

**FLAGSTAFF UNIFIED SCHOOL DISTRICT No.1  
COCONINO COUNTY, ARIZONA**

**Flagstaff Unified School District No. 1**

**Superintendent Employment  
Agreement**

THIS SUPERINTENDENT EMPLOYMENT AGREEMENT ("Agreement") is made and entered into by and between the Governing Board (the "Board" or "Governing Board") of the Flagstaff Unified School District No. 1, a political subdivision of the State of Arizona (the "District") and Michael Penca ("Superintendent").

WHEREAS, the Governing Board desires to provide for the orderly administration of the District's employees and schools, to maintain and continuously improve the quality of the District's overall education program, and to employ Superintendent to fulfill these and other functions as more specifically set forth herein; and

WHEREAS, Superintendent desires to perform such functions upon the terms and conditions more fully set forth herein;

NOW THEREFORE, the Governing Board and Superintendent, in consideration of the foregoing, agree as follows:

**Article I. Term.**

The Board employs Superintendent, and Superintendent accepts employment as Superintendent, a full-time position, for an initial term of three consecutive fiscal years: (a) July 1, 2024 to June 30, 2025; and (b) July 1, 2025 to June 30, 2026; and (c) July 1, 2026 to June 30, 2027. The Board, at its sole option and upon acceptance by Superintendent, may extend the term of Superintendent's employment under this Agreement for one additional fiscal year (commencing on July 1, 2027, and ending June 30, 2028) by providing written notice to Superintendent on or before December 15, 2026 that it is exercising such option.

**Article II. Professional Certification and Responsibilities**

**Section 2.01 Certification**

Superintendent shall hold and maintain throughout the term(s) of his employment under this Agreement a valid Administrative Certificate issued by the State of Arizona and a valid fingerprint clearance card, which shall be on file in the District at all times. All offers of employment, including continuing employment, are contingent on a successful fingerprint clearance check and compliance with this paragraph.

**Section 2.02 Superintendent's Duties and Responsibilities**

Superintendent shall be the District's Chief Executive Officer. Superintendent shall be responsible to the Board and shall be responsible for the general administration of the school system.

Superintendent's duties and responsibilities shall include, but not limited to the following:

- (a) Those set forth in Board Policy 2-101, "Duties of the Superintendent", as the Policy currently exists and as may be revised during the terms of Superintendent's employment under this Agreement;
- (b) In cooperation with the Board, Superintendent will be responsible for the implementation of the mission, vision and the educational goals of the District;
- (c) The development, implementation, and evaluation of a strategic plan for the District that is consistent with the District's educational goals and that optimizes student learning, facilities use, and expenditures. Superintendent shall develop the strategic plan in consultation with the Board; and
- (d) The performance of such other reasonable duties or tasks as the Board may assign or delegate to Superintendent from time to time.

#### Section 2.03 Work Calendar

Superintendent agrees to devote his time, skill, labor, and attention to the duties of Superintendent of the School district and shall follow the established work schedule of other administrators in the District.

### Article III. Compensation

#### Section 3.01 Annual Base Salary

- (a) During the 2024-2025 fiscal year, the District agrees to pay the Superintendent a minimum guaranteed annual base salary of \$161,262.00. The Board may exercise its discretion to adjust the Superintendent's annual base salary upward during the first fiscal year of this Agreement, up to an additional 5%, taking into account increases approved (if any) for other employees;
- (b) During the second and third fiscal years of Superintendent's employment under this Contract, the Board shall adjust Superintendent's annual base salary no less than 1% and no more than 5%, taking into consideration increases approved (if any) for other employees. Any adjustment in Superintendent's annual base salary shall not extend the length of his employment under this Agreement. Superintendent's annual base salary shall be payable in regular installments at the same time and in the same manner as other 12-month salaried employees of the District; and
- (c) If Superintendent earns a doctorate degree during the term of this Agreement, Superintendent shall receive a one-time bonus of \$3,000.00, to be added to his annual base salary during the fiscal year the doctorate degree is awarded.

#### Section 3.02 Pay for Performance

In addition to the annual base salary set forth above, the parties agree in accordance with A.R.S. § 15-341(A)(39) that during each fiscal year of his employment under this Agreement, the Superintendent also will be eligible to receive \$10,000 designated as "performance pay". The parties acknowledge that section 15-341(A)(39) authorizes school district governing boards to develop and approve their own procedures for the determination of such performance pay, and that the Board, in accordance with that authority, has developed and has approved

contemporaneously with this Agreement the Performance Pay Plan attached to this Agreement and incorporated herein by reference as Exhibit A, which plan shall govern the award of "performance pay" under this Agreement.

