

**Benton Harbor Area Schools
Berrien County, Michigan
Contract of Employment – Superintendent of Schools**

Pursuant to Section 1229(1) of the Revised School Code and in accordance with the action found in the _____, 2016 meeting minutes of the **Board of Education** (“Board”) of the **Benton Harbor Area Schools** (“School District”), the Board employs **Dr. Shelly Mills-Walker** (“Superintendent”) according to the terms and conditions of this Contract of Employment as specifically described below.

1. **Term.** The Superintendent shall be employed for a period of time beginning February 22, 2016 and ending on June 30, 2018.

2. **Contract Extension.** This Contract may be extended either by Board option or operation of law as follows:

- A. The Board, no later than March 30 of each year of the Contract, may extend the Contract for an additional one (1) year period. By exercising this option, the Board shall also establish the annual salary to be paid to the Superintendent for the Contract year included in the extension. All other terms and conditions of the Contract shall remain unchanged unless expressly agreed in writing by the Superintendent, the Board and the State Treasurer.
- B. Unless the Board gives written notice of nonrenewal of this Contract at least ninety (90) days before the Contract’s termination, this Contract will automatically renew for an additional one (1) year period as provided in Section 1229(1) of the Revised School Code. MCL 380.1229(1).

3. **Qualifications.** The Superintendent represents that she possesses and will maintain all certificates, credentials, and qualifications required by law, including Revised School Code Sections 1246 and 1536, applicable administrative regulations, and those required by the Board to serve in the position assigned, including, but not limited to Board Policy.

- A. As a condition of continued employment, the Superintendent also agrees to meet all certification and continuing education requirements for the position assigned, as may be required by law, including applicable administrative regulations.
- B. If at any time the Superintendent fails to maintain all certificates, credentials, continuing education requirements, or qualifications for the assigned administrative position, this Contract shall automatically terminate and the Board shall have no further obligation.
- C. This Contract is conditioned upon the Superintendent establishing her eligibility for employment through successful completion of all legally-required criminal history and background checks, as well the “unprofessional conduct” check.

4. **Duties.** The Superintendent shall faithfully and diligently perform the duties of Superintendent of Schools as required by law and as prescribed by the Board, as well as those duties that may be further established, modified, or amended from time to time by the Board. Consistent with

the Consent Agreement, the Superintendent shall implement the written financial and operating plan for the District. Further, the superintendent shall comply with all provisions of the Consent Agreement.

- A. The Superintendent acknowledges the ultimate authority of the Board as to her duties and agrees to faithfully perform those duties and to diligently implement the Board's policies, regulations, rules, directives, and education programs.
- B. The Superintendent is subject to assignment and transfer to another position of administrative employment in the School District at the Board's discretion, subject to the approval of the State Treasurer.

5. **Performance.** The Superintendent agrees to devote her talents, skills, efforts, and abilities toward competently and proficiently performing all duties and responsibilities of the position assigned, including compliance with the directives of the Board to carry out its policies and educational programs.

- A. The Superintendent agrees to comply with and fulfill all responsibilities and tasks for which she is responsible as required by state and federal law and regulation, as well as by the Board through its policies, regulations, and directives.
- B. The Superintendent pledges to use her best efforts to maintain and improve the quality of School District operations and to constantly promote efficiency in all areas of her responsibility.
- C. The Superintendent agrees that she will diligently and competently discharge her duties on behalf of the School District to enhance its operations and will use her best efforts to maintain and improve the quality of the District's programs and services.

6. **Performance Evaluation.** The Superintendent's job performance shall be evaluated by the Board in writing and at least annually. The evaluation shall comply with Section 1249 of the Revised School Code (or its successor provisions). See MCL 380.1249. During the month of January, the Superintendent shall annually provide a written reminder to the Board of its evaluation obligation.

7. **No Tenure in Position.** In accordance with the Teachers' Tenure Act, the Superintendent agrees that she shall not be deemed to have been granted tenure in the position of Superintendent of Schools or to any other administrative position in the School District to which she may be assigned, other than that of a classroom teacher, should the probationary period required for tenure as a teacher be fulfilled by virtue of this Contract or any employment assignment requiring certification with the School District.

