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Board Cover Memorandum

To Board of Education

From Gary Yee, Board President
Sam Davis, Board Vice President

Meeting Date June 22, 2022

Subject Resolution No. 2122-0094 - Implementation of the Superintendent's Sabbatical

Ask of the Board Adoption by the Board of Education of Resolution No. 2122-0094 - Implementation of the Superintendent's Sabbatical

Background On August 11, 2022, the Board of Education ("Board") approved a new employment agreement ("Agreement") with Dr. Kyla Johnson-Trammell to serve as Superintendent of OUSD through June 30, 2025.

Among other things, the Agreement recognizes the demands of leading the District through the COVID pandemic and includes a provision for a paid sabbatical. The initial timeline for the sabbatical was April to June 2022.

Discussion The Board and the Superintendent both seek to change the dates of the sabbatical to August 22, 2022 through November 25, 2022. Amendment No. 1 to the Agreement would codify this change and the proposed Resolution would approve and adopt this Amendment. Additionally, the proposed Resolution would appoint Dr. Sondra Aguilera as the Acting Superintendent during the sabbatical.

Fiscal Impact While there is no direct fiscal impact due to the contract amendment, there is an additional fiscal impact due to the appointment of Dr. Aguilera as Acting Superintendent. The increase compensation for Dr. Aguilera to serve as Acting Superintendent during the Dr. Johnson-Trammell's sabbatical is estimated to be \$31,000. It will be paid for by the General Fund.

Attachment

- Resolution No. 2122-0094 - Implementation of the Superintendent's Sabbatical
- Amendment No. 1 to Employment Agreement for Services of Kyla Johnson-Trammell as District Superintendent
- Employment Agreement for Services of Kyla Johnson-Trammell as District Superintendent

**RESOLUTION OF THE
BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2122-0094

Implementation of the Superintendent's Sabbatical

WHEREAS, in recognition of the Superintendent's extremely demanding work schedule, during which she is required by job duties to work most evenings, weekends and holidays, the Board of Education ("Board") wishes to and did include in its Employment Agreement ("Employment Agreement") the option for the Superintendent to take a sabbatical leave;

WHEREAS, the sabbatical leave was originally scheduled to be April 1, 2022 through June 30, 2022;

WHEREAS, the Board and the Superintendent seek to change the dates of the sabbatical leave to August 22, 2022 through November 25, 2022;

WHEREAS, the Superintendent is proposing that the current Chief Academic Officer, Dr. Sondra Aguilera, serve as Acting Superintendent during the sabbatical leave;

WHEREAS, the Superintendent has established and will put into place other changes necessary to ensure the continued smooth operation of the District during the sabbatical leave.

NOW, THEREFORE, BE IT RESOLVED, the Board hereby approves and adopts Amendment No. 1 to the Employment Agreement for Services of Kyla Johnson-Trammell as District Superintendent, attached hereto as Attachment A and incorporated herein by reference;

BE IT FURTHER RESOLVED, the Board hereby appoints Dr. Sondra Aguilera as Acting Superintendent during the sabbatical leave as follows:

- Dr. Aguilera's salary shall be increased to that of the Superintendent but there shall be no other changes to Dr. Aguilera's current level of compensation,
- Dr. Aguilera shall perform all of the duties and shall have all of the responsibilities of the Superintendent as provided for in law and in Section 4 (Duties and Responsibilities) the Employment Agreement, and
- Section 5 (Board/Superintendent Communications), Section 18 (Selection of Employees), and Section 25 (Indemnification of Superintendent) of the Employment Agreement shall apply.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 22nd day of June, 2022, by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Gary Yee

NOES: VanCedric Williams, Mike Hutchinson

ABSTAINED: None

RECUSED: None

ABSENT: Samantha Pal (Student Director), Natalie Gallegos Chavez (Student Director)

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at the Meeting of the Board of Education of the Oakland Unified School District held on June 22
 , 2022.

