

AUG 02 2022

Board Approved

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

This is an Agreement between the Board of Trustees ("Board") of the Berryessa Union School District of Santa Clara County, State of California ("District") and Roxane Fuentes ("Superintendent"). to employ the Superintendent for a term of four (4) years commencing July 1, **2021**, and ending June 30, **2025**, subject to the terms and conditions set forth below. This Agreement supersedes and completely replaces all prior agreements between the parties, the most recent of which was **an Amendment to Agreement for Services as Superintendent which was effective June 1, 2020 for a term of four years through June 30, 2024**. The provisions set forth below reflect the full Agreement between the parties.

1. Employment as Superintendent

By this Agreement, the Board employs the Superintendent and the Superintendent accepts employment as the Superintendent of the Berryessa Union School District of Santa Clara County in the State of California, under the terms and conditions indicated below.

2. Term of Agreement

- 2.1 The terms of this Agreement shall become effective on **July 1, 2021**, and shall end on **June 30, 2025**, unless otherwise terminated or extended.
- 2.2 The Board shall at least annually complete a written evaluation of the Superintendent's job performance including an assessment of her progress toward the performance goals and objectives established pursuant to Section 4.
- 2.3 Following each annual evaluation (based on the same time line and process set forth in **sections 4 and 5**) of the Superintendent's job performance, if the Board determines that the evaluation is satisfactory, the Board may enter into a new four-year agreement with the Superintendent to take effect on the next succeeding July 1. A less than satisfactory evaluation shall be determined solely by the Board.
- 2.4 If the Board decides not to reelect or reemploy the Superintendent at the expiration of this Agreement, the Board shall notify the Superintendent in writing at least 45 days before this Agreement expires, as provided in Education Code Section 35031.

3. Duties and Responsibilities

- 3.1 The Superintendent shall serve as the Superintendent of the Berryessa Union School District and act as its Chief Executive Officer. The Board is responsible for developing District policy and general goals; the Superintendent is responsible for executing said policies and implementing the identified goals. The parties agree to cooperate fully and to assist each other in satisfying these responsibilities.
- 3.2 The Superintendent shall recommend persons to the Board for appointment to the District's administrative staff and for employment as certificated or classified employees. She shall also recommend persons to the Board as independent contractors should the Board so request. The Board retains the final decision whether to appoint or employ any of the persons recommended or nominated by the Superintendent.
- 3.3 The Superintendent shall perform the duties prescribed for a superintendent by the laws of the State of California and Board policy. The Superintendent shall act as Secretary to the Board as described in Education Code section 35025. In addition to the powers and duties described in Education Code sections 35035 and 35250, the Superintendent shall have such additional powers and duties as delegated to her by the Board. In the performance of her duties, the Superintendent shall adhere to all Board policies, rules, regulations, ordinances, and direction, and all applicable state and federal laws.

4. Superintendent's Performance Objectives

The Board, in consultation with the Superintendent, shall establish the Superintendent's goals and performance objectives. These objectives shall be reduced to writing and shall be among the criteria by which the Board evaluates the Superintendent's performance. Following the completion of the Superintendent's evaluation each year and by August 15, the parties will meet to establish goals and performance objectives for the next succeeding year in the same manner.

5. Evaluation

- 5.1 The Board shall evaluate the Superintendent's performance at least two times a year during the term of this Agreement and more frequently at the Board's discretion. An informal evaluation should be completed before December 31 of each year; an annual written evaluation should be completed by June 30 of each year, using the performance evaluation form mutually agreed upon by the Superintendent and the District. The Board President or designee will deliver a copy of the written evaluation to the Human Resources Department for placement in the Superintendent's personnel file.

5.2 No later than November 15th and March 15th each year, the Superintendent shall notify the Board of its evaluation responsibilities; provide the Board with copies of this Agreement, the performance evaluation form previously agreed upon, the completed evaluation from the previous year and the Superintendent's current performance objectives; and schedule a meeting for the Superintendent and Board to review the Board's completed written evaluation of the Superintendent.

