



## EXECUTIVE SEARCH SERVICES AGREEMENT

This Executive Search Services Agreement (Agreement) is made by and between the Board of Trustees of the Ector County Independent School District (Board or District), Ector County, Texas, and the Texas Association of School Boards, Inc. (TASB), a nonprofit Texas corporation, through its Executive Search Services (ESS) division, based in Austin, Texas.

### RECITALS

WHEREAS, at a duly held meeting of the Board, TASB was engaged as an independent consultant to assist the Board in a search for a new superintendent for the District; and

WHEREAS, TASB accepted this engagement;

NOW, THEREFORE, pursuant to the authority of Section 11.151 of the Texas Education Code, the general laws of the State of Texas, and District policy, the Board and TASB agree as follows:

#### I.

Performance by TASB. TASB duties and responsibilities under this Agreement are specified in Exhibit A, which is attached hereto and incorporated by reference.

#### II.

Performance by the Board. The Board agrees to work with TASB in the search for the new superintendent for the District. The parties agree that the final decision for selection to the superintendent position is left solely to the Board. In light of this working relationship, the Board agrees to accept the following duties and responsibilities:

A. Promptly inform TASB consultants about all matters relevant to the search, including without limitation matters which must be kept confidential.

B. Adhere to the Search Timeline established under and as provided for in Exhibit A.

C. Promptly determine and assist in arranging a schedule for interviews with candidates.

D. Maintain the confidentiality of the information provided by TASB, including any background check information, whether oral or written and regardless of format (e.g., electronic or paper). If the Board is required to disclose such information pursuant to state or federal law, the Board must notify TASB before disclosing the information so that TASB will have an opportunity to



protect its interest. The obligation imposed under this paragraph shall survive the termination of this Agreement.

E. Unless otherwise agreed in writing, TASB will arrange for a background check of each candidate selected for interview by the Board to be performed by a third-party provider. The District agrees to comply with the Background Check Requirements attached and incorporated into this Agreement as Exhibit B. This background check will not substitute for the criminal history background check the District must conduct under state law. [TASB Legal Services phone line: 800-580-5345.]

F. Each individual member of the Board will execute the Acknowledgment of Confidentiality ("Acknowledgment"), attached hereto as Exhibit C, and abide by the terms of the Acknowledgment.

### III.

Payments. The District will pay TASB a professional services fee in the amount of \$20,000 to provide the services outlined in Exhibit A. This fee is inclusive and covers all of TASB's related out-of-pocket expenses, except as provided herein. TASB will bill the District for the full amount owed under this Agreement within 10 business days after the date the Board votes to hire a candidate or within 10 business days after TASB has fulfilled its duties and responsibilities leading to the selection of a finalist as set forth in Exhibit A. If either party terminates this Agreement, TASB will bill the District the fee due in accordance with Section V and payment is due within 30 days after the District's receipt of the bill, unless a longer period is required by law. Any taxes, FICA, or other deductions which the District is legally required to make from the pay of regular employees will not be withheld from TASB payment(s) since TASB is an independent contractor.

A. If the Board chooses to reimburse a candidate for travel or other expenses, such expenses are not included in the fee payable to TASB under this Agreement. The District is responsible for paying any such expenses.

B. Should the Board elect to conduct a site visit to the school district of a candidate, the travel and lodging expenses will be paid by the District. In the event the Board requests TASB to accompany the Board representative(s) on a site visit and TASB consents, TASB will pay the expenses of the attending TASB search consultant if the site visit is within Texas.

### IV.

Warranty. Should a superintendent hired pursuant to this Agreement leave the District within two years from the date of hire, for any reason other than a family emergency, TASB will perform a one-time search for a replacement. Expenses charged to the District for this one-time search will include all travel to and from the District. This warranty does not apply if, with respect



to the initial search, the Board does not follow the process set out in Exhibit A. The search process will be modified should TASB reopen the search.

V.

Termination. This Agreement may be terminated by either party upon written notice to the other party as follows.

A. If the District terminates this Agreement for any reason, including for convenience, the District will provide TASB with seven days' prior written notice of termination and pay TASB the amount due under the Earned Fees Table set out below.

B. (1) If TASB terminates this Agreement due to the District's material breach of the Agreement, as determined by TASB, the District will be responsible for the amount due under the Earned Fees Table set out below. However, to the extent the breach can be cured, TASB shall give the District at least a 15-day opportunity to cure before resorting to termination.

(2) If TASB terminates this Agreement for any reason other than the District's material breach, TASB will provide the District with seven days' prior written notice of termination and the District will be responsible only for expenses TASB incurred under this Agreement as of the date of termination. Notwithstanding Section III, expenses shall include TASB's out-of-pocket expenses that normally are included in its overall fee.