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By:	er

OAKLAND UNIFIED SCHOOL DISTRICT



Gary Yee
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

EXHIBIT A

Section 7.4 of the Original Agreement is hereby **replaced** with the following:

- 7.4. *In recognition of the Superintendent's extremely demanding work schedule, during which she is required by job duties to work most evenings, weekends and holidays, the Board wishes to allow her extended leave time on an occasional basis. The Superintendent shall be on a sabbatical leave from **August 22, 2022 through November 25, 2022**. During this time she shall not be on call for routine business of the District but will be available to deal with extraordinary situations that may threaten the wellbeing of the District, its employees and/or its students. The Superintendent shall propose to the Board an individual to serve as Acting Superintendent during her sabbatical leave and shall establish and put into place all other changes necessary to ensure the continued smooth operation of the District. Except as stated in this Section, the Superintendent shall be paid her regular salary and receive her contractual benefits during the sabbatical leave. This sabbatical leave shall be treated as remuneration for leave for purposes of compensation under the California State Teachers Retirement System, pursuant to Education Code sections 22119.2(b)(1) and 22119.2(d). The payment for leave hereunder shall be reported by the District as creditable compensation under the California State Teacher Retirement System ("CalSTRS") but the District makes no guarantee that CalSTRS will treat the payment as creditable for calculating the Superintendent's annuity payments from CalSTRS.*
- 7.4.1 *The Superintendent shall not receive the \$750 per month travel expense reimbursement for the months of September 2022, October 2022, and November 2022.*
- 7.4.2 *Section 11 (Business Expenses) shall not apply during the sabbatical leave.*
- 7.4.3 *During her sabbatical leave, Section 25 (Indemnification Of Superintendent) shall only apply to the extent that the Superintendent is engaging to educational or professional activities in furtherance of her duties and development as Superintendent of the District.*

**OAKLAND UNIFIED SCHOOL DISTRICT EMPLOYMENT AGREEMENT
FOR SERVICES OF KYLA JOHNSON-TRAMMELL DISTRICT SUPERINTENDENT**

In consideration of the mutual promises made herein, this Employment Agreement ("Agreement") is intended to set forth the terms and conditions by which the Governing Board ("Board") of the Oakland Unified School District ("District") employees Kyla Johnson-Trammell ("Superintendent") as the District.

1. **TERM**

The term of this Agreement is for four (4) years, beginning on July 1, 2021 ("Effective Date") and ending on June 30, 2025.

2. **REPLACEMENT OF PRIOR AGREEMENT**

This Agreement replaces the prior employment agreement between the parties. Upon the signing of this Agreement by all parties, all parties agree that the prior agreement will terminate and be void as of the Effective Date of this Agreement.

3. **RENEWAL**

Provided the Board and the Superintendent mutually agree and Superintendent has met performance goals, the Board may annually take official action at a noticed, public meeting to extend this Agreement for an additional year.

4. **DUTIES AND RESPONSIBILITIES**

4.1. The Superintendent is the chief executive officer and educational leader of the District and is responsible for carrying out the educational, managerial and administrative responsibilities for the care and maintenance of the District. The Superintendent shall administer the District in accordance with the Board's policies and State and federal laws as they exist or may hereafter be enacted or amended. The Superintendent shall perform those duties, which are required by law, prescribed by the Board, or as necessary for the efficient and effective management of the District. Such duties include, but are not limited to, the following:

- a. reporting directly to the Board; the Superintendent is directly responsible to the Governing Board of the Oakland Unified School District; the Superintendent facilitates communication and information among the administrators, the Board, staff, parents and community, and sets a positive tone for the District;

