

BERRYESSA UNION SCHOOL DISTRICT

FIRST AMENDED AGREEMENT FOR SERVICES AS DEPUTY SUPERINTENDENT ADMINISTRATIVE SERVICES

This Agreement between, the Board of Trustees ("Board") of the Berryessa Union School District of Santa Clara County, State of California ("District") and Phuong Le ("Deputy Superintendent") was originally effective July 1, 2015, this First Amended Agreement ("Agreement") is effective April 12, 2016, and supersedes all prior agreements between the parties.

1. Employment As Deputy Superintendent And Chief Business Officer

The Governing Board employs Phuong Le, and Phuong Le accepts employment, as Deputy Superintendent Administrative Services ("Deputy Superintendent") of the Berryessa Union School District in Santa Clara County, State of California. Pursuant to Education Code Section 45100.5 and Board resolution, the Deputy Superintendent is a position in the senior management of the classified service. The Deputy Superintendent works under the Superintendent's direct supervision.

2. Prior District Employment

Deputy Superintendent served as the Assistant Superintendent of Business Services from July 1, 2013 through June 30, 2015, and during that period has taken on increasingly responsible roles. Based on her prior performance and current District needs, the Board entered into this Agreement that requires the Deputy Superintendent to perform additional responsibilities on behalf of the District.

3. Term Of Agreement

The terms of this amended Agreement shall become effective on April 12, 2016, unless otherwise specified herein. The term of the Agreement shall end on June 30, 2018, unless otherwise terminated or extended.

Following each annual evaluation of the Deputy Superintendent's job performance, if the Board determines that the evaluation is satisfactory, the Board may enter into a new three-year agreement with the Deputy Superintendent to take effect on the next succeeding July 1.

If the Board decides not to reelect or reemploy the Deputy Superintendent at the expiration of this Agreement, the Board shall notify the Deputy Superintendent in writing at least 45 days before this Agreement expires.

4. Duties And Responsibilities

The duties and responsibilities of the Deputy Superintendent shall be those described in the Position Descriptions for both the Deputy Superintendent

and the Assistant Superintendent of Business Services and as prescribed by law and Board policies, as well as other duties and responsibilities that may be assigned by the Superintendent.

The Deputy Superintendent shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the District, subject at all times to applicable state and federal laws and the policies set by the Board, and subject to the Board's consent when required by the terms of this agreement or by Board ordinances, policies, rules, or applicable law.

5. Deputy Superintendent Performance Objectives

As soon as practicable after the parties execute this agreement, the Deputy Superintendent and the Superintendent shall meet to establish the Deputy Superintendent's goals and performance objectives. These objectives shall be committed to writing and shall be among the criteria by which the Superintendent evaluates the Deputy Superintendent's performance. Following the completion of the Deputy Superintendent evaluation each year and before September 1 of the succeeding school year, the Superintendent and the Deputy Superintendent will meet to establish goals and performance objectives for the next succeeding year in the same manner

6. Evaluation

The Superintendent shall evaluate the Deputy Superintendent's performance at least once each year during the term of this Agreement and more frequently at the Superintendent's discretion. The annual written evaluation should be completed before July 1 of each year, using the performance evaluation form mutually agreed upon by the Deputy Superintendent and the Superintendent.

Any evaluation shall be based upon, but not limited to:

- the duties and responsibilities of the Deputy Superintendent as described in this Agreement and provided by state law, Board policies, procedures, and direction;
- the Deputy Superintendent's goals and performance objectives for the year in question; and
- the working relationship between the Deputy Superintendent and the Superintendent.

7. Compensation

- 7.1 The initial annual base salary of the Deputy Superintendent shall be not less than two hundred and two thousand seven hundred and eighty two dollars (\$202,782) per year for the term of this Agreement, payable in twelve equal monthly payments (Initial Base Salary).

