this Contract in accordance with the New Mexico statutes and any applicable rules and regulations of the Board and the state Public Education Department. Any material falsification of any of these documents shall be grounds for discharge.

(6) Annual Leave. The Acting Superintendent shall be entitled to twenty-two (22) working days per year as annual leave with pay. Unused annual leave may be accumulated to a total of not more than sixty-six (66) working days, and upon cancellation or termination of this Contract; payment shall be made for up to sixty-six (66) days of accrued but unused annual leave. The Acting Superintendent shall be credited with any annual leave already accrued by her as an employee of the Albuquerque Public Schools as part of that sixty-six (66) day accumulation. The Acting Superintendent shall be entitled to sick leave with pay for a total of not more than 12.6 working days per year. Unused sick leave may be accumulated to a total of not more than two hundred sixty (260) working days, but must be used for legitimate sick leave. The Acting Superintendent shall be credited with any sick leave already accrued by his as an employee of the Albuquerque Public Schools as part of that two hundred sixty (260) day accumulation.

(7) Salary.

a. Subject to the provisions of the applicable approved budget, the Acting Superintendent shall, during the term hereof, receive a salary of Two Hundred Twenty Five Thousand Dollars (\$225,000) per year (the "Initial Base Salary"), payable biweekly in installments of \$8,653.85 less required or authorized withholding and deductions. This salary shall be increased in each school year during the term of this Contract to reflect the average annual raises provided to teachers of the District (the "Adjusted Base Salary"). The Board may, but shall not be required to, increase prospectively, but not retroactively, the salary for any school year governed by the terms of this Contract. Any increase is subject to budgetary approval by the State Public Education Department. Notwithstanding the above, the Board shall further have the authority, for any school year governed by the terms of this Contract and for which a salary increase is mandated if the District meets conditions as specified by the legislature of New Mexico, to implement salary adjustments during the school year in accordance with a salary schedule adopted by the Board in accordance with the legislative guidelines for that year. Any adjustment is subject to budgetary approval by the PED. Additionally, the Board shall have authority to implement any salary increases or other adjustments to benefits and compensation provided for by the Legislature of New Mexico.

b. The Board shall provide the Acting Superintendent with appropriate resources, including an administrative secretary, to fulfill his duties, which resources shall include, but not be limited to, payment of Five Hundred Dollars (\$500.00) per month for dues and expenses related to participation in community organizations. The Acting Superintendent shall be provided a District car (including use of the car to travel to and from work), reimbursement of the cost of independent review of this employment contract, and communication and technology equipment needed to meet and be accountable for Board expectations and goals. However, the Board shall not be required to provide an independent review of the employment contract more than one time in each calendar year of the contract term, or at any time the Board is seeking to discharge the Acting Superintendent, or when litigation is pending between the Acting Superintendent and the Board.

c. The Board shall budget funds for the Acting Superintendent's appropriate resources and reasonable expenses attributable to performing his duties in the annual budget approved by the Board, including and not limited to professional organization dues to belong to education-related organizations and reimbursement of expenses, travel, lodging and food related to travel on Board business and to job-related conferences and seminars. The Acting Superintendent's requests for business expense reimbursements and other payments shall be subject to approval by the Audit Committee of the Board pursuant to District policies.

The provisions set forth above address the minimum contractual requirements of NMSA §22-10A-21 and NMAC 6.66.3.8. The following additional provisions further clarify and define the terms of the Employment Agreement between the parties.

(8) Fringe Benefits. During the term of this Employment Contract, the Acting Superintendent shall, at the expense of the District, participate in fringe benefit programs offered by the District to its employees at the same benefit level as is offered to other District employees,

which benefits include family health, family dental, family vision, disability insurance, and life insurance.

