

**EMPLOYMENT AGREEMENT FOR DISTRICT SUPERINTENDENT
BETWEEN THE PALO ALTO UNIFIED SCHOOL DISTRICT
AND DR. DONALD B. AUSTIN**

This employment agreement ("Agreement") is entered into this first day of July 2018, by and between the Board of Trustees of the Palo Alto Unified School District ("Board" or "District") and Dr. Donald B. Austin ("Superintendent").

1. TERM: The Board hereby employs and the Superintendent accepts the position of District Superintendent for a term of three (3) years, commencing on July 1, 2018, and ending on June 30, 2021, unless terminated earlier as provided by the terms of this Agreement or as permitted or required by law.

The parties agree that Dr. Austin may provide services to the District for up to ten (10) work days prior to the commencement of the term of this Agreement as set forth above. Dr. Austin shall receive per diem pay for such days, based on the annual base salary set forth in section 3(A) below divided by the work year set forth in section 2(E) below, plus reimbursement for reasonable travel and lodging expenses. The scheduling of, and the activities to occur on such days shall be determined in consultation between Dr. Austin and the Board President or designees.

2. DUTIES:

A. GENERAL DUTIES: The Superintendent shall be the Chief Executive Officer of the District and shall serve as Secretary to the Board. The Superintendent shall perform duties of his office as prescribed by law, this Agreement and a job description which may be adopted and/or amended by the Board at any time. All powers and duties which may lawfully be delegated to the Superintendent are to be executed in accordance with the policies adopted and/or amended by the Board. Such acts which may require ratification by the Board shall be referred to the Board at the earliest possible opportunity by the Superintendent. The Board, individually and collectively, shall channel criticisms, complaints and suggestions called to the Board's attention which, in the opinion

of the Board may require action, to the Superintendent for study and recommendation.

B. PERSONNEL MATTERS: The Superintendent shall have authority to organize, reorganize and assign administrative and supervisory staff which in his judgment best serves the District, subject to the approval of the Board. The responsibility for selection of personnel shall be vested in the Superintendent and his staff, subject to approval of employment by the Board. Placement of non-administrative and non-supervisory personnel shall be vested in the Superintendent and his staff.

C. ADMINISTRATIVE FUNCTIONS: The administration of instruction and business affairs shall be lodged with the Superintendent and administered by him with the assistance of his staff. The Superintendent shall act as Chief Executive Officer and Secretary to the Board in accordance with Education Code section 35025, responsibility for any duties authorized by the Board pursuant to Education Code section 17604 and Board Policy. The duties of the Superintendent as Chief Executive Officer shall include, but are not limited to the following:

- Review, supervise and execute all policies adopted by the Board and make appropriate policy recommendations to the Board;
- Assure that all regulations related to evaluation of District employees are enforced;
- Advise the Board about financial and budgetary issues, including sources of funds that might be available to implement present or contemplated District programs;
- Assume responsibility for making and maintaining records and reports required by law;
- Endeavor to maintain and improve professional competence by all available means, including membership in appropriate professional associations and attendance at professional meetings as approved by the Board;
- Establish and maintain positive community, staff and Board relations;
- Recommend to the Board District goals and objectives for the ensuing school year and at other times initiated by the Board or the Superintendent;
- Serve as liaison to the Board with respect to all matters of employer/employee relations and make recommendations to the

- Board concerning these matters;
- Perform such duties as are conferred upon, or delegated to, Superintendents under the Education Code; and
- Unless unavoidably detained, or with prior Board approval to be absent, attend all regular, special, and closed session meetings of the Board, with the exception of those closed sessions in which the Board discusses matters related to the Superintendent's employment.

D. BOARD-SUPERINTENDENT ROLES: The Board has primary responsibility for formulating District policies and setting District goals. The Superintendent has primary responsibility for implementing District policies and goals. The Board and the Superintendent agree to collaboratively support and assist one another to fulfill these roles and responsibilities.

E. WORK YEAR: The Superintendent shall be required to render two hundred twenty four (224) workdays of full and regular service to the District during each annual period covered by this Agreement, exclusive of holidays as defined in Education Code sections 37220 and 37221. Days in excess of 224 and holidays are considered non-work days. The Superintendent shall not be entitled to vacation pay for non-work days. Both parties recognize that Superintendent is not entitled to overtime pay or compensatory time off.

3. COMPENSATION

A. SALARY: In consideration for the services provided under this Agreement, the Superintendent will receive a base salary at the annual rate of three hundred thousand dollars (\$300,000). This base salary is subject to automatic adjustment pursuant to section 4(B) below. The annual salary shall be in twelve equal monthly installments, payable the last day of each month. The Board reserves the right to adjust the Superintendent's base salary at any time. Any change in salary will be made by written amendment to this Agreement and shall not constitute the creation of a new Agreement nor extend the termination date of this Agreement.