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

- the duties and responsibilities of the Superintendent as described in this Agreement and provided by state law, Board policies, procedures, and direction;
- the Superintendent's goals and performance objectives for the year in question;
- the working relationships between the Superintendent and the Board;
- the working relationships between the Superintendent and the community served by the District; and
- the improvement in student achievement as measured by state tests or other multiple measures.

6. Salary

6.1 Salary:

- **2021-2022 School Year:** Effective July 1, 2021, the Superintendent's annual base salary shall be two hundred and forty-four thousand nine hundred and thirty-five dollars (\$244,935), which is a four percent (4%) increase over the 2020-2021 annual base salary. In addition, the Superintendent shall receive a one-time payment equal to three percent (3%) of the 2021-2022 annual base salary provided in this section.
- **2022-2023 School Year:** Effective July 1, 2022, the Superintendent's annual base salary shall be two hundred and fifty-seven thousand one hundred and eighty-two dollars (\$257,182), which is a five percent (5%) increase over the 2021-2022 annual base salary.

6.2 Longevity Increments: In addition to the **annual** base salary listed in Section 6.1 above, the District shall provide longevity increments to the Superintendent in the amount of a two percent (2%) increase in **annual** base salary for the completion of each five (5) years of service as

Superintendent in the District up to a maximum increase of eight percent (8%). The longevity increase shall be included in considering future **annual base salary** increases.

6.3 Master's & Doctoral Degree Stipends: Two percent (2%) of the annual base salary will be awarded for a Master's Degree (effective beginning with the 2021-2022 school year); 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.

6.4 Merit Increases: Based on merit, job performance, and any other criteria determined by the 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.

6.5 Modifications of Salary: Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.

6.6 Installments: The Superintendent's annual salary shall be payable in 12 equal monthly installments on the last working day of each month for that month's service. The per diem rate shall be calculated based on a 225 day work year.

6.7 STRS Rules: The District shall report the Superintendent's creditable compensation to the State Teachers Retirement System (STRS) as required by law and applicable regulations, and makes no warranties regarding whether any particular compensation or service credit will be deemed creditable by STRS.

7. Health and Welfare Benefits

The Superintendent 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 Superintendent's medical, dental and vision benefits premiums shall be the same amount as applicable to other certificated management employees of the District. The Superintendent 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. Professional Memberships

The District shall continue to contribute up to a maximum of \$1,800 per school year toward individual memberships in ACSA or other organizations directly related to the Superintendent's service to the District. In addition, the District shall pay up to \$700 for the cost of a retiree lifetime membership in ACSA if the Superintendent retires from the District.

9. Medical Examination

The Superintendent is required to have an annual comprehensive physical examination by a licensed physician. The Superintendent may opt to be examined by her personal licensed physician. Following the examination, the physician shall provide to the Board a signed statement concerning the Superintendent's continued physical fitness to perform the Superintendent's duties. The physician's statement shall be confidential. The District shall pay the costs of the examination and report, to the extent they are not covered by insurance.

10. Business Expenses

10.1 Mileage/Expense Reimbursement: The District will not provide expense reimbursement except as specifically authorized in advance pursuant to Section 10.2.

10.2 Business Expenses: If, by action of the Board, the District requires the Superintendent to travel or attend meetings outside of Santa Clara County, the District will reimburse the Superintendent for authorized expenses. The Superintendent will follow normal District procedures for requesting expense reimbursement. Each reimbursement request shall be accompanied by receipts and other appropriate documentation and must be submitted to the Board for approval. Prior Board approval is required for anticipated airfare or other transportation expenses, hotel, and meeting/conference registration costs. In the event that prior approval by the full Board is not feasible, the Board President may provide this approval.

11. Workyear

11.1 The Superintendent's work year shall be 225 days during each annual period covered by this Agreement, exclusive of legal and Board declared District holidays as described in the adopted District calendar.