#### **Article IV. Benefits**

##### **Section 4.01 Medical, Dental, Vision**

The District shall provide Superintendent, at District expense, with the medical, dental, and vision insurance benefits provided to other eligible District employees under the District's group health insurance plan in effect during the term of his employment under this Agreement.

##### **Section 4.02 Life Insurance**

The District shall provide Superintendent, at District expense, with the same life insurance benefit that it provides to other eligible District administrators under the District's insurance plan in effect during the term his employment under this Agreement (which benefit presently provides for an amount equal to three times Superintendent's annual base salary).

##### **Section 4.03 Vacation, Personal Leave, Sick Leave, and Holiday**

- (a) Vacation: Superintendent shall be entitled to 30 days of vacation time during each fiscal year of his employment under this Agreement, exclusive of legal holidays. Vacation time may be accumulated during the tenure of Superintendent's employment under this Agreement. At the option of Superintendent, up to 10 earned and unused vacation days may be paid out by the District at any time during each fiscal year during his employment under this Agreement. Upon his resignation, retirement, or nonrenewal (but not his termination for cause), Superintendent shall be entitled to be paid his then per diem rate of pay for all earned but unused vacation days up to a maximum of 45 days. Should Superintendent be renewed for additional terms of employment at the expiration of his employment under this Agreement, Superintendent may carry forward up to 15 days and to be paid at the per diem rate of pay for all other earned and unused vacation days to a maximum of 45 days.
- (b) Personal Leave: Superintendent shall be entitled to 12 days of personal leave time during each fiscal year of his employment under this Agreement as provided to other District administrators. Use and accrual of personal leave will follow District policies and procedures.
- (c) Sick Leave: Superintendent shall be entitled to sick leave as outlined and described in A.R.S. §23-373. Superintendent will accrue at the rate of one (1) hour per thirty (30) hours worked. Superintendent shall not be entitled to accrue or use more than forty (40) hours of sick leave per year. The maximum accrual bank of sick leave time will be eighty (80) hours.
- (d) Holiday: Superintendent shall be entitled to the same holidays as other professional staff members.

##### **Section 4.04 Cellular Phone Allowance**

In order to accomplish his work under this Agreement, Superintendent is expected to have a personal cellular phone available for school business. The District therefore agrees to provide Superintendent with a monthly cellular phone allowance of \$120.00 per month during each fiscal year of this Agreement, covering all District obligations for Superintendent's use of his personal cellular phone for District business. The cellular phone allowance shall be paid in equal monthly

installments on the same schedule Superintendent receives his base salary from the District.

#### Section 4.05 Auto Allowance

In order to accomplish his work under this Agreement, Superintendent is expected to have a personal automobile available for school business. The District agrees to provide an automobile allowance of \$500.00 per month during each fiscal year of his employment under this Agreement, covering all District obligations for Superintendent's personal and official automobile use, effective through June 30, 2023 or until termination of his employment under this Agreement, whichever shall occur first. Superintendent shall at all times be responsible for all expenses relating to the good working order and operation of his automobile, including lease cost. if applicable, maintenance, gas, oil, and liability insurance coverage of not less than \$300,000.00 per occurrence, on which the District and Board shall also be named as additional insured parties. A Certificate of Insurance shall be onfile with the District throughout the full term of his employment under this Agreement. Such insurance shall be non-cancelable except upon 30 days' written notice from the carrier to the District and Board President. The automobile allowance shall be paid in equal monthly installments on the same schedule Superintendent receives his base salary from the District.

#### Section 4.06 Tax Deferred Annuity Election

In accordance with applicable federal and state laws, the District shall provide Superintendent with an annual payment in an amount equal to \$5,000.00, to be designated by Superintendent for payment into a tax deferred annuity program or other tax deferred program of Superintendent's choice. Superintendent will not have the option of receiving it as cash in lieu of a contribution to the tax deferred annuity plan.

#### Section 4.07 Professional Liability

The Board agrees that it shall provide indemnification and liability insurance for Superintendent under the District's insurance policy, subject to all the terms, conditions, and limitations of that policy.