C. The below Earned Fees Table is based on when termination occurs relative to the performance of key milestones. The District understands and agrees that damages from an early termination are difficult to ascertain because TASB expends considerable time and effort in preparing for and delivering on all aspects of the services provided under this Agreement. Therefore, the percentage of the overall fee due under the Earned Fees Table constitutes liquidated damages and not a penalty. Moreover, the District remains responsible for paying any expenses incurred that are otherwise not included in the TASB fee (see Section III). The District will pay the amount due within 30 days of receipt of TASB's bill unless a longer period is required by law.

<b>Performance Milestone</b>	<b>Amount due TASB</b>
1. After Agreement Execution	20% of fee
2. After Planning Session	30% of fee
3. After Community Profile Session	40% of fee
4. After Profile Report for Board	50% of fee
5. After Review of Application Session	75% of fee
6. After Preparation for Follow Up Interviews	100% of fee



Note: If the Board votes to engage TASB-ESS but fails to sign the contract, any expenses incurred by TASB, due to the District's request for services, will be remitted to the District for payment.

D. This Agreement is subject to cancellation by either party due to acts of God, riots, strikes, labor difficulties, acts of public authorities, or any other similar condition beyond the control of either party that impedes or frustrates full performance.

VI.

Controlling Law/Venue. This Agreement will be interpreted under, and controlled by, the laws of the State of Texas. Venue shall lie in Travis County, Texas.

VII.

Ownership of Records. TASB is an independent contractor. All records, gathered from persons or entities, other than the District, for purposes of this Agreement, are the sole property of TASB. The Board will not have access to TASB files, correspondence, or other records, including those developed for this search, unless permitted by TASB (it being agreed that permission will not be unreasonably withheld) or as required by law.

VIII.

News/Media. TASB will cooperate with the District as the District coordinates the release of names and biographical information on candidates, in accordance with applicable law.

IX.

Limitation of Liability. To the extent permitted by applicable law, TASB's liability under this Agreement is limited to the fees paid to TASB under this Agreement. TASB shall have no responsibility or liability for any of the following actions by the Board, any member of the Board, or the District: (a) any breach of this Agreement, (b) any violation of applicable law, including the Fair Credit Reporting Act (FCRA), (c) any disclosure of information related to a candidate, or (d) any unlawful or unauthorized use or disclosure of any background check information obtained under this Agreement.

X.

Attorney's Fees. The parties agree that, in the event of a lawsuit relating to this Agreement, the prevailing party is entitled to recover its reasonable and necessary attorney's fees.



XI.

Entire Agreement. This Agreement constitutes the entire agreement between the Board and TASB and supersedes all prior written or oral understandings and agreements. This Agreement may not be modified unless the parties execute a written amendment.

The undersigned represent and warrant that they are duly authorized to sign this Agreement in the capacity stated and have full authority to enter into this Agreement on behalf of and bind their respective entities to its terms and conditions. This Agreement becomes effective the date as of which it is executed by both parties.

**BOARD OF TRUSTEES OF ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT**

BY: \_\_\_\_\_  
President, Board of Trustees

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

**TEXAS ASSOCIATION OF SCHOOL BOARDS, INC.**

BY: \_\_\_\_\_  
George Kazanas  
Division Director  
Executive Search and Field Services

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



## EXHIBIT A: DUTIES AND RESPONSIBILITIES

The following duties and responsibilities supplement those referenced in the parties' Executive Search Services Agreement (Agreement).

A. TASB will perform these tasks in consultation with the District's Board or representatives:

1. Make public announcements of superintendent vacancy.
2. Develop a search timeline (Search Timeline), which may be modified upon the agreement of TASB and the Board.
3. Assist Board in drafting notices of all public meetings.
4. Conduct focus group/community involvement sessions and provide an online survey for community input, which may include the following:
  - a) Board members
  - b) Teachers
  - c) Students
  - d) Central office administrators
  - e) Principals and assistant principals
  - f) Paraprofessionals and auxiliary personnel
  - g) PTA and PTO members
  - h) Business, professional, and civic leaders
  - i) Former board members
  - j) Special interest groups
  - k) Media
5. Assist in reviewing focus group/community input and using it to create desired leadership qualifications and characteristics of new superintendent.
6. Develop qualifications and characteristics.
7. Solicit qualified candidates, as determined by qualifications and characteristics.
8. Screen all applications for completeness.
9. Screen all candidates for minimum qualifications specified by Board.
10. Provide applications and supporting materials for Board's review.