- b. directing the day-to-day administration of the District; the Superintendent has the authority to direct and supervise the activities of all District employees, programs, and functions to ensure the effective administration of the total school program;
- c. planning, implementing and evaluating programs regarding the organizational, operational, fiscal and educational functions of the District;
- d. performing the duties of a Superintendent as set forth in Education Code section 35035 and Education Code section 35250;
- e. instituting reforms and systemic changes, such as curriculum and program offerings, as the Superintendent finds necessary and expedient in order to affect positive change in the District;
- f. developing and implementing a program of professional development that the Superintendent finds necessary and expedient in order to affect positive changes in the District;
- g. soliciting parental/guardian involvement in the development and implementation of the District's policies, as appropriate;
- h. recommending policies to the Board and reasonably interpreting and implementing policies adopted by the Board;
- i. organizing departments and assigning employees of the District;
- j. developing and implementing administrative regulations that the Superintendent deems necessary for the efficient and effective operation of the school system and that are consistent with the Board's policies, and with state and federal law;
- k. selecting qualified candidates for District employment, unless the position is one which reports wholly or jointly to the Board;
- l. directing, assigning, transferring, evaluating, and dismissing all the employees of the District consistent with the Board's policies, and with state and federal law; the Superintendent shall not create new positions outside of those that are vacant and approved within the adopted budget without Board approval;
- m. accepting all resignations of employees of the District, unless the position is one which reports wholly or jointly to the Board;

- n. assuming responsibility for the overall financial planning of the District, including preparation of the annual budget and the submission of the budget to the Board for review and approval;
 - o. attending and participating in all discussions in all regular, special and executive sessions of the Board. From time to time, the Superintendent may appoint an appropriate administrator to attend such meetings in lieu of the Superintendent with the Board's or Board's designee consent;
 - p. making recommendations on items of business for Board meetings as the Superintendent deems necessary for the efficient and effective operation of the District;
 - q. establishing and implementing a process, including a means and time parameters for keeping the Board up-to-date on developments, initiatives, and issues in the District;
 - r. seeking Board input prior to engaging in work that is not detailed in the Board or Superintendent work plan, and advising the Board of sources of funds that may be available to implement such programs for initiatives; and
 - s. seeking Board input on a desirable organizational structure for leadership positions within central office.
- 4.2. This is an Agreement for the performance of professional services involving a relationship of confidence and is not assignable by either party.
- 4.3. The Superintendent acknowledges and agrees, as provided in Board Bylaw 9124, that the District's General Counsel is appointed jointly by the Board and Superintendent and is a dual report to the Board and the Superintendent.

5. **BOARD/SUPERINTENDENT COMMUNICATIONS**

- 5.1. The Board and the Superintendent agree that they shall work with each other in the spirit of cooperation and teamwork and shall provide each other periodic opportunities to discuss Board/Superintendent relationships and communications.
- 5.2. As provided in Board Bylaw 9200 and the Oakland City Charter, no board member may interfere with the performance by the Superintendent of the District of those duties vested in or delegated to the Superintendent of the District by statute or by act of the Board. Such interference specifically includes any attempt by

a board member to order, coerce or influence, publicly or privately, any subordinate, official or employee of the District as to any matter within the authority of the Superintendent under statute or as conferred by the Board through its policies, procedures, resolutions, or minutes of meetings. The Board agrees they shall refer all personnel complaints or other communications concerning the day-to-day administration of the District to the Superintendent for investigation and report to the Board. Individual members of the Board, by virtue of holding office, shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee. The Superintendent is neither obligated nor expected to follow the directions or instructions of individual board members, officers, and committees unless the Board has specifically delegated such exercise of authority. Individual board members may submit a request for information to the Superintendent. The Superintendent shall share with the Board criticisms, complaints, and suggestions concerning the District that may come to her attention.

- 5.3. The Board shall provide the Superintendent with periodic opportunities to discuss the Board-Superintendent relationships as they relate to the Board's productivity and the effectiveness of the Superintendent's leadership. As a part of this process, when it is deemed necessary by either the Board or the Superintendent, the District may retain an outside advisor to facilitate this process.
- 5.4. The Board shall hold the Superintendent accountable to manage the District consistent with the approved policies which establish what it expects the schools to accomplish. It is through Board policy and official Board action that the Board gives direction to the Superintendent.