- 11.2 Days in excess of 225 and holidays are considered non-work days. The Superintendent recognizes that her job duties may, on occasion require work in excess of the established work year, and that she shall not be entitled to vacation pay for non-work days, and is not entitled to overtime pay or compensatory time off for working additional days.
- 11.3 The District is not required to pay the Superintendent for any work in excess of the 225 workdays established by Section 11.1.
- 11.4 Advance written notification to the Board and Board approval is required for the Superintendent's use of five (5) or more consecutive non-work days.
- 11.5 The Superintendent shall keep the Board informed about her calendar, including written reports at least each December and June about the Superintendent's use of sick leave and non-work days, days worked, and the Superintendent's proposed work schedule for the following six months. These written reports shall be placed in the Superintendent's personnel file.

12. Sick Leave

- 12.1 As permitted by Education Code Section 44979, the Superintendent shall be entitled to transfer accumulated and unused leave from the El Rancho Unified School District to the Berryessa Union School District.
- 12.2 The Superintendent shall be entitled to 12 working days of sick leave each current contract year. Unused sick leave days shall be accumulated.
- 12.3 Upon termination or expiration of this Agreement, the Superintendent may transfer the accumulated and unused sick leave days to another school district as permitted by Education Code Section 44979.
- 12.4 In no event shall the District make a cash payment to the Superintendent for accumulated and unused sick leave.
- 12.5 The Superintendent shall follow District procedures and use District forms for reporting sick leave use to the Board and the District **Human Resources** department.

13. Outside Professional Activities

- 13.1 With the Board's prior approval, the Superintendent may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties and obligations; said outside professional activities may be performed for consideration provided they do not interfere with

or conflict with the Superintendent's performance of her duties under this Agreement.

- 13.2 If performed on District time, honorariums paid to the Superintendent for such activities shall be transferred to the District.

14. Contract Termination

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

- 14.1 Parties' mutual written agreement.
- 14.2 Superintendent's retirement or death.
- 14.3 Superintendent's disability. The 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 Superintendent and indicates that the Superintendent is unable to perform the essential functions of the Superintendent's position or will be unable to perform the essential functions of the position for at least six months or longer.

14.4 Termination For Cause:

- 14.4.1 The Board may terminate this Agreement for good and just cause. This shall include, by way of illustration and not limitation, failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to District, unprofessional conduct, incompetency, neglect of duty, or breach of this Agreement. Determination of whether cause exists shall be in the sole discretion of Board. The Board will not make this determination in an arbitrary or capricious manner.
- 14.4.2 Prior to Board action terminating the Agreement for cause, if the identified cause is for unsatisfactory performance, Governing Board shall identify the specific areas of unsatisfactory performance and give Superintendent a stated timeline to correct said areas.
- 14.4.3 If the Board proposes to terminate this Agreement prior to its expiration date for cause pursuant to this section, it shall give the Superintendent written notice of its intent to terminate for cause ("Notice"), including a detailed delineation of the charge(s) against her, and copies of any documents substantiating the charges. The Superintendent shall be given not less than 15 days from the date of receipt of the Notice to meet with the Board and respond to the charge(s).

The Superintendent may bring a representative of her choice, and at her expense, to attend and participate in such meeting. **Such meeting shall be held in closed session unless Superintendent elects under the Brown Act to cause such meeting to be held in open session (see Government Code section 54957 (b)(2)).**

- 14.4.4 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 Superintendent shall have no right to further employment by the District, nor shall she be paid a salary nor be provided any other benefit beyond the given date of termination.