8. **Base Compensation.** The Superintendent shall be paid at an annual (12-month) base salary rate of not less than One Hundred Eighty Thousand Dollars (\$180,000.00) in consideration of her performance of the duties of the position assigned in conformance with the requirements and expectations of the Board and as scheduled by the Board. At any point, the Superintendent is able to add additional pay to an annuity but it will be deducted out of her base pay (not additional compensation).

In addition to the base salary, the Superintendent can receive a one-time payment of up to five thousand dollars (\$5,000) for expenses related to moving. Receipts documenting expenses must be submitted no later than June 30, 2016 to receive reimbursement.

- A. The Superintendent's annual salary shall be paid in equal bi-weekly installments, beginning with the commencement of the Contract year (July 1 - June 30), and pro-rated for the February 22, 2016 start date.
- B. The Superintendent's contractual salary constitutes the total compensation to be paid to the Superintendent for her services, regardless of the hours of service required to perform the job, and no overtime or additional compensation will be paid for such services except as otherwise specifically provided in this Contract.
- C. The Board retains the right to adjust the Superintendent's annual salary during the term of this Contract. Any such salary adjustment shall not reduce the annual salary below the minimum annual salary prescribed above unless otherwise mutually agreed by the Administrator. Any adjustment in salary made during the term of this Contract shall be in the form of a written amendment and, when executed by the Superintendent and the Board, shall become a part of this Contract. Unless expressly stated in writing, any such salary adjustment amendment shall not be considered a new Contract or an extension of the Contract's termination date.
- D. Consistent with Section 1250 of the Revised School Code, the Superintendent's job performance and job accomplishment as evaluated pursuant to Paragraph 4 of this Contract will be a significant factor in determining any adjustment to the Superintendent's compensation. See MCL 380.1250.

9. **Mileage Stipend.** The Superintendent shall receive a mileage stipend (at the IRS rate) for use of her personal vehicle while performing the duties of Superintendent.

10. **Professional Dues.** Subject to authorization by the Board, the School District shall pay the association dues for the Superintendent's membership in local, state, and national professional organizations as appropriately related to the Superintendent's duties. The Board agrees to pay association dues for the Superintendent's membership in the following professional organizations: the Michigan Association of School Administrators (MASA), and the MASA region in which the School District is located. Subject to prior approval by the Board, the School District will pay the Superintendent's costs of memberships in other appropriate professional organizations and Local service clubs.

11. **Professional Development.** The Superintendent may attend professional meetings at the local, state, and national levels as appropriately related to the Superintendent's duties, the expenses of which shall be paid pursuant to Board policy for related registration fees, tuition, travel, lodging, and reasonable meal expense. The Superintendent's attendance at professional meetings at the national level is subject to prior approval by the Board. The Superintendent is pre-authorized to attend the following state annual conference at School District expense: Michigan Association of School Administrators (MASA). Other state or national professional development activities or continuing education expenses require approval by the Board and shall be consistent with Board policy. The Superintendent's time away from the District and her administrative responsibilities shall be limited and reasonable as determined by the Board.

12. **Insurance Programs.** Upon proper application and acceptance for enrollment by the appropriate insurance underwriter, policyholder, or third-party administrator, the Board shall make premium payments on behalf of the Superintendent and her eligible dependents for the same insurance benefits (including long-term disability insurance) or cash in lieu of insurance as provided by the School District to full-time, professional administrative staff (medical, vision, dental, LTD, life insurances), unless otherwise stated in this Contract.

A. Consistent with the Publicly Funded Health Insurance Contribution Act, MCL 15.561 et seq., the Board is limited to the amount which it may pay for the above-referenced insurance programs. The Board will notify the Superintendent of the amount for which she is responsible in excess of the Board-paid benefit plan cost contributions. The Superintendent agrees that the amount of benefit plan cost contributions designated by the Board as the Superintendent's responsibility shall be payroll-deducted from the Superintendent's compensation.