6. **SALARY AND BENEFITS**

- 6.1. The annual base salary of the Superintendent for 2021-22 shall be \$294,000.00, payable in twelve (12) equal monthly installments. During the term of this Agreement, the Superintendent shall be entitled to salary increases provided to all other District confidential administrators. In addition, the Superintendent shall be eligible for those stipends made available to eligible confidential administrators.
- 6.2. In order to encourage continuity of leadership in the District, the Board wishes to provide additional compensation to the Superintendent to incentivize longevity and provide stability to the District. This longevity payment shall be in the following lump sum amounts on the following dates, provided that the Superintendent is employed as Superintendent on each date under this Agreement:

- On June 30, 2021: 5% of the Superintendent's 2021-22 base salary as determined by this Agreement.
- On June 30, 2022: 6% of the Superintendent's 2022-23 base salary as determined by this Agreement.
- On June 30, 2023: 7% of the Superintendent's 2022-23 base salary as determined by this Agreement.
- For all Contract years after June 30, 2023 in which this Contract is in effect, the amount of longevity pay shall increase by 1%.

6.3. Provided that this Agreement is in effect and has not been terminated by either party by June 30, 2021, the District shall contribute the following amounts on the following dates to a Supplemental Retirement Plan ("SRP"), provided that the Superintendent is employed as Superintendent on each date under this Agreement:

- On June 30, 2021: 20% of the aggregate maximum contributions permitted by the Code for a 403(b) plan, 457(b) plan, and 401(a) plan for 2020-21.
- On June 30, 2022: 30% of the aggregate maximum contributions permitted by the Code for a 403(b) plan, 457(b) plan, and 401(a) plan for 2021-22.
- On June 30, 2023: 40% of the aggregate maximum contributions permitted by the Code for a 403(b) plan, 457(b) plan, and 401(a) plan for 2022-23.
- For all Contract years after June 30, 2023 in which this Contract is in effect, the amount of the District's contribution shall increase ten percent (10%) over the previous year's contribution amount until it is 100% of the allowable aggregate maximum contributions permitted by the Code for a 403(b) plan, 457(b) plan, and 401(a) plan to the SRP.

The SRP shall be a plan established under Section 403(b)/457(b)/401(a) of the Internal Revenue Code of 1986, as amended. The SRP shall be established as employer-paid with non-discretionary contributions by the District and the Superintendent shall have no right to receive such contributions in cash. The SRP plan shall be established under a written plan document that meets the requirements of the Code and such document is incorporated herein by reference. The funds for the SRP plan shall each be invested as determined solely by the Superintendent in such investment vehicles as are allowable under the Code and California law for the applicable type of plan. The contributions to the SRP shall be contributed to the 403(b) plan, the 457(b) plan, and the 401(a) plan as directed by the Superintendent. The contributions to the SRP and all earnings thereon shall at all times be vested with the Superintendent.

- 6.4. The Superintendent and her eligible dependents shall be entitled to paid coverage under the District's health, vision, dental, long-term disability, and life insurance plans to the same extent as other confidential administrators as determined by the Health Benefits Governance Board, including without limitation, contributions towards premiums and all co-pay costs required by health care providers.
- 6.5. In addition to the benefits provided in this Agreement, the District will provide the Superintendent the same benefits provided to confidential administrators.
- 6.6. The District, at its cost, shall provide the Superintendent with term life insurance in the amount of \$1 million dollars. Upon termination or expiration of this Agreement, the Superintendent shall be entitled to maintain this insurance by assuming the payments the then applicable premiums applicable to his policy. In addition, the District, at its cost, shall provide the Superintendent with disability insurance at 100% her annual base salary. Both the life insurance policy and disability policy shall be owned by the Superintendent and the premiums for such policy shall be treated as taxable income to her.
- 6.7. Any additional benefits not specified in this Agreement shall be approved by the Board.

