

## **LOS GATOS UNION SCHOOL DISTRICT**

### **EMPLOYMENT AGREEMENT FOR DISTRICT SUPERINTENDENT**

THIS AGREEMENT is entered into on January 20, 2015, between the Governing Board (hereinafter “the Board”) of and on behalf of the Los Gatos Union School District of California (hereinafter “the District”) and Dr. Diana Abbati (hereinafter “the Superintendent”).

#### **1. TERM**

The term of this Employment Agreement is from July 1, 2014 through June 30, 2017.

#### **2. QUALIFICATIONS AND EMPLOYMENT STATUS**

The Superintendent warrants and represents that she currently possesses an administrative credential issued by the State of California, and that such credential has not been suspended or revoked. Any suspension or revocation of such administrative credential shall constitute cause for termination of this Agreement.

The Superintendent shall not become a permanent employee of the District. Her employment rights and status shall be determined solely by this Agreement and California law that does not conflict with the terms hereof.

#### **3. POWERS AND DUTIES**

The Superintendent is the chief executive officer of the District. The Superintendent shall fulfill the duties and responsibilities prescribed by the District’s Superintendent’s Job Description, applicable Federal and State laws and regulations, Board Policy and District regulations, and direction of the Board of Trustees.

The Superintendent shall serve as authorized agent and as Secretary to the Board. The Superintendent is directly responsible to the District Governing Board. She 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, as more specifically provided for by the Job Description.

The Superintendent shall have primary responsibility in making recommendations to the Board regarding all personnel matters, including employment, assignment, transfer and dismissal of employees.

#### **4. EVALUATION**

Each year of the agreement, the Board and Superintendent shall establish by mutual agreement the Superintendent’s performance objectives and benchmarks for the next school year. Said performance and objectives as outlined in the timetable listed below shall be reduced in writing no later than September 15<sup>th</sup>, and shall be based on the duties and responsibilities set forth in this Agreement:

March 15      Superintendent starts evaluation process by giving notice to Board

- April 1-30 Evaluation process jointly established by Superintendent and Board and pursued to conclusion, including at least one closed session conference between the Board and Superintendent to discuss the evaluation before it is finalized with the Superintendent and for the Superintendent to respond to such draft evaluation
- May 1 - 14 Board opportunity to make any changes to the final evaluation pursuant to that dialogue with Superintendent and delivery of final evaluation to Superintendent
- May 15- 31 Superintendent opportunity to prepare response to evaluation to be appended thereto and made a part of it
- May 31 Evaluation with response, if any, placed in Superintendent's personnel file and a copy of that same document provided to the Superintendent
- May 1-June 1 Board and Superintendent prepare next school year's performance objectives for Superintendent
- June 1-30 If Superintendent's evaluation is satisfactory, the District shall pay an annual \$10,000 merit-based performance payment

During February and November of each year the Board shall meet in closed session with the Superintendent for an informal, oral review of the Superintendent's performance and progress towards achievement of the objectives jointly established for that school year. Modifications to those performance objectives may occur from time as the parties may agree and shall be reduced to writing by the Superintendent.

Evaluations shall be based upon the achievement of the mutually agreed upon performance objectives for the year in question. If the Board deems it appropriate, it will provide written recommendations for strengthened performance to the Superintendent. In the event the Board determines that the performance of the Superintendent is unsatisfactory in any respect, the Board may, if it deems appropriate, describe in writing the unsatisfactory performance, and indicate what objective(s) must be accomplished and the date by which it should be accomplished in order for the Superintendent's performance to be deemed satisfactory.

One copy of the written evaluation shall be placed in the Superintendent's personnel file; a second copy shall be given to the Superintendent.

## **5. COMPENSATION**

The Superintendent's base annual salary, effective July 1, 2014, shall be two hundred twenty seven thousand twenty-six dollars (\$227,026), and shall be paid in equal monthly installments. This annual salary amount includes recognition for the Superintendent's Masters' Degree and Doctorate Degree. Payments to the Superintendent for the remainder of the 2014-15 school year shall be adjusted and pro-rated as necessary.

If a majority of the Board rates the Superintendent's annual formal evaluation at a satisfactory level then the District shall pay to the Superintendent a merit based payment for the evaluated in the fixed amount of ten thousand dollars (\$10,000).

The Superintendent's base salary shall be automatically increased each school year during the term of this agreement starting with the 2014-15 school year by the percentage increase applied to the salary schedule of the certificated bargaining unit.

**6. FRINGE BENEFITS**

The Superintendent shall be afforded at least all of the fringe benefits of employment which are granted to the District's management personnel, except as otherwise set forth in this Agreement. Such fringe benefits include, but are not limited to, medical, dental, vision and life insurance for the Superintendent and her eligible dependents, all fully paid by the District. In addition, the District shall pay the Superintendent's dues for ACSA, ASCD and a local service organization, and provide the Superintendent with \$100,000 of term life insurance. The Superintendent shall not be entitled to cash in lieu of any fringe benefits provided for in this section.