B. Unless otherwise specified by the Board, any Board-adopted furlough days for certificated senior cabinet-level employees shall apply to the Superintendent. Unless otherwise specified by the Board, such furlough days

shall have the effect of reducing the Superintendent's work year by the number of furlough days instituted, along with a corresponding proportional reduction in salary.

C. TAX DEFERRED PLANS: The District agrees to provide the Superintendent with the ability to use an IRS Section 403b or similar tax deferred plan, an IRS Section 125 Cafeteria Plan, and other plans made available to other District employees. All employee and employer contributions to such plans shall conform to all requirements of state and federal law.

4. FRINGE BENEFITS:

A. HEALTH INSURANCE BENEFITS: The Superintendent shall receive District paid health, dental, vision and other fringe benefits in the same manner and subject to the same limitations as other certificated senior cabinet-level employees as those benefits may change from time-to-time.

B. HOUSING: The District has made available, and Superintendent has elected to reside in, District-owned property located at 3189 Berryessa Street, #4, Palo Alto, California effective July 1, 2018. Superintendent shall pay to the District, through a process and according to time lines established by the District, a monthly rent of \$1800. Superintendent's residency in the property shall be subject to the usual conditions associated with a month to month tenancy. Superintendent shall execute a standard month to month rental agreement with the District setting forth specific terms and conditions of his tenancy. Should Superintendent elect to vacate the premises during the first year of this Agreement (July 1, 2018 through June 30, 2019), his annual base salary set forth in section 3(A) above shall automatically be adjusted from \$300,000 to \$325,000, beginning the first of the month following the date of his vacation of the property. Subject to all applicable state and federal laws, Superintendent shall be entitled to continue residency in the aforementioned property for the duration of his employment as Superintendent. The Superintendent shall be required to vacate the premises within 30 days of termination or cessation of his employment, unless agreed to otherwise in writing by the Superintendent and the Board.. The Superintendent shall be solely responsible for any federal and/or state tax-related

obligations associated with this fringe benefit.

5. SICK LEAVE: The Superintendent shall earn one (1) day of sick leave per month, in accordance with District practice for other certificated senior cabinet-level employees. Unused sick leave shall be accumulated and shall be carried forward from year to year and may be credited for retirement purposes according to law.

6. EXPENSE REIMBURSEMENT:

A. EXPENSES: The District shall reimburse the Superintendent for actual and necessary expenses incurred by the Superintendent within the course and scope of his employment, so long as such expenses are incurred by prior approval of the Board, are consistent with this Agreement and as long as the cost of the expense is not already provided for under the terms of this Agreement. For reimbursement, the Superintendent shall submit and complete expense claims in writing in accordance with the District's policies, rules and regulations and shall provide the Board with copies of the Superintendent's monthly expense reports. The Superintendent's expense claims shall be supported by appropriate documentation prior to reimbursement.

B. RELOCATION EXPENSES: The Superintendent shall be reimbursed for the actual and necessary expenses he incurs in relocating to the District during the 2018-2019 school year. Reimbursable relocation expenses shall include but not be limited to travel and meal expenses incurred in the process of relocating, temporary housing expenses and the cost of shipping his personal property to his new residence. "Temporary housing" expenses shall be housing expenses the Superintendent incurs for staying overnight within the District or within ten (10) miles of the District's boundaries during the first six (6) months of his employment. Reimbursement under this section shall not exceed Fifteen Thousand Dollars (\$15,000).

C. TECHNOLOGY: Subject to Board approval, the District will meet the Superintendent's reasonable requests for technology that will facilitate the Superintendent's performance of duties within the course and scope of his employment.

7. TRANSPORTATION: The Superintendent shall be reimbursed for transportation expenses for the operation of the Superintendent's own vehicle for District related travel outside of 100 miles from the District's boundaries at the prevailing rate set by the Internal Revenue Service.

8. PROFESSIONAL DEVELOPMENT AND ACTIVITIES:

A. The District shall pay the Superintendent's annual membership dues and fees for up to five (5) national, state or local professional organizations selected by the Superintendent related to public education and/or Superintendent's employment.

B. The Superintendent shall attend appropriate professional meetings at the community, local, state and national level, subject to prior approval by the Board when such meetings are out of state, the expense of said attendance to be incurred by the District unless such costs are paid for or reimbursed by the sponsoring agency.

C. The District encourages the Superintendent to maintain and improve his professional competence by all available means including subscriptions to appropriate periodicals which shall be at District expense.