7. **LEAVE**

- 7.1. The Superintendent shall render services in accordance with the District's standard work year for confidential administrators and she shall be entitled to the same holidays as are provided for confidential administrators of the District. In addition, the Superintendent shall be entitled to twenty-five (25) annual vacation days with pay. The Superintendent is encouraged to take all vacation days during the year in which such days are earned. At Superintendent's option, the Superintendent may be reimbursed annually at her daily rate of pay for any unused days not to exceed twenty-five (25) per year. The Superintendent shall not accrue more than twenty-five (25) vacation days annually without the written approval of the Board President. If the Superintendent's vacation balance reaches 25 days, she will stop earning vacation in each month until vacation days are taken. The Superintendent shall provide the Board President with reasonable advance notice of any planned use of vacation days before any vacation is taken. Upon termination or expiration of this Agreement, the Superintendent shall be entitled to receive payment for any accrued and unused vacation days equal to the number of accrued but unused vacation days multiplied by her then daily rate of pay, subject to the limitations on the accrual of vacation days set forth in this paragraph. The Superintendent's daily rate of pay is the Superintendent's then-current annual salary divided by 240.

- 7.2. The Superintendent shall be entitled to accrue paid sick leave at the rate of 1.0 day per month up to twelve (12) days per year. If the Superintendent does not utilize the total amount of accrued sick leave authorized during any year, she may carry over the unused time to sick leave in the subsequent year.
- 7.3. The Superintendent shall be entitled to all other leave, including personal leave, provided to confidential administrators.
- 7.4. In recognition of the Superintendent's extremely demanding work schedule, during which she is required by job duties to work most evenings, weekends and holidays, the Board wishes to allow her extended leave time on an occasional basis. The Superintendent shall have the option to be on a sabbatical leave from April 1, 2022 through June 30, 2022. During this time she shall not be on call for routine business of the District but will be available to deal with extraordinary situations that may threaten the wellbeing of the District, its employees and/or its students. Such sabbatical leave shall be taken in one continuous period at such time as it is mutually agreeable to the Board and the Superintendent. The District and Superintendent shall be able to extend the sabbatical leave to be of a longer duration with mutual agreement. The Superintendent shall submit an interim leadership operations plan including a recommendation regarding who will lead the District to the Board by March 1, 2022, for approval. The Superintendent shall be paid her regular salary and receive her contractual benefits during the sabbatical leave. This sabbatical leave shall be treated as remuneration for leave for purposes of compensation under the California State Teachers Retirement System, pursuant to CAL. EDC. CODE § 22119.2(b)(1) and CAL. EDC. CODE § 22119.2 (d). The payment for leave hereunder shall be reported by the District as creditable compensation under the California State Teacher Retirement System ("CalSTRS") but the District makes no guarantee that CalSTRS will treat the payment as creditable for calculating the Superintendent's annuity payments from CalSTRS. The Superintendent shall inform the Board in writing no later than March 1, 2022 if they are electing to not use the sabbatical leave.
- 7.5. The Parties agree that the sabbatical leave is an investment towards longevity and stability of leadership in the District. The District and Superintendent agree that should the Superintendent decide to terminate her service under this agreement to take another Superintendent position in a different school district before July 1, 2024, she will pay back the following agreed to amount back to the District to repay the sabbatical investment. Should the Superintendent terminate this agreement to take another Superintendent position in a different school district in the 2022-2023 school year, the Superintendent will reimburse the District a sum of sixty thousand dollars (\$60,000.00). Should the Superintendent terminate this agreement to take another Superintendent position in a different school district in the 2023-2024 school year, the Superintendent will reimburse the District a sum of thirty thousand dollars (\$30,000.00). A reimbursement shall not be owed if the

Superintendent provides in writing a statement to the Board that they have elected to not use the sabbatical as outlined in 7.4, retires, terminates employment due to health reasons, should the Board decide to terminate the agreement, or if the Board votes to waive this provision for another appropriate reason.