#### Section 4.08 Incidental Food and Beverage

As a de minimus fringe benefit and to the extent appropriate for the occasion, the District may provide incidental food and beverages to Superintendent at Board meetings, schools sponsored community events, mandatory staff meetings or events attended by Superintendent.

#### Section 4.09 General

Superintendent shall be entitled to the same benefits applicable to other 12-month certified administrators unless this Agreement provides different or additional benefits.

### **Article V. Professional Memberships, Professional Development, and Travel**

#### Section 5.01 Professional Memberships

Superintendent shall, at the District's expense, maintain annual memberships in organizations that are relevant to the District. A fund of \$2,000.00 shall be established in the District's budget to cover such activities. Superintendent may, during the term of his employment under this Agreement, maintain memberships in such other civic, educational, and professional organizations as Superintendent and the Governing Board mutually agree will benefit Superintendent and the District

Membership fees and reasonable costs of participation, as pre-approved by the Board, shall be borne by the District. At the end of each fiscal year, all unused funds shall revert to the District budget. Superintendent shall ensure that the District maintain a record log of all expenditures for Board review.

#### Section 5.02 Professional Development

Superintendent shall continue his professional development and may participate in relevant learning experiences, including attending professional meetings at the local, state, and national levels. The Board shall establish a fund of \$5,000.00 annually to pay for such professional development activities. The Board, in its sole discretion, may approve the expenditure of additional funds for Superintendent's professional development activities. Superintendent shall seek prior Board approval regarding attendance at any out of state professional development meetings. At the end of each fiscal year, all unused funds shall revert to the District budget. Superintendent shall ensure that the District maintains a record log of all such expenditures for Board review.

#### Section 5.03 Travel

If Superintendent travels to conferences, state, or regional meetings upon the Board's request and/or with the Governing Board's permission, the District shall pay for appropriate travel-related expenses, pursuant to applicable Board Policies, Administrative Regulations, and state law. The District shall pay or reimburse Superintendent for other lawful, reasonable, and necessary travel and business expenses incurred by Superintendent in the performance of his duties under this Agreement. The District's reimbursement of expenses under this Section shall be only for job-related expenses. Superintendent shall comply with all procedures and documentation requirements in accordance with Governing Board Policies, Administrative Regulations, and state law.

### Article VI. Termination of Employment

#### Section 6.01 Discharge for Cause

Throughout the term of his employment under this Agreement, Superintendent shall be subject to discharge for good and just cause, with notice of termination specifying such cause to be given to Superintendent in writing. In the event of a discharge for cause, Superintendent shall have the right to request a hearing by so advising the Board in accordance with the rights outlined in A.R.S. §15-341 (A) and the applicable District policies. Such hearing shall take place according to the procedures provided for under A.R.S. §15-541. The Board may, in its discretion, suspend Superintendent from his duties, with pay and all other employment benefits, upon serving Superintendent with notice of its intent to discharge him for cause.

For purposes of this Section, the term – “good and just cause” includes, but is not limited to, (a) failure to perform in accordance with the terms and or conditions of this Agreement; (b) incompetence: which shall include without limitation demonstrated and repeated deficiencies in Superintendent's administrative skills; (c) neglect of duty; (d) unprofessional conduct; (e) insubordination; (f) unethical or other conduct that tends to injure the credibility of the Board, the District, its schools, its employees and/or students; (g) any conviction on felony charges, or on misdemeanor charges involving fraud, deceit or moral turpitude; (h) physical or mental incapacity, subject to the provisions of Section 6.02; (i) failure or inability to provide acceptable evidence of appropriate professional certification; (j) violation of Governing Board Policies or federal or state

laws; (k) any misrepresentation of Superintendent's credentials; or (l) any conduct that materially interferes with the continued or efficient performance of Superintendent's duties hereunder.

#### Section 6.02 Incapacity of Superintendent

Should Superintendent be unable to perform any or all of his duties by reason of illness, Accident, or other causes beyond his control, and such disability exists for a cumulative period of more than 3 months during any 12-month period during the term of his employment under this Agreement, and if the Board determines at its sole discretion that such disability is of such a nature that it materially impairs Superintendent's ability to perform his duties hereunder, then the Board may, at its option, terminate his employment under this Agreement upon 60 days' prior written notice to Superintendent. In no event shall such termination hinder or impair Superintendent's ability to collect any disability benefits to which he would otherwise be entitled to the disability in question.