D. The District may pay for other professional resources and activities as may be requested by the Board or the Superintendent, subject to Board approval.

E. The Superintendent may engage in outside professional activities, such as consulting, speaking, and writing, providing such activities do not interfere with the Superintendent's duties, and subject to prior Board approval.

9. EVALUATION: The Board shall evaluate the Superintendent's performance at least once a year based upon terms and conditions established by the Board following consultation with Superintendent.

(A) 2018-2019: The Board shall evaluate Superintendent's performance at or around the mid-point of the first year of this Agreement pursuant to a process (formal or informal) established by the Board in consultation with the Superintendent.

(B) OUTSIDE FACILITATOR: The Board and Superintendent may

mutually agree upon and utilize the services of an outside facilitator in connection with the evaluation process established under this Agreement.

(C) **CONTRACT REVIEW:** At the conclusion of each annual evaluation, the parties shall review this Agreement and consider proposed modifications and additions.

10. **TERMINATION OF AGREEMENT:** This Agreement may be terminated prior to the expiration of the contract term as follows:

(A) **MUTUAL CONSENT:** The parties may terminate the Agreement at any time by written mutual consent.

(B) **TERMINATION BY THE SUPERINTENDENT:** The Superintendent may unilaterally terminate the Agreement provided that, unless otherwise waived by the Board, the Superintendent shall provide at least ninety (90) calendar days advance written notice. The Superintendent and Board may mutually agree in writing to a termination date of fewer than ninety (90) calendar days. The Superintendent shall immediately notify the Board if the Superintendent becomes the finalist for another position with any other employer. Failure to so notify the Board shall be deemed to constitute a material breach of this Agreement.

(C) **TERMINATION FOR CAUSE:** The Board may terminate the Superintendent for: (1) breach of this Agreement; (2) unsatisfactory performance established by at least two written evaluations conducted at least six (6) months apart; (3) refusal or failure to act in accordance with a specific provision of this Agreement or a directive of a majority of the Board; (4) misconduct; (5) for any cause as defined in Education Code section 44932; or (6) conviction of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person. The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties of the parties under this Agreement. If cause exists, the Board shall meet with the Superintendent and shall submit a written statement of the grounds for termination and copies of written documents the Board reasonably believes supports termination.

If the Superintendent disputes the charges, the Superintendent shall then be entitled to a conference before the Board in closed session. The

Superintendent shall have the right to be represented by counsel at his own expense. The Superintendent shall have a reasonable opportunity to respond to all matters raised in the charges and to submit any written documents the Superintendent's believes are relevant to the charges. The conference with the Board shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. If the Board, after considering all evidence presented, decides to terminate this Agreement, it shall provide the Superintendent with a written decision. The decision of the Board shall be final. The Superintendent's conference before the Board shall be deemed to satisfy the Superintendent's entitlement to due process of law and shall be the Superintendent's exclusive right to any conference or hearing otherwise required by law. The Superintendent waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the Superintendent's administrative remedies and then authorizes the Superintendent to contest the Board's determination in a court of competent jurisdiction.

(D) TERMINATION WITHOUT CAUSE: The Board may terminate this Agreement without reason, cause or a hearing upon forty-five (45) calendar days written notice to the Superintendent. In consideration for the exercise of this right, the District shall pay to Superintendent from the date of termination until the expiration of this Agreement (section 1 TERM above), or for a period of twelve (12) months, whichever is less, a sum equal to the difference between Superintendent's salary at the rate in effect during the Superintendent's last month of service and the amount which the Superintendent earns from any other employment as superintendent for an educational agency. As a condition of payment, the Superintendent shall make reasonable efforts to seek other employment in a timely manner and to notify the District in writing immediately if the Superintendent earns income from any employment as superintendent of an educational agency.

For purposes of this Agreement, the term "salary" shall include only the Superintendent's regular monthly base salary (section 3A above) and shall not

include the value of any other stipends, reimbursements or benefits received under this Agreement. All payments made pursuant to this termination without cause provision shall be subject to applicable payroll deductions and shall be treated as compensation for state and federal tax purposes. No payments made pursuant to this early termination provision shall constitute creditable service or creditable compensation for retirement purposes. Payments made pursuant to this termination without cause provision shall be considered as final settlement pay and shall not count for any retirement purpose; accordingly, no deductions shall be made for retirement purposes. The Superintendent shall also be entitled to District-paid health benefits, as those benefits may change from time-to-time, until expiration of this Agreement, a period of twelve (12) months, or until the Superintendent obtains other employment which provides health benefits, whichever occurs first. The parties agree that any damages to the Superintendent that may result from the Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the parties agree that the payments made pursuant to this termination without cause provision, along with the District's agreement to provide paid health benefits, constitutes reasonable liquidated damages for the Superintendent, fully compensates the Superintendent for all tort, contract and other damages of any nature whatsoever, whether in law or equity, and does not result in a penalty. The parties agree that the District's completion of its obligations under this provision constitutes the Superintendent's sole remedy to the fullest extent provided by law. Finally, the parties agree that this provision meets the requirements governing maximum cash settlements as set forth in Government Code section 53260, et seq.