7.2. The Board may also grant the Deputy Superintendent an increase in total compensation (including compensation provided by this Section 7 and Health and Welfare and Retirement benefits provided by Section 8, and/or related compensation or benefits), an amount equivalent to the highest annual percentage total compensation adjustment granted to any classified employee group during the term of this Agreement, adjusted downward to reflect any compensation-related concessions made by that employee group. The Deputy Superintendent agrees to accept, a total compensation reduction, equivalent to the total compensation reduction that may be made to any other classified employee group, whether through furloughs, reduced work years, benefits reductions, salary schedule reductions, or similar mechanisms. The Board and Deputy Superintendent shall revise this Agreement to reflect any total compensation adjustments made pursuant to this Section 7.2, and to specify how such compensation adjustments shall be made to salary, health and welfare benefits, and/or related compensation. To fully implement this paragraph for the 2015-2016 and 2016-2017 fiscal years, the Deputy Superintendent's annual base salary as set forth in 7.1 shall be increase to the following, and no additional base salary shall be due for these years pursuant to the provisions of this Section 7.2:

- **2015-2016 Base Salary:** The annual base salary for the Deputy Superintendent shall be two hundred and twelve thousand four hundred and forty-one dollars (\$212,441) for the full 2015-2016 year.
- **2016-2017 Base Salary:** The annual base salary for the Deputy Superintendent shall be two hundred and twenty five thousand eight hundred and sixty-seven dollars (\$225,867) for the full 2016-2017 year.

7.3 Career administrative service increments will be granted to the Deputy Superintendent as follows:

Upon completion of 12 years of career administrative services as a school district chief business officer, 2% additional compensation;

Upon completion of 15 years of career administrative service as a school district chief business officer, 2% additional compensation;

Upon completion of 23 years of career administrative service as a school district chief business officer, 2% additional compensation;

Upon completion of 26 years of career administrative service as a school district chief business officer and/or deputy superintendent, 2% additional compensation.

- 7.4 Based on merit, job performance, and any other criteria determined by the Superintendent and Board, the Board may provide additional increases for any and all years of the Agreement. Specific Board action is required to approve any salary increase. Any salary increase shall not be considered either as entering into a new agreement or extending the term of this Agreement.
- 7.5 Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.
- 7.6 The District is required to follow the requirements of law and related regulations of the California Public Employees' Retirement System (CalPERS). This Agreement includes no promises or warranties regarding whether any particular item of compensation or service credit will be deemed creditable by CalPERS.
8. Health And Welfare Benefits, Insurance And Retirement Benefit
- 8.1 The Deputy Superintendent may participate in medical, dental, and/or vision insurance benefits programs offered by the District pursuant to the applicable program enrollment rules. The District shall pay the premium costs for the District-provided dental and vision insurance benefits plans. If the Deputy Superintendent elects to participate in the District's medical benefits plan, the maximum District contribution toward the Deputy Superintendent's medical benefits premiums shall be the same amount as applicable to other classified management employees of the District. The Deputy Superintendent shall be required to pay all medical benefits premium costs above this maximum District contribution level, and may use an IRC Section 125 plan for this purpose. The District's required premium contribution provided by this Section 8.1 is subject to change as part of a total compensation adjustment made pursuant to Section 7.2.
- 8.2 The District will provide the Deputy Superintendent with a term life insurance policy in the face amount of fifty thousand dollars (\$50,000).
- 8.3 The District shall, beginning July 1, 2015, contribute \$3,000 per year to a tax sheltered instrument of the Deputy Superintendent's choosing. This annual contribution amount shall increase by \$500 per year each additional year the Deputy Superintendent employed by the District, up to a maximum total contribution of \$5,000 per year in her seventh year of District service on July 1, 2019.
- 8.4 If the Deputy Superintendent retires from the District after serving at least five (5) years in position(s) of Assistant Superintendent and/or Deputy Superintendent, the District will provide the retired Deputy Superintendent with retiree medical, vision, and dental benefits premium contributions toward single or two-party coverage through available District-provided plans as follows:

- 8.4.1 The District will pay up to a total maximum of \$1,100 per month toward the cost of the medical, vision, and dental benefits premiums combined, and the retired Deputy Superintendent shall be responsible for paying all premium costs above this combined total maximum amount.
- 8.4.2 The District will pay the combined total maximum premium contributions set forth in Section 8.4.1 for one year for every year the retired Deputy Superintendent served as an Assistant Superintendent and/or a Deputy Superintendent in the District, up to a maximum of ten (10) years (subject to the limit in Section 8.4.3 below, and the requirement that the Deputy Superintendent must have served at least five (5) years to be eligible for any retiree premium contributions).
- 8.4.3 Any required District contributions toward the retired Deputy Superintendent's retiree premium contributions shall cease when the retired Deputy Superintendent reaches age 65 or is eligible for Medicare.
- 8.4.4 At the conclusion of the period of District-provided retiree benefits contributions, subject to any and all requirements of the insurance carriers, the Deputy Superintendent may elect to continue coverage at her own expense.
- 8.4.5 The provisions of this Section 8.4 (including subsections) supersede any contrary limitations contained in Board Policy 4312.2.
- 8.4.6 The required retiree premium contributions described in this Section 8.4 (including subsections) shall apply only to medical, dental, and vision insurance plans offered through the District, and only to the extent that the retired Deputy Superintendent is eligible to participate in those insurance programs pursuant to applicable plan rules.
- 8.4.7 The entitlement to retiree premium contributions described in this Section 8.4 (including subsections) is not a vested benefit and is subject to change in future contracts or other employment arrangements with the District.

