

**BERRYESSA UNION SCHOOL DISTRICT
AGREEMENT FOR SERVICES AS
ASSISTANT SUPERINTENDENT BUSINESS SERVICES**

This is an employment Agreement between the Board of Trustees (“Board”) of the Berryessa Union School District of Santa Clara County, State of California (“District”) and Kevin T. Franklin for services as Assistant Superintendent Business Services of the District.

1. Employment as Assistant Superintendent Business Services

The Board employs Kevin T. Franklin, and Kevin T. Franklin accepts employment, as Assistant Superintendent Business Services of the District. 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 employment rights for which are as provided in Education Code sections 45104.5 and 35031. The Assistant Superintendent Business Services works under the Superintendent’s direct supervision.

2. Term of Agreement

The term of this Agreement shall commence on May 22, 2019 and terminate on June 30, 2022, unless otherwise terminated or extended.

Following each annual evaluation of the Assistant Superintendent Business Services’ job performance, the Superintendent may recommend that the Board enter into a new three-year agreement to take effect on the next succeeding July 1. At any time, with the recommendation of the Superintendent, the Board may take additional action to extend this Agreement. Approval by the Board and Assistant Superintendent Business Services is required for any new Agreement or extension of the term of this Agreement.

If the Board decides not to reelect or reemploy the Assistant Superintendent Business Services at the expiration of this Agreement, the Board shall notify the Assistant Superintendent Business Services in writing at least 45 days before this Agreement expires. Failure to give such notification will make this Agreement automatically renew for one (1) year upon the same terms and conditions. The Assistant Superintendent Business Services shall give notice to the Board of this provision at least ninety (90) days prior to the expiration of the term of this Agreement.

3. Duties and Responsibilities

The duties and responsibilities of the Assistant Superintendent Business Services shall be those described in the Position Description and as prescribed by law, as well as other duties and responsibilities that may be assigned by the Superintendent.

The Assistant Superintendent Business Services 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.

4. Assistant Superintendent Business Services Performance Objectives

The Assistant Superintendent Business Services and Superintendent annually shall meet to establish the Assistant Superintendent Business Services' goals and performance objectives. These objectives shall be committed to writing and shall be among the criteria by which the Superintendent evaluates the Assistant Superintendent Business Services' performance. Following completion of the Assistant Superintendent Business Services' evaluation each year and before September 1 of the succeeding school year, the parties will meet to establish goals and performance objectives for the next succeeding year

5. Evaluation

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

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

A. the duties and responsibilities of the Assistant Superintendent of Business Services as described in this Agreement and provided by state law, Board policies, procedures, and direction;

B. the Assistant Superintendent Business Services' goals and performance objectives for the year in question; and

C. the working relationship between the Assistant Superintendent Business Services and the Superintendent.

6. Salary

A. Annual Base Salary: The annual base salary of the Assistant Superintendent Business Services shall be \$197,826 for the 2019-2020 school year (July 1, 2019 through June 30, 2020), payable in twelve (12) equal monthly payments. The Assistant Superintendent shall be paid proportionately based on this annual amount for services rendered during the period May 22, 2019 through June 30, 2019.

B. Future Compensation Increases/Decreases: The Board may grant the Assistant Superintendent for Business Services an increase in total compensation (including salary, health and welfare benefits, and related compensation and/or benefits), in an amount equivalent to the highest annual percentage total compensation adjustment provided 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 Assistant Superintendent Business Services agrees to accept a total compensation reduction equivalent to the total compensation reduction that may be accepted by any classified employee group, whether through furloughs, reduced work years, salary schedule reductions, or similar mechanisms. The Board and the Assistant Superintendent Business Services shall revise this Agreement to reflect any compensation adjustments made pursuant to this paragraph, and to specify how such compensation adjustments shall be made to salary, health and welfare benefits, and/or related compensation.

C. Masters & Doctoral Degree Stipends: Two percent (2%) of the base salary will be awarded for a Master's Degree; and three percent (3%) of the base salary will be awarded for a Doctoral Degree. No more than one Master's Degree and one Doctoral Degree shall be counted for this purpose.

D. Administrative Service Increments: Career administrative service increments will be granted as follows:

- Upon completion of twelve (12) years of career administrative service, two percent (2%) additional compensation;
- Upon completion of fifteen (15) years of career administrative service, two percent (2%) additional compensation; and
- Upon completion of eighteen (18) years of career administrative service, two percent (2%) additional compensation.
- Upon completion of twenty-six (26) years of career administrative service, two percent (2%) additional compensation.

E. Other Increases: 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 this 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. Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.

F. CalPERS: The District is required to follow the requirements of law and related regulations of the California Public Employees' Retirement System. This Agreement includes no promises or warranties regarding whether any particular item of compensation or service credit will be deemed creditable by PERS.

7. Health and Welfare Benefits

The Assistant Superintendent Business Services may participate in medical, dental, and/or vision insurance benefits programs offered by the District pursuant to the applicable program enrollment rules. The maximum District contribution toward the Assistant Superintendent of Business Services' medical, dental and vision benefits premiums shall be the same amount as applicable to classified management employees of the District. The Assistant Superintendent Business Services shall be required to pay all benefits premiums costs above this maximum District contribution level, and may use an IRC Section 125 plan for this purpose.