D. TERMINATION FOR INAPPROPRIATE FISCAL PRACTICES:

Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Superintendent according to the provisions of Government Code section 53260, and the

Superintendent shall not be entitled to any cash, salary payments, health benefits or other non-cash settlement.

E. **TERMINATION FOR ABUSE OF OFFICE:** Notwithstanding any other provision of this Agreement, and as mandated by Government Code section 53243 et seq., if the Superintendent is convicted of a crime constituting “abuse of office,” the Superintendent shall reimburse the District to the fullest extent mandated by Government Code section 53243 et seq. (i.e. for paid leave, criminal defense expenditures, or any cash settlement).

11. **NON-RENEWAL OF AGREEMENT:** Pursuant to Education Code section 35031, the Board may elect not to renew this Agreement at the expiration of its term by giving written notice to the Superintendent forty-five (45) days prior to the expiration of its term. Failure to give such notification will make the Agreement automatically renew for one (1) year upon the same terms and conditions. The Superintendent shall give notice to the Board of this provision at least ninety (90) days prior to the expiration of the term of this Agreement.

12. **DISABILITY:** Should the Superintendent be unable to serve in his position due to physical or mental condition, and upon expiration of his sick leave and disability entitlement as provided by statute or Board policies, after written evaluation by a licensed physician mutually chosen by the parties, which evaluation indicates the Superintendent’s inability to carry out the duties of the position of Superintendent, this Agreement may be terminated by the Board.

13. **GENERAL PROVISIONS:**

A. **INDEMNIFICATION:** Subject to and in accordance with the provisions of Government Code sections 825 et seq. and 995 et seq., and 53243.2, the District shall defend, indemnify and hold harmless the Superintendent from any and all demands, claims, suits, actions, legal proceedings and judgments against the Superintendent in Superintendent’s individual capacity or official capacity as an agent and employee of the District, provided that the incident(s) or occurrence(s) giving rise to any such demand, claim, suit, action, legal proceeding or judgment arose while the Superintendent was employed by the District and acting within the course and scope of his

employment. This provision shall survive the expiration of this Agreement.

B. MERGER CLAUSE: This Agreement constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications will be in writing and signed by the parties.

C. APPLICABLE LAW: This Agreement is subject to all applicable laws of the State of California, the regulations of the State Board of Education, and the rules, regulations, and policies of the District.

D. NO ASSIGNMENT: The Superintendent may not assign or transfer any rights granted or obligations assumed under this Agreement.

E. CONSTRUCTION: This Agreement shall not be construed more strongly in favor of or against either party regardless of which party is responsible for its preparation.

F. BOARD APPROVAL: The effectiveness of this Agreement shall be contingent upon approval by the Board as required by law.

G. EXECUTION OF OTHER DOCUMENTS: The parties shall cooperate fully in the execution of any other documents and in the completion of any other acts that may be necessary or appropriate to give full force and effect to this Agreement.

H. INDEPENDENT REVIEW: The Superintendent has had the opportunity to obtain, and has obtained, independent legal or other professional advice with regard to this Agreement, and the consequences thereof, including tax and retirement consequences. The Superintendent acknowledges that the terms of this Agreement have been read and fully explained to him by his representative(s) and that those terms are fully understood and voluntarily accepted.

I. BINDING EFFECT: This Agreement shall be for the benefit of and shall be binding upon all parties and their respective successors, heirs, and assigns.

J. EXECUTION: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

K. WAIVER: Any waiver of any breach of any term or provision of this Agreement shall be in writing and shall not be construed to be a waiver of any other breach of this Agreement.

L. SAVINGS CLAUSE: If any provision of this Agreement or its application is held invalid, the invalidity shall not affect the other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and the provisions of this Agreement are declared to be severable.

M. PUBLIC RECORD: The parties recognize that, once final, this Agreement is a public record and must be made available to the public upon request.

IN WITNESS WHEREOF, we affix our signatures to this Agreement as the full and complete understanding of the rights and obligations of the parties hereto.

Dated: _____ 2018 Palo Alto Unified School District Board of Trustees:

Dated: _____ 2018 Dr. Donald B. Austin, Superintendent:

This Agreement was ratified by the Board of Trustees at its Board meeting on _____ 2018.