11. Unless otherwise agreed in writing, arrange for background checks of candidates selected for interview by the Board. Background checks may include multiple reports (e.g., National Criminal, Global Watchlist, County Criminal, Statewide Criminal, National Sex Offender, Federal Criminal, Federal Civil, DMV Report, Education Verification, Employment Verification, Social Media Review, Employee Credit Report, and Bankruptcies, Liens and Judgments).
12. Assist Board with the process of evaluating candidates and selecting those to be interviewed.
13. Review interview procedures and meeting agenda for initial interviews.
14. Assist Board in preparing questions for interviewing candidates.
15. Contact candidates and set up schedule for initial interviews.
16. Review questions and procedures for follow-up interviews.
17. Assist in developing procedures for follow-up interviews.
18. Arrange for candidates (and spouses, if requested) to attend follow-up interviews.
19. Assist Board in developing a draft salary and benefit package for new superintendent.
20. Assist in arranging for Board's subcommittee to visit the home district of the candidate of interest, if applicable.
21. Assist Board's subcommittee in reporting to full Board on visit to the home district of the candidate of interest, if applicable.
22. Assist Board in the process for naming finalist(s).
23. Assist Board in announcing selection of lone finalist(s) to media.
24. Assist Board in the process for hiring new superintendent.
25. Confirm results of Board's vote to hire new superintendent.
26. Assist Board in announcing selection of new superintendent to media.
27. Award continuing education credit for Board members' training in interview process.



B. The Board will be responsible for the following:

1. Obtaining any criminal history background check required under state law. Background checks obtained under this Agreement do not fulfill this requirement. TASB will advise each candidate that any employment offer made by District will be conditioned upon the candidate's successful clearance of a criminal history background check. Additionally, TASB will ask each candidate the Board plans to interview to self-report any criminal conviction history, and the candidate will be encouraged to convey information that will help the Board conduct an individualized assessment of any criminal history (e.g., evaluate the nature and gravity of the offense, the time elapsed since the offense, and similar factors).
2. Accepting and adhering to the Search Timeline.

C. This section applies if the search cannot proceed in accordance with the Search Timeline because of a change to the Timeline that has not been agreed to by TASB and the Board as provided for in Section A(2) of this Exhibit A. If and as soon as (but no later than 10 days after) a party has reason to believe that the party will or may not be able to adhere to the Search Timeline, the party will provide the non-delaying party written notice of the delay. If the delay is not cured within 45 days of receipt, or within 45 days of the delay if no notice is given, the non-delaying party may terminate the Agreement in accordance with Section V of the Agreement, and TASB shall be paid in accordance with Section III of the Agreement. Alternatively, the search may be suspended or further delayed for a period and upon such terms as TASB and the District agree in writing.

**Initials: Board \_\_\_\_\_ TASB \_\_\_\_\_**





## EXHIBIT B: BACKGROUND CHECK REQUIREMENTS

For all background checks performed under Section II(E) of the parties' Executive Search Services Agreement (Agreement), the District, including the Board, agrees that it will:

1. not distribute, disclose, sell, give, or trade any background check report, or any information contained in any background check report, to any other party, unless required by law;
2. not utilize any information in violation of any federal or state equal employment opportunity law or regulation;
3. not request any criminal record information prior to the time permitted by applicable law, ordinance, or regulation commonly referred to as "ban-the-box" restrictions;
4. provide a reasonable amount of time (generally not less than five business days) prior to taking any adverse action against the subject of a background check provided under the Agreement, if such action will be based in whole or in part upon the information contained in the background check, and provide notice to TASB of the decision to take action so that TASB can, except as otherwise provided by law, advise the subject of the Board's intent to take adverse action and provide a copy of the background check report to the subject and a description, in writing, of the subject's rights under the Fair Credit Reporting Act (FCRA);
5. after taking adverse action based in whole or in part upon information contained in a background check provided under the Agreement, provide notice to TASB of that action so that TASB can:
  - a. provide notice of such action to the subject of the background check;
  - b. provide the name, address and telephone number of the third-party provider that conducted the background check; and
  - c. inform the subject that he/she is entitled to a free copy of the background check report and has the right to dispute the record through the third-party provider and that the third-party provider is unable to provide the subject with the specific reasons for the adverse action;
6. comply with the FCRA and applicable state laws with respect to all background check reports and follow the requirements of the Driver's Privacy Protection Act (DPPA) and the applicable state laws implementing the DPPA with respect to all motor vehicle reports; and



7. maintain documentation showing compliance with this Exhibit B for a period of two years or during the employment of the subject of the background check, whichever is longer.

Initials: Board \_\_\_\_\_ TASB \_\_\_\_\_



**EXHIBIT C: ACKNOWLEDGMENT OF CONFIDENTIALITY**

**Ector County Independent School District**

***This document should be signed by each member of the Board of Trustees and any other person who will have access to confidential information.***

We understand and agree that, subject to Texas and federal law, the information provided by the Texas Association of School Boards, Inc. (TASB) through Executive Search Services is confidential, and we are obligated to protect the confidentiality of the information, whether oral or written, and regardless of the format (e.g., electronic or paper). We will ensure that the information is kept out of view from those who are not authorized to see the information, and we will only use the information in an appropriate manner as authorized by the District’s agreement with TASB or as authorized by law.

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Date

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Signature

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Printed Name

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