The District shall also pay the full premium for the District-provided fifty thousand dollar (\$50,000) life insurance policy.

8. Business Expenses

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

9. Professional Memberships

The District shall contribute up to a maximum of one thousand eight hundred dollars (\$1800) per school year towards an individual membership for the Assistant Superintendent Business Services in ACSA, CASBO, CASH and/or ASBO, and other organizations pre-approved by the Superintendent.

10. Work Year/Vacation

- A. The Assistant Superintendent Business Services shall render twelve (12) months of full and regular service to the District during each annual period covered by this Agreement, except that he shall be entitled to twenty-four (24) working days annual vacation with pay, and in addition, legal and Board declared District holidays, as described in the adopted District calendar.
- B. Vacation shall accrue on a monthly basis (two days per month). The Assistant Superintendent may carry over no more than ten (10) days of vacation from one fiscal year to the next.
- C. If this Agreement is terminated or the Assistant Superintendent Business Services retires, he shall be entitled to full compensation for unused vacation; in no case, however, will more than 20 total days of unused vacation be paid at the expiration or termination of this Agreement.

11. Sick Leave

- A. The Assistant Superintendent Business Services shall be entitled to twelve (12) working days of sick leave per year. Unused sick leave days shall be accumulated.
- B. Upon termination or expiration of this Agreement, the Assistant Superintendent Business Services may transfer the accumulated and unused sick leave days to another school district as permitted by Education Code Section 45202.
- C. In no event shall the District make a cash payment to the Assistant Superintendent Business Services for accumulated and unused sick leave.
- D. The Assistant Superintendent Business Services shall follow District procedures and use District forms for reporting sick leave use.

12. Termination of Agreement

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

- A. Parties' mutual written agreement.
- B. Assistant Superintendent Business Services' retirement or death.
- C. Assistant Superintendent Business Services' disability.
- D. The Assistant Superintendent Business Services may be removed from his position by the Board if, in the Board's opinion, he 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 Assistant Superintendent Business Services and indicates the Assistant Superintendent Business Services is unable to perform the essential functions of his position or will be unable to perform the essential functions of the position for at least six (6) months or longer.
- E. 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 Assistant Superintendent Business Services written notice of its intent to terminate for cause ("Notice"); a detailed delineation of charge(s) against him; and copies of any documents substantiating the charge(s). The Assistant Superintendent Business Services shall be given not less than fifteen (15) days from the date of receipt of the Notice, charge(s), 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 Assistant Superintendent Business Services shall have no right to further employment by the District; nor shall he 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.

If this Agreement is terminated for cause, the Assistant Superintendent shall have no right of action against the Board for breach of contract.

F. Discharge Without Cause

The Board may terminate this Agreement without cause, with forty-five (45) days written notice to the Assistant Superintendent Business Services. Upon

exercising its option under this subsection, the Board shall pay to the Assistant Superintendent Business Services any amounts specified in this paragraph and shall advise the public and prospective employers that the Assistant Superintendent Business Services was terminated under a provision of this contract that does not require cause.

Except as provided in Government Code Section 53260 (b), if the Board terminates this Agreement without cause, the District shall pay the Assistant Superintendent Business Services monthly sums equal to the Assistant 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. The Assistant Superintendent Business Services shall fully reimburse the District for any such payment if he is convicted of a crime involving abuse of his office or position.

The provisions of this paragraph comply with California Government Code Sections 53243 – 53243.4 and 53260.

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

G. Assistant Superintendent Business Services' Election to Terminate Agreement

The Assistant Superintendent Business Services shall notify the Superintendent and all Board members if he becomes a finalist for a position with another employer. The Assistant Superintendent Business Services may resign at any time upon giving forty-five (45) days written notice to the Board.

13. Professional Liability

The Governing Board agrees that, consistent with the requirements of law, it shall defend, hold harmless and indemnify the Assistant Superintendent Business Services 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 Assistant Superintendent Business Services by or on behalf of the District, any criminal proceedings brought against the Assistant Superintendent Business Services in his individual capacity or in his official capacity as agent and employee of the Governing Board), provided the incident giving rise to the claim arose while the Assistant Superintendent Business Services was

acting in good faith and within the scope of his employment. In no event shall individual Governing Board members be individually liable or responsible to the Assistant Superintendent Business Services, for defending or indemnifying him against such demands, claims, suits, actions, and legal proceedings.

14. Severability and Savings

If any provisions of this Agreement shall be held invalid by operation of law of 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.

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. Amendment

This Agreement may be amended by mutual written consent of the Governing Board and Assistant Superintendent Business Services.

17. General Provisions

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 to the lawful rules and regulations of the Governing Board of the Berryessa Union School District.

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.

We sign this Agreement as the full and complete understanding of the relationships between the parties.

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

By: _____
Khoa Nguyen, President

By _____
Richard Claspill, Vice President

By: _____
David Cohen, Clerk

By _____
Thelma Boac, Member

By: _____
Hugo Jimenez, Member

Date: _____

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

By: _____
Kevin T. Franklin
Assistant Superintendent
Business Services

Date: _____