#### Section 6.03 Unilateral Termination by Governing Board

The Board may, at its option, for any or no reason, and upon a minimum of 90 days' prior written notice to Superintendent, unilaterally terminate his employment under this Agreement. Because Superintendent's damages for such a termination would be extremely difficult to calculate, Board and Superintendent hereby agree that upon any such termination, the District shall pay to Superintendent a sum equal to the present value of all accrued and unpaid annual base salary, which Superintendent would have earned under this Agreement from the actual date of the term of his employment then in effect. Superintendent shall also be entitled to receive the present value of leave days, consistent with the provisions of Section 4.03 of this Agreement that have accrued up through the date of the termination. Superintendent shall further be entitled to payment of earned but unpaid performance pays, but only for the fiscal year in which he is terminated under this provision. Superintendent understands and agrees that his acceptance of monies paid pursuant to this paragraph shall constitute his sole legal remedy relative to all compensation and benefits to which he might otherwise have been entitled under this Agreement. Superintendent agrees that as a condition precedent to receiving the Severance Payment, Superintendent shall execute a Severance Agreement acceptable to the Board, which shall include Superintendent's: (i) full release of the Board, District, their agents and employees from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of Superintendent's employment or termination of employment with District; and (ii) agreement not to initiate or cause to be initiated any lawsuit, claim, grievance proceeding, or investigation of any kind, under any contract, law, or regulation, pertaining to his employment with District up to the date of the signing of the Severance Agreement. Upon signing the Severance Agreement, the Board, the District, and its agents will release Superintendent from all claims arising out of Superintendent's employment with the District.

#### Section 6.04 Mutual Agreement

This Agreement shall terminate upon written agreement between Superintendent and the Board.

#### Section 6.05 Superintendent's Resignation

If Superintendent desires to terminate his employment under this Agreement, Superintendent shall provide the Board with written notice of the same at least 90 days prior to Superintendent's intended termination date. If Superintendent accepts employment for any other employer without obtaining the advanced written consent of the Board, Superintendent will be deemed to have

resigned from all District employment effective as of either the date the Superintendent accepted said employment or the date the Superintendent began said employment whichever is earlier. If the Agreement is terminated under this paragraph, Superintendent shall receive only his prorated annual base salary earned to the date of termination of employment and shall forfeit all rights to other compensation and benefits under this Agreement for the remainder of its term, including but not limited to payout of any accrued and unused leave. with the exception of eligibility for election of benefits available under COBRA.

#### **Section 6.06     Death of Superintendent**

This Agreement shall automatically and without further action by the Board or Superintendent's estate, terminate upon the death of the Superintendent.

#### **Section 6.07     Conflict of Interest**

This Agreement may be terminated in accordance with A.R.S. §38-511, the terms of which are incorporated herein by reference.

### **Article VII.       Severability**

In the event any covenant, term, condition, or provision of this Agreement shall be deemed by a court of competent jurisdiction to be illegal, void, or against public policy, such provision shall be severed from this Agreement and the remaining terms, conditions, and provisions hereof shall remain in full force and effect to the extent permitted by law.

### **Article VIII.       Arbitration of Disputes Required (in lieu of litigation)**

#### **Section 8.01**

The parties agree to submit all disputes, claims, or controversies that exist or that may arise between them, including without limitation all disputes, claims, or controversies that may arise out of Superintendent's employment with or separation from employment with the District, and including without limitation all claims that the Board and/or any of its agents engaged in conduct prohibited on any basis under any federal, state, or local statute, ordinance, regulation, rule of decision, or principle of common law, to binding arbitration by a single arbitrator in the City of Flagstaff, Arizona, utilizing the procedures set forth in Rules 75, 76(a), and 76(b) of the Arizona Rules of Civil Procedure, or such other procedures as the parties may agree upon. The arbitrator, and not any federal, state, or local court or agency, will have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement, including without limitation any claim that all or any part of this Agreement is void or voidable. Judgment upon the arbitration award will be final, binding, and conclusive upon the parties and may be entered in any court having jurisdiction.

#### **Section 8.02**

By this provision, the parties do not intend to waive any of the substantive remedies to which they may be entitled under applicable law, but only to specify certain procedures for the prompt resolution of all disputes, claims, or controversies.