B. The Board shall provide term life insurance in the amount of \$360,000.

13. **Insurance Contracts.** The Board reserves the right to change the identity of the insurance carrier, policyholder, or third-party administrator for any of the coverage for the plans and programs identified in ¶ 14, provided that comparable coverage (as determined by the Board) is maintained during the term of this Contract. Additionally, the Board reserves the right to self-fund any of the benefits listed in ¶ 14.

A. The Board shall not be required to remit premiums for any insurance coverage for the Superintendent and her eligible dependents if enrollment or coverage is denied by the insurance underwriter, policyholder, or third-party administrator.

B. The terms of any contract or policy issued by any insurance company or third-party administrator shall be controlling as to all matters concerning benefits, eligibility, coverage, termination of coverage, and other related matters.

C. The Superintendent is responsible for ensuring the completion of all forms and documents needed to receive the above-described insurance coverage.

D. The Board, by remitting the premium payments required to provide the above-described insurance coverage(s), shall be relieved from all liability with respect to insurance benefits.

14. **Errors and Omissions Insurance.** The Board agrees to pay the premium amount for errors and omissions insurance coverage which includes the Superintendent while engaged in the performance of a governmental function and while the Superintendent is acting within the scope of her employment authority. The policy limit for this insurance shall not be less than Two Million Dollars (\$2,000,000) per occurrence.

A. The terms of the errors and omissions insurance policy shall control the Superintendent's defense and indemnity. The Board's sole obligation shall be limited to the payment of premium amounts for the above errors and omissions coverage.

- B. If such insurance coverage cannot be purchased at a reasonable premium rate, the Board has the right to discontinue said coverage and will notify the Superintendent. In that event, the Board agrees on a case-by-case basis to consider providing legal defense or indemnification to the Superintendent as authorized under MCL 691.1408 and MCL 380.11a(3)(d).

15. **Vacation.** The Superintendent is employed on the basis of fifty-two (52) weeks of work per contract year (July 1 - June 30), as scheduled by the Board. The Superintendent shall be granted vacation time of twenty five (25) days per Contract year, in addition to the holidays recognized by the School District and identified in ¶ 16 below.

- A. The Superintendent shall schedule use of vacation days in a manner to minimize interference with the School District's business and orderly operation. The Superintendent shall not schedule her vacation during a time at which her presence and leadership are critical to the District as determined by the Board President.
- B. Vacation days must be used within the Contract year for which they are made available and shall not accumulate beyond the Contract year.
- C. Upon separation from employment with the District, the Superintendent shall be compensated for a maximum of ten (10) unused vacation days at her per diem rate at the time of separation.

16. **Holidays.** The Superintendent is entitled to the paid holidays listed on the School District's calendar.

17. **Leave.** The Superintendent shall receive 30 sick days to start and 12 days per year (beginning July 1 each year) thereafter. Unused sick days will roll over into the following school year.

In addition, flexibility will be granted from the start of the contract through June 30, 2016 to accommodate family travel during the transition. Up to twelve (12) days can be used and will not count against the allotted prorated vacation days from the beginning of the contract through June 30, 2016. The district understands the need for travel and will approve the days requested to be out of the district during that time period. These 12 days cannot be saved, or carried over after June 30, 2016.

18. **Disability Leave.** In the event of the Superintendent's mental or physical incapacity to perform her duties, she shall be granted an initial leave of ninety (90) work days for purpose of recovery. The Superintendent shall first exhaust any accumulated personal leave and accrued vacation time, with the balance of the ninety (90) work-day period to be unpaid. Health plan premium payments shall be made on behalf of the Administrator during this interval to the extent required by law. Upon using leave under this provision, the Superintendent shall furnish medical certification to the Board (or its designee) as to the necessity for the leave.