(9) Extension of Term. On or before March 15, 2021, and each March 15 thereafter during the term of this contract and each extension thereof, the Board shall vote to extend or not extend this Employment Contract beyond the term fixed in paragraph (1) for such additional time as the Board, in its discretion, deems appropriate and with such modifications to the Contract as the Board deems appropriate. If the Board offers an extension of this Employment Contract, the Acting Superintendent shall have a period of ten (10) calendar days from receipt of the notice of extension to accept or reject the Contract extension.

(10) Board Responsibilities.

a. The Board shall evaluate the Acting Superintendent at least one time each year, but may conduct such other evaluations as it determines to be advisable. The evaluation under this Employment Contract shall be conducted prior to March 1, 2021. Thereafter an evaluation of the Acting Superintendent shall occur prior to March 1 of each year in which this Employment Contract is in effect and at such other times as are determined by the Board. The Board will evaluate the Acting Superintendent's job performance pursuant to the goals, measures of performance, and communication procedures agreed upon between the Board and the Acting Superintendent, and the Board shall furnish the Acting Superintendent with written results of each evaluation or with the completed evaluation instrument used. The Acting Superintendent may respond in writing to the evaluation not later than fifteen calendar days after receipt of the written results of the evaluation or the completed evaluation instrument. Thereafter, the Board and the Acting Superintendent shall meet in closed session for the purpose of discussing the Acting Superintendent's evaluation and any response by the Acting Superintendent.

b. In the event the evaluation contains a determination that the Acting Superintendent's performance is unsatisfactory in any one or more respects, the areas of unsatisfactory performance shall be described in writing, in reasonable detail, with reference to specific instances, if possible, and shall include or contain recommendations as to remediation of each category of unsatisfactory performance and the time frame within which the Acting Superintendent is to remedy the noted deficiencies. The Board must receive any response from the Acting Superintendent within fifteen (15) calendar days of the receipt by the Acting Superintendent of the Board's written recommendations for remediation of unsatisfactory performance. The Acting Superintendent's response to the Board's evaluation and/or to the Board's written recommendations for remediation of unsatisfactory performance shall, at the request of the Acting Superintendent or Board, become part of the Acting Superintendent's permanent personnel file.

(11) District Goals, Measures, and Communication. Goals, measures of performance, and communication procedures between the Board and the Acting Superintendent will be established by the Board before the beginning of each school year or as soon as is practical after the beginning of a school year during the term of this Employment Contract.

(12) Medical Examinations. In light of the unique nature of the Acting Superintendent's professional duties, the Board, at the Board's expense, may require the Acting Superintendent to complete a thorough medical examination by a physician designated or approved by the Board, annually, or more often, should the Board deem it necessary or appropriate based upon reasonable cause. Each report of a medical examination shall be given directly and exclusively by the licensed examining physician to the Acting Superintendent. The Board President shall, however, be advised in writing by the licensed physician as to the Acting Superintendent's ability to perform his duties or any referral to another healthcare professional for further evaluation or consultation. Such report shall be treated as confidential by the Board.

(13) Liability and Indemnity. To the extent that it may lawfully do so, the District agrees that it shall defend, hold harmless, and indemnify the Acting Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against him in his official capacity, or in his individual capacity while acting as agent and employee of the Board. If, in the good faith opinion of the Acting Superintendent or the Board, a conflict regarding the defense of any claim exists between the Acting Superintendent's legal position and the legal position of the Board, the Acting Superintendent may, with the consent of the Board, which consent shall not be unreasonably withheld, engage counsel, in which case the District shall indemnify the Acting Superintendent for the costs of legal defense to the extent permitted by state law. This provision shall not apply to any legal proceedings in which the Board and the Acting Superintendent are adverse parties.

(14) Physical or Mental Disability. In the event of disability because of illness or other physical or mental incapacity which causes the Acting Superintendent to be unable to perform the essential functions of his position with or without reasonable accommodations as defined by the Americans with Disabilities Act, of his position for a period of ninety (90) days, the Board may end this contract by written notice to the Acting Superintendent after determining that there is no position that he can be reassigned to where he is able to perform the essential functions of such position, with or without reasonable accommodation. The District shall, however, pay monthly installments of salary for an additional ninety (90) days from the date of such notice and the Acting Superintendent will be eligible to receive all accrued and unused annual and sick leave as defined in Paragraph 6 of this Contract in one lump sum payment. The parties may, by mutual agreement, alter or amend the provisions of this paragraph 14.