9. Business Expenses

In accordance with Board policies, the Deputy Superintendent shall also be compensated for actual reasonable and necessary expenses incurred when District-related duties and obligations require her to travel outside the boundaries of Santa Clara County.

10. Professional Memberships

The District shall contribute up to a maximum of one thousand eight hundred dollars (\$1800) per school year towards membership in ACSA, CASBO, CASH, and/or ASBO for the Deputy Superintendent.

11. Work Year/Vacation

11.1 The Deputy Superintendent shall render twelve (12) months of full and regular services to the District during each annual period covered by this Agreement, except that she shall be entitled to twenty-five (25) working days annual vacation with pay, and in addition, legal and Board declared District holidays, as described in the adopted District calendar.

11.2 Vacation shall accrue on a monthly basis (approximately 2.08 days per month). The Deputy Superintendent may carry over no more than ten (10) days of vacation from one fiscal year to the next. This maximum may be exceeded only with written agreement of the Superintendent.

11.3 If this Agreement is terminated or the Deputy Superintendent retires, the Deputy Superintendent shall be entitled to full compensation for unused vacation earned during the current annual period of the Agreement and any unused vacation from the previous year carried over and documented in a written agreement between the Deputy Superintendent and the Superintendent. The total maximum payout of unused vacation shall not exceed twenty (20) days.

12. Leaves Of Absence

12.1 The Deputy Superintendent shall be entitled to sick leave, bereavement leave and personal necessity leave as provided for by law and Board policy for classified employees.

12.2 Upon termination or expiration of this Agreement, the Deputy Superintendent may transfer the accumulated and unused sick leave days to another school district as permitted by Education Code Section 45202.

12.3 In no event shall the District make a cash payment to the Deputy Superintendent for accumulated and unused sick leave.

12.4 The Deputy Superintendent shall follow District procedures and use District forms for reporting sick leave use to the Board and the District personnel department.

13. Termination Of Agreement

This Agreement may be terminated by any of the following events:

13.1 Parties' mutual written agreement.

13.2 Deputy Superintendent's retirement or death.

13.3 Deputy Superintendent's Disability

The Deputy Superintendent may be removed from her position by the Board if, in the Board's opinion, she is unable to serve in this position due to a physical and/or mental condition, and a licensed physician selected by the District evaluates the Deputy Superintendent and indicates the Deputy Superintendent is unable to perform the essential functions of the her position or will be unable to perform the essential functions of the position for at least six (6) months or longer.

13.4 Termination For Cause

The Board may terminate this Agreement for good and just cause.

If the Board proposes to terminate this Agreement for cause, it shall give the Deputy Superintendent written notice of its intent to terminate for cause ("Notice"); the reasons for the proposed termination; and copies of any documents supporting the Board's reasons. The Deputy Superintendent shall be given not less than fifteen (15) days from the date of receipt of the Notice, reasons, and documents in which to meet with the Board and respond to the charge(s).

The Board's official decision to terminate this Agreement for cause shall not be made until after the conclusion of the pre-termination meeting. If the proposed termination for cause is finalized by Board vote, the Deputy Superintendent shall have no right to further employment by the District; nor shall she be paid a salary or provided any other benefit beyond the given date of termination, which in no event shall be earlier than thirty (30) days from the receipt of the Notice.

13.5 Termination Without Cause

13.5.1 The Board may terminate this Agreement without cause, with forty-five (45) days written notice to the Deputy Superintendent. Upon exercising its option under this subsection, the Board shall pay to the Deputy Superintendent compensation pursuant to this section and shall advise the public and prospective employers that the

Deputy Superintendent was terminated under a provision of this contract that does not require cause.

13.5.2 Except as provided in Government Code Section 53260 (b), if the Board terminates this Agreement without cause, the District shall pay the Deputy Superintendent monthly sums equal to the Deputy Superintendent's current salary rate for a period of six (6) months following the effective date of termination, or the number of months remaining on the unexpired term of this Agreement beyond the termination date, whichever is less.