- A. If the Board (or designee) has reason to doubt the validity of the medical certification supplied by the Superintendent, a second opinion may be requested, at Board expense.
- B. The Superintendent may request a ninety (90) work-day unpaid leave extension in the event of her physical or mental inability to return to work at the expiration of the initial leave interval, as described above, provided that there is a verified prognosis that the

Superintendent will be able to resume her duties at the end of the extended leave interval. Medical certification shall be supplied by the Superintendent as a condition to any leave extension. Any leave extension for this purpose shall be at the Board's discretion.

- C. If the Superintendent is unable to or does not resume work at the conclusion of a leave taken under this paragraph (or any leave extension), her employment and this Contract may be terminated at the Board's option. However, no such termination shall occur when restoration after leave is required by the Family and Medical Leave Act.
- D. Before any resumption of duty after an unpaid leave of absence for a serious health condition, the Superintendent shall provide to the Board a fitness-for-duty certification from the Superintendent's health care provider. A second opinion may be required by the Board, at its expense, unless the securing of the second opinion is precluded by the Family and Medical Leave Act.

19. **Medical Examination.** The Superintendent shall submit to such medical examinations (including drug or alcohol tests, as well as psychological or psychiatric evaluation), supply such information, and execute such documents as may be required by any underwriter, policyholder, or third-party administrator providing insurance programs specified under this Contract, or as may be directed by the Board to determine the Superintendent's ability to perform the essential job functions required by her assignment, with or without reasonable job accommodation(s).

- A. As a condition precedent to fulfilling the duties and obligations under the Contract, the Superintendent agrees to undergo a comprehensive medical examination and to provide the Board with a physician's verification of her physical ability to perform the essential job functions of her assignment.
- B. Thereafter, upon the Board's request, the Superintendent agrees to undergo an appropriate medical or psychological examination and shall authorize the release of medical information necessary to determine if the Superintendent is able to perform the essential job functions required by her assignment, with or without reasonable job accommodation(s).
- C. Any medical or psychological examination or disclosure of such information required of the Superintendent by the Board shall be job-related and consistent with business necessity.
- D. Any medical or psychological examination under this section shall be at Board expense and shall be conducted by appropriate medical personnel of the Board's choice.
- E. Any information obtained from medical examinations or inquiries shall be confidential. The Superintendent may receive the results of Board-ordered tests and examinations upon written request.

20. **Nonrenewal.** The Board's decision to discontinue or non-renew the Superintendent's employment for any subsequent period in any capacity (other than as a classroom teacher as may be required by the Michigan Teachers' Tenure Act), shall not be deemed a breach of this Contract or a discharge or demotion pursuant to the Michigan Teachers' Tenure Act.

21. **Termination by Board.** The Board is entitled to terminate the Superintendent's employment at any time during the term of this Contract when it determines that the Superintendent has engaged in any act of moral turpitude, misconduct, dishonesty, fraud, insubordination, incompetency, inefficiency, or if the Superintendent materially breaches the terms and conditions of this Contract, or for any other reason that is not arbitrary or capricious subject to the approval of the State Treasurer.

- A. The foregoing standard for termination of this Contract during its term does not apply to nonrenewal of this Contract at the expiration of its term, which decision is discretionary with the Board and shall be governed by Section 1229 of the Revised School Code, MCL 380.1229.
- B. If the Superintendent fails to comply with the Consent Agreement or violates Michigan law, the Board, upon request of the State Treasurer, shall terminate the Superintendent.
- C. If the Board undertakes to dismiss the Superintendent during the term of this Contract, she shall be entitled to written notice of charges and an opportunity for a hearing before the Board. The Superintendent may be accompanied by legal counsel at the hearing, and the cost of such counsel shall be paid by the Superintendent. The Board shall provide the Superintendent with a written decision which identifies the rationale for the Board's determination.
- D. If the Board terminates the Superintendent's employment during the term of this Contract, this Contract shall automatically terminate and the Board shall have no further contractual obligation to the Superintendent.