**7. TRANSPORTATION ALLOWANCE**

Consistent with Education Code section 44033 and notwithstanding any contrary Board Policy, Administrative Regulation or practice, the Superintendent is required to possess and maintain an automobile for the performance of her duties at her own expense. Mileage may be reimbursed in accordance with applicable law, Board Policy and/or Administrative Regulation.

**8. EXPENSE REIMBURSEMENT**

The District shall reimburse the Superintendent for all actual, necessary and reasonable expenses which she incurs within the scope of her employment. The Superintendent shall provide expense records which the District normally requires for reimbursement. Reimbursable expenses include without limitation, the unreimbursed cost of an annual physical required by Section 13 of this agreement, purchase of a laptop and cell phone, if not provided to the Superintendent by July 7, 2011, travel and educational expenses.

**9. WORK YEAR AND VACATION**

The Superintendent shall be required to perform two hundred and twenty-one (221) work days over a twelve (12) months of full and regular service to the District during each school year covered by this Agreement. Each school year, the Superintendent shall accrue 22 working days of annual vacation with pay, exclusive of holidays as defined in Sections 37220 and 37222 of the Education Code, such vacation to accrue in accordance with District policy for full time employees. She shall submit her proposed work year calendar each year before July 31. By mutual agreement she and the Board may modify this calendar during the year. She shall take vacation during the current or next succeeding year after accrual, and in no event shall she accrue more than 35 days of paid vacation at one time. In the event of termination or expiration of this Agreement, the Superintendent shall be entitled to compensation for unused accrued vacation up to a maximum of 35 working days at the then current salary rate. The Superintendent shall enjoy paid holidays as specified by California and/or Federal law and on all days when the District's administrative office is actually closed to the public.

**10. SICK LEAVE**

The Superintendent is entitled to 12 sick leave days per year. She may also use personal necessity and business leave days in accordance with District policy for full time employees.

**11. PROFESSIONAL GROWTH ACTIVITIES**

For the 2011-2012 school year, the Superintendent shall be granted up to \$10,000 in tuition reimbursement for the pursuit of her Doctoral degree. Such payment shall be made to the Superintendent within thirty (30) days following submission of documentation for the tuition expense incurred or to be incurred by the Superintendent. For the remainder of the contract, prior to September 1 each year, the Superintendent shall submit to the Board a schedule of anticipated professional growth activities for the school year and an estimate of their cost for reimbursement up to \$2,500 per year. Any additions to this schedule shall require prior Board approval. At regular intervals to be scheduled during the year by the Board and Superintendent, the Superintendent shall report back to the Board concerning these professional growth activities and any information and/or educational developments as the Board may request.

**12. OUTSIDE PROFESSIONAL ACTIVITIES**

The Superintendent shall give exclusive professional services to the District during the period of time such services are to be rendered to the District except as otherwise provided herein. Notwithstanding this provision, the Superintendent may, with notification to the Board, undertake consultative professional work, engage in speaking, writing, lecturing, or other professional undertakings either with or without compensation provided such activities do not, in the exclusive judgment of the Board, interfere with or conflict with the Superintendent's performance of her duties under this agreement. The Superintendent may retain any income that may be derived there from.

**13. MEDICAL EXAMINATION**

As a condition of employment, the Superintendent shall have a comprehensive medical examination within sixty (60) days of signing the contract (or shall provide a report of such an examination performed within the last 60 days). At least once every two years thereafter, the physician who conducts the examination shall communicate in writing the results of any medical examination in terms of whether or not the Superintendent is medically fit to perform the essential duties of her position promptly to the President of the Board. This information shall be considered confidential. Nothing herein shall be deemed to waive the physician/patient privilege which the Superintendent shall have with any physician with whom the Superintendent consults for the purpose of this paragraph.

**14. EXTENSION OF AGREEMENT**

The parties acknowledge that the initial term of this Agreement is three (3) school years. Each year of this Agreement, upon the Superintendent's receipt of a satisfactory overall evaluation, the Board may offer to extend this Agreement for a period of one (1) additional year, on the same terms and conditions set forth herein. If the Superintendent is agreeable to the extension, then the extension shall be ratified by the Board in a properly agendized Board meeting during open session and memorialized by a writing delivered to the Superintendent no later than **May 31** of any year.

## **15. TERMINATION OF AGREEMENT**

This Agreement may be terminated prior to its expiration by any of the following methods:

A. Unilateral Termination by Superintendent: The Superintendent may terminate this Agreement by providing the Board with a written notice of intent to terminate. This notice shall be provided no less than ninety (90) days prior to the effective date of said termination. The Superintendent and the Board may mutually agree to a termination notice of less than ninety (90) days.