14.5 Discharge Without Cause

- 14.5.1 Notwithstanding any other provision of this Agreement, **the** Board shall have the sole right, upon the giving of at least sixty (60) days' notice, to terminate this Agreement during its term.
- 14.5.2 Except as provided in Government Code Section 53260 (b), if the Board terminates the Agreement before its normal expiration, except pursuant to sections 14.4.1 through 14.4.4 above, it shall pay Superintendent, commencing from date of notification, not more than twelve (12) months of **annual base** salary and benefits, or for the number of months remaining on this Agreement, whichever is less. This payment of salary and benefits is consistent with the requirements of Government Code sections 53260 and 53261.
- 14.5.3 The actual amount to be paid shall be determined by the number of months remaining on the Agreement, and the annual **base** salary paid in the last year of actual employment with District. **For purposes of this section 14.5, "annual base salary" is defined to be only the salary provided by sections 6.1 and 6.2 of this Agreement.**
- 14.5.4 If Superintendent is gainfully employed, or commences drawing retirement benefits from a retirement system during any portion of the time she is being compensated by District pursuant to this section 14.5, such earnings shall reduce, on a dollar-for-dollar basis, District's obligation under this section.
- 14.5.5 For each affected month during the period of time Superintendent is to be compensated by District pursuant to this section 14.5, Superintendent shall provide District with a

statement of earnings, if any, which shall become a prorated offset against District's monthly obligation under this section for the following month.

- 14.5.6 The compensation set forth in this section 14.5 shall be the only compensation of any kind that shall be due Superintendent upon termination of this Agreement pursuant to this section 14.5.
- 14.5.7 As required by law, including but not limited to Government Code sections 53243, et seq., the Superintendent shall fully reimburse the District for any cash settlement, any paid leave of absence pending an investigation, or any criminal defense provided to the Superintendent if she is convicted of a crime involving an abuse of her office or position.
- 14.5.8 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 and the Superintendent shall not be entitled to the cash, salary payments, or other non-cash settlement as set forth above. This provision is intended to implement the requirements of Government Code section 53260(b).

14.6 Superintendent's Election to Terminate Agreement

Superintendent shall have the sole right, upon the giving of at least ninety (90) days' notice, to terminate this Agreement during its term. Should Superintendent become a candidate for a position elsewhere during the term of this Agreement, Superintendent shall advise the Board through the Board President of Superintendent's intention when Superintendent becomes a finalist for any position.

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

15. Indemnification

To the extent required by law (including Government Code sections 825 and 995), and subject to any applicable limitations, the District shall defend and indemnify the Superintendent for suits, torts, or claims brought against her arising out of acts or omissions occurring within the scope of her employment

as Superintendent. This provision shall continue after the expiration of this Agreement as required by law.

16. Amendment

This Agreement may be amended by mutual **written** consent of the Board and Superintendent.

17. Severability and Savings

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

18. 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.

19. General Provisions

19.1 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 California State Teachers Retirement System, and to the lawful rules and regulations of the Berryessa Union School District Governing Board. If any provisions of this Agreement conflict with any District rules or regulations, the terms of this Agreement shall prevail.

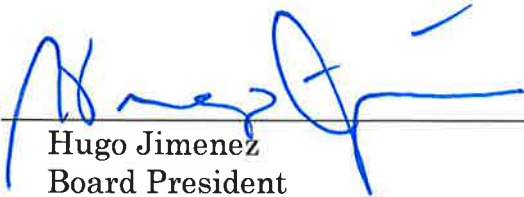
19.2 This Agreement is the full and complete agreement between the parties, and it can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

19.3 This Agreement shall be construed as a whole according to its plain and fair meaning and shall not be construed more strongly against either party regardless of who is responsible for its preparation.


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

19.5 This Agreement and all related application and employment documents will be placed in the Superintendent's personnel file.

APPROVED BY THE GOVERNING BOARD OF THE BERRYESSA UNION SCHOOL DISTRICT ON AUGUST 2, 2022, SANTA CLARA COUNTY, STATE OF CALIFORNIA:

By: 
Hugo Jimenez
Board President

By: 
Khoa Nguyen
Board Vice President

By: 
Jai Srinivasan
Board Clerk

By: 
Kansan Chu
Board Member

By: 
Thelma Boac
Board Member

Date: 8/2/22

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

By: 
Roxane Fuentes

8/3/22
Date

Ratified in a public meeting of the Governing Board on August 2, 2022.