8. **TRAVEL EXPENSES**

The Superintendent shall receive \$750 per month to cover travel- related expenses, including parking, tolls, and mileage, within 100 miles of the District. For travel outside of 100 miles of the District, the Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing his professional responsibilities for the District, including reasonable expenses for travel outside the District. The District shall reimburse the Superintendent for automobile travel outside of 100 miles of the District at the mileage rate as provided to all confidential administrators in the District. Any such request for reimbursement shall comply fully with all District rules and requirements relating to expense reimbursements. In the Board's discretion, the District may offer the Superintendent security services which include a driver. In the event of such a determination, the Superintendent will receive those services in lieu of a monthly travel stipend. Any actual and approved District travel expenses incurred by the Superintendent would be reimbursed in accordance with District policy.

9. **TECHNOLOGY SUPPORT**

The Board shall provide the Superintendent with appropriate equipment that will assist the Superintendent in the performance of her duties and responsibilities. This shall include a cell phone (or equivalent stipend), iPad, laptop, and printer. The District shall own equipment. Upon termination of this Agreement, the Superintendent shall return all District equipment.

10. **PROFESSIONAL ACTIVITIES**

The Superintendent may engage in outside professional activities, including writing, consulting, and lecturing, with or without honorarium, as long as such activities do not interfere with the performance of her duties as Superintendent. The Superintendent may not serve as a consultant without the prior approval of the Board President, which will not be unreasonably withheld.

11. **BUSINESS EXPENSES**

The Board shall reimburse the Superintendent for reasonable and necessary expenses incurred by the Superintendent in the course of District's business that are within the

District's Board-approved budget. The Superintendent shall provide expense records normally required for reimbursement.

12. **PROFESSIONAL GROWTH AND DEVELOPMENT**

The Board encourages the Superintendent to maintain and improve her professional competence by all available means including subscription to and reading of professional journals, participation in professional organizations and meetings, and other continuing education. The District shall pay the Superintendent's membership dues and reasonable related expenses to belong to a reasonable number of relevant professional organizations, including the Association of California School Administrators (ACSA) and the American Association of School Administrators (AASA) or alternatives as otherwise approved by the Board. Prior notice shall be given to the Board when the Superintendent attends a function outside of Alameda County or the San Francisco Bay Area.

13. **EVALUATION**

13.1. No later than June 30 of each year, unless mutually agreed otherwise, the Board and the Superintendent shall jointly establish the Superintendent's Work Plan, the performance goals, and the evaluation form to be used by the Board for the following school year. The Board shall complete the Superintendent's evaluation no later than June 30 of each year. The Board shall provide the Superintendent a copy of the completed evaluation. The Superintendent shall have the right to respond to the Board's written evaluation orally or in writing.

13.2. No later than January 31 of each year of this Agreement, the Board and the Superintendent shall meet to discuss and review the Superintendent's progress in meeting the agreed-upon goals.

13.3. No later than May 1 of each year of this Agreement, the Superintendent, prior to her evaluation, shall provide the Board a written self-appraisal of her accomplishments and progress toward meeting the agreed-upon goals. After the Board receives the Superintendent's self-appraisal, the Board and the Superintendent shall meet no later than June 1 of each year of this Agreement to discuss the Superintendent's self-appraisal. The Board's evaluation of the Superintendent shall occur as provided in Section 12.1 of this Agreement. Any publication of the Superintendent's progress towards the work plan goals shall be designated as a self-evaluation.

14. **TERMINATION**

This Agreement may be terminated by the following:

- 14.1. Superintendent's Option to Terminate. Notwithstanding any other provisions of this Agreement, the Superintendent shall have the option to terminate this Agreement by providing the Board with a written notice of intent to terminate. This notice shall be provided no less than one hundred and twenty (120) days prior to said termination date. The Superintendent and the Board may mutually agree to a termination notice of less than one hundred twenty (120) days. In the event Superintendent opts to terminate, all reasonable efforts shall be made to have the cessation of services be at the conclusion of a fiscal year. In the event that the Superintendent opts to terminate, the District shall have no obligation to pay the severance as provided in paragraph 13.2 and reserves the right to notify the California Commission on Teacher Credentialing (CCTC) of the early termination.
- 14.2. District's Option to Terminate Without Cause. Notwithstanding any other provision of this Agreement or law, the District, at its sole discretion, shall upon giving ninety (90) days written notice, have the option to terminate this Agreement without cause. If the District elects the option to terminate the Agreement pursuant to this Section, the District shall, within ninety (90) days of giving written notice of termination, pay the Superintendent in one lump-sum payment an amount equal to her current salary of nine (9) months or the salary of the remainder of the Agreement if such remainder is less than nine (9) months. In addition, the Superintendent shall be paid for all accrued but unused vacation days in accordance with Section 6.1 of this Agreement. The Superintendent shall also be provided with all of the other benefits under this Agreement with the exception of vacation and sick days, for a period of nine (9) months. In the event that the Superintendent obtains comparable benefits through another source, the Superintendent shall so notify the District and its obligation to continue those benefits shall cease. The calculation for purposes of the lump-sum payment shall be based upon the rate of base salary excluding stipends in effect on the date of the notice of termination. The Superintendent may elect to receive the termination payments paid on the same monthly installment basis as the Superintendent's salary is currently paid, rather than receive a lump sum payment. This provision applies to any termination without cause of the Superintendent initiated by the Board, or any agent operating on behalf the District.
- 14.3. State Administrator. The parties expressly agree to promptly inform the other of any communications or events that may result in the appointment of an administrator ("State Administrator") to administer some or all of the District's functions or operations. In the event that within the initial two years of the term of this Agreement, the parties are on notice of an appointment of a State Administrator and acknowledging that such appointment was not caused by the Superintendent, the Termination Without cause section (13.2) shall apply and the Superintendent shall be paid the severance terms set forth in that paragraph.

The parties have reviewed the provisions of Education Code sections 41320 *et seq.* and acknowledge that this Agreement cannot be implemented contrary to the law. Specifically, the parties acknowledge that, under some fiscal situations, the Education Code requires the termination of the Superintendent and sets the final compensation of the Superintendent. The parties intend for this Agreement to be construed in compliance with such sections. (See Education Code section 41326, subsections (c) and (j).)

14.4. Mutual Agreement. The Board and the Superintendent at any time during this contract may mutually agree to terminate this Agreement. In the event of mutual termination, the District shall have no obligation to pay the severance, provided in paragraph 13.2 unless it otherwise agrees in writing.

14.5. By the Board for Cause.

- a. The Board may elect to terminate this Agreement for cause upon sixty (60) days written notice to the Superintendent. Cause shall constitute conduct enumerated in Education Code section 44932 and shall specifically include, but not be limited to, the following: (a) a conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of *nolo contendere*) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude; (b) an act that is defined as moral turpitude under state or federal law and that is materially and demonstrably injurious to the District; (c) willful malfeasance or gross negligence in the performance of duties pursuant to this Agreement that are materially and demonstrably Injurious to the District; (d) an act of fraud, embezzlement or theft; (e) material breach of any material term of this Agreement or repeated, willful failure or refusal to perform any material obligation or duty pursuant to this Agreement that has not been cured within 30 days after written notice by the Board; and (f) persistent, willful violation of the school laws of the state or reasonable regulations of the State Board of Education.
- b. Dismissal for cause shall be effective upon action taken by majority vote of the Board at a closed session of the Board. With the exception of any salary and benefits accrued prior to Board action, all salary and benefits provided for in this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to Board action shall be paid to the Superintendent within thirty (30) days of Board action.
- c. Prior to any Board action, the Board shall provide the Superintendent notice in writing of possible termination for cause, including reasons for proposed termination for cause, at least 15 days prior to the Board

meeting to discuss and take possible action to terminate the Superintendent for cause. The Superintendent shall have the opportunity to appear before the Board with her counsel and to present evidence at the meeting to discuss and take possible action to terminate the Superintendent for cause. Within five days of the Board's decision to terminate the Superintendent, the Board shall provide the Superintendent a written decision, including reasons, for terminating the Superintendent for cause.