#### **Section 8.03**

This Agreement does not constitute an agreement by either party to arbitrate any Claims in any purported class, representative, or consolidated proceeding. Superintendent agrees to arbitrate and process any and all such disputes, claims, or controversies in his individual capacity only; Superintendent hereby waives any and all rights that he may have to bring, participate in, or be a party to any action or arbitration against the Board in any forum that is commenced or that proceeds on any class, collective, representative, or similar basis.

#### Section 8.04

The parties will divide responsibility for the arbitrator's fees and costs equally between them; provided, however, that if Superintendent demonstrates to the arbitrator that being required to pay such amount would subject him to such financial hardship as to preclude him from effectively vindicating his claims or defenses in the arbitral forum, he will only be responsible for such portion of the arbitrator's fees and costs that the arbitrator determines will not so preclude the effective vindication in arbitration of Superintendent's claims or defenses.

#### Section 8.05

By this provision, the parties knowingly and voluntarily waive any right that either of them otherwise may have to a jury trial on any dispute, claim, or controversy that exists or that may ever arise between them.

### **Article IX. Notices, Dispute and Applicable Law**

#### Section 9.01 Governing Law

This Agreement will be construed in accord with, and any dispute or controversy arising from any breach or asserted breach of this Agreement will be governed by, the laws of the State of Arizona, without reference to the choice of law principles thereof. The parties agree that the proper and exclusive forum for any action or arbitration arising out of or relating to this Agreement or arising out of or relating to Superintendent's employment with the District will be Coconino County, Arizona, and that any such action or arbitration will be brought only in Coconino County, Arizona. Superintendent consents to the exercise of personal jurisdiction in any such action or arbitration by the courts or arbitrators of Coconino County, Arizona.

#### Section 9.02 Construction

This Agreement has been negotiated by and between the Governing Board and Superintendent in arms-length negotiations and both parties are responsible for the drafting of this Agreement. Both parties have reviewed this Agreement with appropriate legal counsel, or have waived their right to do so, and the parties hereby mutually and irrevocably agree that this Agreement shall be construed neither for nor against either party, but in accordance with the plain language and intent hereof. Headings are used herein for convenience only and shall play no part in the construction of any provision of this Agreement.

#### Section 9.03 Attorney's Fees

Each party is responsible for its own attorneys' fees in the event of any dispute between the District and Superintendent arising under or in relation to this Agreement.

#### Section 9.04 Waiver



The waiver by either party of any covenant, term, condition, or provision of this Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent contravention or breach of same or any other covenant, term, condition, or provision herein contained. No covenant, term, condition, or provision of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing, signed by both parties and properly approved by the Governing Board.

#### Section 9.05 Notices

Any notice required to be given hereunder shall be hand-delivered or sent by United States certified mail, return receipt requested, and addressed to: (a) in the case of Superintendent, the District Office, or upon his written request, to his home address as on file in the District office; and (b) in the case of the Governing Board, the individual Board Members' respective home addresses.

#### Section 9.06 Time

Time is of the essence of this Agreement and every term and condition hereof.

#### Section 9.07 Non-Assignability

This Agreement is an Agreement for services and may not be assigned by either party, nor shall the Superintendent's duties hereunder be performed by any other person without the prior written consent and proper approval of the Board, which consent and approval the Board may elect to grant or deny in its sole, absolute, and unfettered discretion.

#### Section 9.08 Integration and Amendment

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be valid or binding upon either party unless such amendment or modification is in writing, duly executed by the parties, and properly approved by the Board.

#### Section 9.09 Non-Discrimination

The parties agree to comply with all provisions of applicable federal, state, and local laws relating to non-discrimination and equal employment opportunity.

The Governing Board approved this Superintendent Employment Agreement at a properly noticed public meeting of this Governing Board held on September 26, 2023. By its approval of this Agreement, the

Governing Board has authorized the Board President to sign this Agreement on behalf of the Governing Board. In witness thereof, the parties indicate their agreement to the above terms by affixing their signatures below.

**SUPERINTENDENT:**

By: \_\_\_\_\_  
Michael A. Penca, Superintendent

**FLAGSTAFF UNIFIED SCHOOL DISTRICT NO. 1:**

By: \_\_\_\_\_  
Dorothy Denetsosie Gishie, Board President

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