(15) Non-Renewal. When in the judgment of the Board it determines that the District's best interest would be served by non-renewal of or of not extending this Employment Contract, it may refuse to renew or extend this Employment Contract at the conclusion of its term or any extended term provided that the Board gives written notice of its intent not to renew or extend by March 15 of the school year in which the Employment Contract expires. In the event the contract is not renewed or extended, or when a permanent Superintendent is employed, the Acting Superintendent shall continue to be employed by the District until at least June 30, 2022 in the administrative capacity as Chief Operations Officer (COO) at the COO yearly salary for which he was previously employed.

(16) Independent Counsel. The Acting Superintendent shall have the right to consult independent legal counsel from time to time, as reasonably necessary, to advise his concerning the

applicability or interpretation of this Employment Contract. Reasonable legal fees incurred in such consultation shall be paid by the Board, except that the Board shall not be required to pay legal fees incurred by the Acting Superintendent relating to any termination or discharge of the Acting Superintendent by the Board except as may be ordered by a court or arbitrator.

(17) Arbitration. The parties agree that any dispute that arises out of or is related to this Employment Contract will be submitted to binding arbitration in accordance with New Mexico law. The fees and charges of the arbitration shall be paid by the Board. The arbitration proceedings shall be held in Bernalillo County, New Mexico and shall be binding upon all parties in accordance with applicable law. The arbitration shall follow New Mexico law when addressing legal issues in the arbitration.

(18) Severability Clause. Every provision of this Contract is intended to be severable. If any term, condition, or other provision of the Contract is declared by any court of competent jurisdiction to be invalid, unenforceable or illegal for any reason whatsoever, such invalidity, unenforceability or illegality will not affect the other terms and provisions hereof, unless it frustrates, materially, the purposes of this Contract, which terms and provisions will remain binding and enforceable and to the extent possible all of such other terms and provisions will remain in full force and effect.

(19) Merger. This Employment Contract contains the complete agreement concerning the employment arrangement between the parties, and shall, as of the effective date hereof, supersede all other agreements between the parties, written or oral. The parties hereby stipulate and agree that neither of them has made any representation with respect to the subject matter of this Contract except such representations as are specifically set forth herein and the parties acknowledge that they have relied on their own judgment and independent counsel in entering into this Contract.

(20) Modification. No waiver or modification of this Contract or of any covenant, condition or limitation herein shall be valid unless in writing and duly executed by the parties, and the parties agree that the provisions of this section may not be waived except as provided herein. Reference to rules and regulations in this Contract shall not be deemed to incorporate said rules and regulations by reference so as to modify the terms of this Contract. The custom and practice of the Board in handling discipline, discharge, and termination matters of other employees, including those in administrative positions, shall not be deemed to modify the express terms of this Contract or to create any implied agreement modifying this Contract.

(21) Waiver of Breach. No waiver of either party of any rights under this Contract shall be valid unless set forth in writing signed by that party. The failure of either party to insist upon strict performance of this Employment Contract shall not be construed as a waiver.

(22) Governing Law. This Employment Contract shall be governed and construed in accordance with the laws of the State of New Mexico.

(23) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

BOARD OF EDUCATION OF THE  
ALBUQUERQUE MUNICIPAL SCHOOL  
DISTRICT NO. 12 COUNTIES OF BERNALILLO  
AND SANDOVAL, NEW MEXICO

By: David E Percy  
Dr. David E Percy, President

ATTEST

By: Yolanda Montoya-Cordova  
Yolanda Montoya-Cordova, Secretary

Scott Elder  
Scott Elder, Acting Superintendent