15. **MEDICAL EVALUATION**

In light of the unique nature of the professional duties of Superintendent, Superintendent shall receive, at District expense, a complete medical examination prior to February 15 of each Contract Year. The examination shall be conducted by a licensed physician selected by Superintendent. The written statement which shall be provided to Board shall be limited to the physician's determination of the continued fitness of Superintendent to perform the duties required under the Contract, with or without reasonable accommodations. The statement shall otherwise be confidential. Nothing in this provision precludes Board from directing Superintendent to submit to a fitness for duty exam at any time, or as otherwise permitted by law.

16. **NON-SOLICITATION OF EMPLOYEES**

For a full school year upon termination or expiration of this Agreement, the Superintendent shall not directly recruit or hire the District's personnel away from the District without the prior written consent of the District. This does not prevent Superintendent from hiring any such person who contacts her on his or her own initiative without any direct solicitation by or encouragement from or on the behalf of the Superintendent.

17. **JOB SEARCH NOTICE**

If, at any time during the term of this Agreement, the Superintendent is selected for a final interview for any other employment position, the Superintendent shall notify the Board President within 3 days in writing upon being selected for a final interview. However, if the Superintendent agrees to interview for another position (not only a final interview) during the months of July through December, the Superintendent shall notify the Board President within 3 days in writing.

18. **SELECTION OF EMPLOYEES**

The Superintendent will follow District policies, protocols and agreements in selecting the best qualified candidates for employment and promote practices that are free of conflicts of interest or the appearance of impropriety. In accordance with the District's

hiring of relatives policy, the Superintendent will not select or recommend for appointment any of her relatives without the permission of the Board. In addition, the Superintendent will not select or recommend for appointment in senior leadership persons who are related to others in the District which could involve or be perceived to involve management, supervisory, evaluation, promotion responsibilities, or other decisions impacting the employment of a relative without the permission of the Board. The Superintendent also shall not recruit individuals who are related to other candidates for District jobs without the permission of the Board.

19. **APPLICABLE LAWS**

This Agreement is subject to all applicable laws and regulations of the State of California, to the rules and regulations of the State Board of Education, and to the rules, regulations, and policies of the District, except as otherwise stated herein. Said applicable laws, rules, regulations, and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein.

20. **MEDIATION**

Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

21. **ENTIRE AGREEMENT**

It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

22. **SEVERABILITY CLAUSE**

If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in full force and effect.

23. **NOTICES**

Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite his or her name below, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

24. **LIMITATION OF DAMAGES FOR BREACH**

The parties agree that in the event of breach of this Agreement, the damages for such breach shall not exceed the sums due as compensation under this Agreement in accordance with the limitations set forth in California Government Code Section 53260 *et seq.*

25. **INDEMNIFICATION OF SUPERINTENDENT**

In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in her individual capacity, or in her official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Superintendent was acting within the scope and course of her employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after her employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings. If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent the Superintendent, then the Superintendent may engage separate legal counsel for which the District shall indemnify the Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by the Superintendent under any other insurance or professional association membership. This Section 20 shall survive termination of this Agreement.

26. **WAIVERS**

No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

27. **SIGNATURES**

This Agreement and all amendments and supplements to it may be executed in two or more counterparts, each of which shall be deemed an original agreement and all of which shall constitute one and the same agreement. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing party and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. This section constitutes a waiver by each party of the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

IN WITNESS WHEREOF, the parties hereto, or their duly authorized representatives, affix their signatures to this Agreement.

By  8/12/2021

SHANTHI GONZALES
President

By  Digitally signed by Kyla Johnson-Trammell
Date: 2021.08.06 14:30:46 -07'00'

KYLA JOHNSON-TRAMMELL
Superintendent

Approved as to Form

By **Namita Brown**

Namita Brown
Counsel for the Board of Education

Signature: 

Namita Brown (Aug 8, 2021 13:48 PDT)

Email: nbrown@f3law.com