B. Unilateral Termination by Board: The Board, at its sole discretion and without the need for any cause, may, upon giving ninety (90) days written notice to the Superintendent, terminate this Agreement. If the Board elects this option to terminate the Agreement, the District shall pay the Superintendent severance pay, in one lump-sum payment no later than the effective date of termination, all aggregate compensation she would have earned for the remainder of this contract following the effective date of termination, not to exceed the equivalent of twelve months of salary. The Superintendent shall also continue to receive her full compensation during the 90 day notice period whether or not the Board elects to have her continue to serve actively or to place her on administrative leave during those 90 days.

C. Non-renewal of Agreement by Board: The Board shall provide the Superintendent with no less than ninety (90) days written notice prior to the expiration date of this Agreement of the Board's intention not to renew or extend this Agreement beyond its then current expiration date. Failure to provide timely notice shall operate as an automatic one year extension of this Agreement.

D. Termination for Cause: The Board, may discharge the Superintendent for cause. Discharge for cause shall be warranted only for conduct that is seriously prejudicial to the District, including but not limited to, neglect of duty.

Notice of discharge for cause shall be given in writing and the Superintendent shall be entitled to appear before the Board to discuss such causes, including presentation of evidence by witnesses. The District shall make its employees available to provide such testimony, if requested by the Superintendent.

If the Superintendent chooses to be accompanied by legal counsel at such meeting, she shall bear any costs therein involved. If the Board determines after such meeting that it will not terminate this agreement, then the Board will reimburse the Superintendent for any costs of legal counsel. Such meeting shall be conducted in closed session unless mutually agreed otherwise.

The Board shall prepare a written statement of reasons for any decision to discharge for cause and provide it to the Superintendent. The Superintendent shall have the right to submit a written response to the decision, which the District shall attach to and make a part of the decision.

If the Superintendent exercises her entitlement under this Agreement to appear before the Board, as provided for herein, the District waives any defense based on failure to exhaust administrative remedies and covenants not to assert any such defense in any forum. The date on which the Superintendent actually receives the Board's written decision to terminate after hearing shall be deemed the date of injury to the Superintendent under these circumstances.

All documents relating to termination of this Agreement shall be treated as confidential personnel matters and maintained in confidence except as required by California law.

**16. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement and understanding between the parties. 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. APPLICABLE LAW**

This Agreement shall be construed in accordance with, and governed by the laws of the State of California; should any provision of this Agreement be invalid, the remainder of this Agreement shall nevertheless be binding and effective.

**18. VENUE**

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed by the laws of that State. Venue of any action to enforce this Agreement shall be in Santa Clara County, California.

**19. ATTORNEYS' FEES**

The parties further agree and understand that in the event that legal proceedings are initiated for the purpose of enforcing the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to an award of reasonable attorneys' fees and costs incurred in bringing or defending such action.

**20. AMENDMENTS**

The parties agree that the terms of this Agreement cannot be changed or supplemented orally and may be modified or superseded only by a written instrument executed by all parties.

**21. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two or more counterparts which, taken together, shall constitute the whole Agreement between the parties. A fax or "pdf" signature shall be as valid as an original signature. A copy of this document shall be as valid as any original.

**22. EFFECTIVE DATE**

The effective date of this Agreement shall be July 1, 2014 even though the date on which the Board may approve its execution and its execution will occur thereafter.

**23. NON-WAIVER**

Failure to insist upon strict performance of any requirement of this Agreement shall not be construed as a waiver of any other or future performance hereunder.

**24. BOARD AUTHORITY**

The signatory for the District represents that the document attached hereto as Exhibit A is a true and correct copy of the Board's action approving this agreement and granting authority for

the signatory to execute it so as to bind the District, in accordance with California Education Code § 17604.

**25. INDEMNITY AND DEFENSE OF SUPERINTENDENT**

The District shall indemnify, save, hold harmless and defend the Superintendent from any claim, demand, suit, action and proceeding of any kind and in any forum wherein the Superintendent is alleged to have acted in any way related to her duties as Superintendent or related to the District. The District's obligation to indemnify shall be excused only as to liability for damages awarded against the Superintendent upon exhaustion of all appeals from any finding by a court of competent jurisdiction that the Superintendent's action was outside the scope of her employment, intentionally violated a criminal law of California or constituted intentional fraud with malice without reversal of such finding.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Diana Abbati,  
Superintendent  
Los Gatos Union School District

Dated: \_\_\_\_\_

\_\_\_\_\_  
President, Governing Board  
Los Gatos Union School District

Ratified in a public meeting of the Governing Board on January 20, 2015.