13.5.3 Deputy Superintendent shall fully reimburse the District for any cash settlement related to the termination of this Agreement pursuant to Section 13.5.2 if she is convicted of a crime involving an abuse of her office or position.

13.6 Breach Or Termination Of Agreement By District

The parties expressly understand and agree that any breach or termination of this Agreement by the District shall not result in the Deputy Superintendent's continued employment or reinstatement. The remedies provided in this Agreement are the exclusive remedies available to the Deputy Superintendent.

13.7 Deputy Superintendent's Election To Terminate Agreement

The Deputy Superintendent shall notify the Superintendent and all Board members if she becomes a finalist for a position with another employer. The Deputy Superintendent may resign at any time upon giving thirty (30) days written notice to the Board.

14. Professional Liability

The Governing Board agrees that, as required by law, it shall defend, hold harmless and indemnify the Deputy Superintendent from any and all demands, claims, suits, actions, and legal proceedings at law or in equity (specifically excluding, however, any demands, claims, suits, actions, or legal proceedings brought against the Deputy Superintendent by or on behalf of the District, any criminal proceedings brought against the Deputy Superintendent in her individual capacity or in her official capacity as agent and employee of the Governing Board), provided the incident giving rise to the claim arose while the Deputy Superintendent was acting in good faith and within the scope of her employment. In no event shall individual Governing Board members be individually liable or responsible to the Deputy Superintendent for defending or indemnifying her against such demands, claims, suits, actions, and legal proceedings.

15. Arbitration

No civil action concerning any dispute arising under this Agreement shall be instituted before any court. All disputes under this Agreement shall be submitted to final and binding arbitration under either informal mediation procedures if the parties agree, or to formal arbitration procedures under the auspices of the American Arbitration Association if the parties cannot agree on an informal mediation procedure. The formal arbitration shall be conducted in accordance with the rules of the American Arbitration Association before a single arbitrator. All costs of the arbitration shall be divided equally between the parties. The arbitrator's award resulting from the arbitration shall be final and binding and may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly.

16. General Provisions

16.1 Severability And Savings

If any provision of this Agreement is rendered invalid or unenforceable by operation of law or is held invalid by any arbitrator, tribunal, or court of competent jurisdiction, or if compliance with or enforcement of any provisions should be restrained by an arbitrator, tribunal, or court pending a final determination as to its validity, the remainder of this Agreement shall not be affected.

16.2 Amendment

This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument signed by both parties.

16.3 Governing Law

This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education and the California Public Employees' Retirement System, and to the lawful rules and regulations of the Governing Board of the Berryessa Union School District.

16.4 Entire Agreement

This Agreement is the full and complete agreement between the parties, and it can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

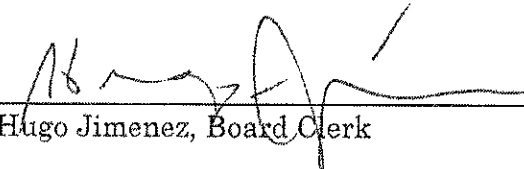
17. Approval by the Governing Board

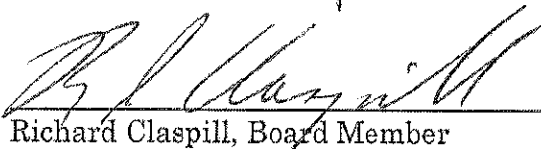
This Agreement shall not be deemed final until approved by the Governing Board of the Berryessa Union School District.

GOVERNING BOARD OF THE BERRYESSA UNION SCHOOL DISTRICT,
SANTA CLARA COUNTY, STATE OF CALIFORNIA

Date: 4-12-16 
David Cohen, Board President

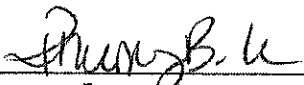
Date: 4-12-16 
Thelma Boac, Board Vice President

Date: 4-12-16 
Hugo Jimenez, Board Clerk

Date: 4-12-16 
Richard Claspill, Board Member

Date: 4/12/16 
Khoa Nguyen, Board Member

I accept this First Amended Agreement and agree to comply with the conditions of this Agreement and to fulfill all of the duties of employment of Deputy Superintendent Administrative Services for the Berryessa Union School District.

By: 
Phuong Le
Deputy Superintendent
Administrative Services

Date: 4/12/16