22. **Arbitration.** If a dispute relating to the Superintendent's termination arises during the term of this Contract, the parties agree to submit such dispute to binding arbitration. Non-renewal and any reasons noted in paragraph 21 shall not be subject to the arbitration process. Selection of the arbitrator and the arbitration proceedings shall be conducted under the National Rules for the Resolution of Employment Disputes, of and administered by, the American Arbitration Association, and shall comply with the Michigan Uniform Arbitration Act, MCL 691.1681 et seq.

- A. The parties intend that this process of dispute resolution shall include all contract and statutory claims advanced by the Superintendent arising from her termination during the term of this Contract, including (but not limited to) claims of unlawful discrimination and all claims for damages or other relief. However, this agreement to arbitrate does not restrict the Superintendent from filing a claim or charge with any state or federal agency (such as the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights), and does not apply to any claims for unemployment compensation or workers' compensation which may be brought by the Superintendent. Instead, this agreement to arbitrate claims applies to those matters which would otherwise be subject to state or federal court proceedings.
- B. This agreement to arbitrate means that the Superintendent is waiving her right to adjudicate discrimination claims in a judicial forum and is instead opting to arbitrate those claims. In any such arbitration proceeding, the Superintendent has the right to representation by counsel of her choice and at her expense, the right to appointment of a neutral arbitrator,

the right to reasonable discovery, and the right to a fair hearing. However, the Superintendent, through this agreement to arbitrate such claims, does not waive any statutory rights or remedies in the context of such arbitration proceedings.

- C. The arbitrator's fee and the costs imposed by the American Arbitration Association shall be shared equally by the Board and the Superintendent, subject to the Superintendent's right to seek to tax such fees as costs against the Board.
- D. Any claim for arbitration under this provision must be filed with the American Arbitration Association, in writing, and served on the Board within thirty (30) days of the effective date of the Superintendent's termination during the term of this Contract. The arbitrator's decision and award shall be final and binding on the parties. Judgment thereon may be entered in the Berrien County Circuit Court pursuant to MCL 691.1681.

23. **Limitations.** The Superintendent agrees that any claim or suit for breach of this Contract or otherwise arising out of her employment with the Board must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or suit. The Superintendent understands that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, but agrees to be bound by this contractual six (6) month limitations period and waives any statute of limitations to the contrary. Should a court of competent jurisdiction determine that this provision allows an unreasonably short period of time to commence a lawsuit, it is the parties' intent that the court will enforce this provision to the extent possible and declare the lawsuit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced.

24. **Entire Agreement.** This Contract contains the entire agreement and understanding between the Board and the Superintendent about the Superintendent's employment. Prior or concurrent representations, promises, contracts, or understandings (written or oral) not contained in this Contract have no effect.

- A. Any prior agreement (written or oral) pertaining to the terms of this Contract is cancelled and superseded by this Contract. Provided, however, that this Contract is voidable under the Revised School Code's provisions pertaining to criminal history/records checks and unprofessional conduct review.
- B. No change or modification of this Contract shall be valid or binding unless it is in writing, approved by official action of the Board as reflected in its minutes, and signed by the Superintendent and the President and Secretary of the Board.
- C. No valid waiver of any provision of this Contract, at any time, shall be deemed a waiver of any other provisions of this Contract at such time or at any other time.

25. **Separability.** Whenever possible, this Contract shall be interpreted in a manner to be effective and valid according to Michigan law. If any provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Contract shall continue in full force and effect without said provision(s).

26. **Governing Law.** This Contract is governed by and shall be interpreted in accord with the laws of the State of Michigan.

27. **Jurisdiction/Venue.** The proper jurisdiction and venue for any action to enforce this Contract or interpret its terms is the Berrien County Circuit Court, State of Michigan.

28. **Authorization.** This Contract is executed on behalf of the School District pursuant to the authority contained in the Board resolution adopted on _____, 2016, the same to be incorporated by reference.

Superintendent

Date: Feb. 8, 2016

By: Shelly Mills-Walker
Dr. Shelly Mills-Walker

Benton Harbor Area Schools
Board of Education

Date: _____, 2016

By: _____
Sharon James
Its President

Date: Feb 11, 2016

By: Lisa Gulley
Lisa Gulley
Its Secretary