

**EMPLOYMENT AGREEMENT
BETWEEN THE
BOARD OF EDUCATION OF
THE POWAY UNIFIED SCHOOL DISTRICT
AND
MARIAN KIM-PHELPS, Ed.D., SUPERINTENDENT**

This Agreement is entered into between the Board of Education ("Board") of the Poway Unified School District ("District") and Marian Kim-PHELPS, Ed.D ("Superintendent").

1. TERM

The Board hereby employs Marian Kim-PHELPS, Ed.D., as the Superintendent of the Poway Unified School District for a term commencing on April 3, 2017, and ending the effective date of June 30, 2020, or until this Agreement is otherwise terminated by the terms of the Agreement.

Should the Superintendent receive a satisfactory evaluation pursuant to this Agreement, the Board may extend the term of the Agreement for an additional year, so long as the term of the Agreement does not at any time exceed three years. An amendment for the extension of the term of this Agreement shall be approved at a regularly scheduled Board meeting.

2. COMPENSATION

A. Base Salary

The Superintendent's initial annual base salary shall be TWO-HUNDRED EIGHTY-SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$287,500) as specified on the salary schedule attached hereto as Exhibit A. The salary will be payable in twelve equal installments on the last working day of each calendar month, and prorated for any partial month's service. The annual base salary shall be increased pursuant to the terms of this Agreement or otherwise by action of the Board. Such an increase would not constitute a new agreement, nor extend the term of this Agreement.

The Superintendent shall have the option of designating a portion of her salary, within applicable legal limitations, to be placed into a deferred compensation plan which complies with all requirements of the Internal Revenue Code and all other applicable laws and regulations.

B. Base Salary Increases

During each year of this Agreement, the Superintendent's annual base salary shall be in accordance with the attached salary schedule and not any negotiated salary increase for any other group of employees. Any and all adjustments pursuant to the attached schedule shall be contingent upon an annual evaluation which indicates overall satisfactory performance. The determination of an overall rating of satisfactory is within the sole and absolute discretion of the Board.

C. Longevity Incentive

Superintendent shall receive longevity step increases as follows: (i) 2.5% increase at the conclusion of ten (10) years of service in Poway Unified School District; (ii) 2.5% increase at the conclusion of fifteen (15) years of service in Poway Unified School District; (iii) 2.5% increase at the conclusion of twenty (20) years of service in Poway Unified School District; and (iv) 2.5% increase at the conclusion of twenty-five (25) years of service in Poway Unified School District. The increase at each step shall not be calculated on a compounding basis.

D. Doctoral Stipend

The Superintendent shall receive the same doctoral stipend as other District management personnel.

3. DUTIES AND RESPONSIBILITIES

The Superintendent shall be governed by and shall perform all duties and responsibilities as set forth in the California Education Code, as well as all rules and regulations of the State Board of Education and rules, regulations, policies, and directives of the Board. This includes acting as the Chief Executive Officer of the District. The Superintendent shall comply with all Board directives, state and federal law, as well as District policy and District rules and regulations as they currently exist, or may hereafter be adopted or amended.

4. ORGANIZATION

The Superintendent shall organize District management and support staff to best serve the needs of the District. The Superintendent is responsible for recommending qualified candidates for selection, placement and transfer, to be approved by Board vote. The Superintendent shall submit an alternative recommendation should Board approval not be given.

5. BOARD-SUPERINTENDENT RELATIONS

The Board and the Superintendent agree to work together in a spirit of cooperation and teamwork to further the District's mission. The Board and the Superintendent agree to perform their duties and responsibilities in a legal and ethical manner, including acting in a manner consistent with fiduciary duties and responsibilities of the position. The Board members shall, in their positions, formulate and adopt the policies of the District. It shall be the Superintendent's responsibility to administer the policies of the District, including responsibility for the study and recommendation of policies, and the handling of criticism, complaint, and suggestions brought to the Board.

6. EVALUATION

The Board shall formally evaluate and assess in writing the performance of the Superintendent at least once per year. The annual evaluation will be in writing and completed by July 31 of each year unless the Board and Superintendent agree upon another date. In addition to these evaluations, the Board and the Superintendent shall meet from time to time to discuss the Superintendent's performance. The Superintendent's evaluation shall be based upon the duties outlined in this Agreement, District Policies and Regulation, Board-adopted priorities, the Superintendent's Goals and Objectives and prevailing law.

The Board shall evaluate and assess in writing the performance of the Superintendent at least once a year during the term of the Agreement. Said evaluation and assessment shall be reasonably related to the position description of the Superintendent and the goals and objectives of the District for the year of the evaluation. The evaluation format shall be reasonably objective and shall contain the following evaluation criteria: Board priority goals, Board relations, educational leadership, personnel relations, business and facilities services, community relations, personal qualities, administrative services.

The Board shall develop Goals and Objectives for the performance of the Superintendent. The Goals and Objectives shall be delivered to the Superintendent no later than one month following the evaluation of the preceding year. These Goals and Objectives shall be among the criteria by which the Superintendent is evaluated.

Lack of an evaluation shall not preclude the Superintendent from eligibility to salary increases as provided in this Agreement or have any effect on any other paragraph of this Agreement, unless otherwise specified.

In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendation as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the Superintendent. The Superintendent shall have the right to make a written reaction or response to the written evaluation. This response will become a permanent attachment to the written evaluation in the Superintendent's personnel file. Within thirty (30) days of the Board's delivery of the written evaluation to the Superintendent, the Board shall meet with the Superintendent to discuss the evaluation.

The Superintendent's evaluation and assessment of performance, including evaluation criteria and performance goals and objectives, shall be private and confidential and shall not be considered part of the Superintendent's Employment Agreement. All discussions regarding these matters shall be held in a closed session of the Board.

The evaluation procedures and requirements set forth in this Agreement, and any Board policy specifically governing the Superintendent's evaluation, shall be the exclusive means by which the Superintendent is evaluated and are intended to supersede any other provisions concerning evaluation that might exist in applicable law. Any failure on the part of the Board to meet the requirements or deadlines set forth in this paragraph shall not release the Superintendent from fully and faithfully performing the services required to be performed under this Agreement or constitute a default by District of its obligations under this Agreement.

7. **OUTSIDE PROFESSIONAL ACTIVITIES**

The Superintendent may, to the extent permitted by law, serve as a consultant to other districts or educational agencies, lecture, engage in professional activities and speaking engagements, and engage in other activities which are of a short-term duration at the Superintendent's discretion. Any such activities which require the Superintendent to be absent from the District for more than three (3) consecutive full working days shall be reported in advance to the Board and shall be subject to Board approval. Any compensation received by the Superintendent for any outside professional activities shall belong to the Superintendent if they are completed on the Superintendent's vacation days or non-work days.

8. **MEDICAL EXAMINATIONS**

The Superintendent shall, at the Board's option, have an annual, comprehensive medical examination by a District-selected physician. The District shall pay any expense above that paid by the District's insurance. A report on the physical condition of the Superintendent shall be shared with the Board President and shall be treated as confidential information by the Board.

9. **WORK YEAR**

The Superintendent shall be required to render twelve months of service to the District during each annual period covered by this Agreement, except that she shall be entitled to twenty-six (26) days of annual vacation with pay, exclusive of holidays defined in sections 37220 and 37221 of the California Education Code, and any additional local holidays granted by the Board to twelve-month management employees of the District. Unused vacation days will accrue on an annual basis as long as the Superintendent's accrued vacation does not exceed fifty-two (52) days. Should the

Superintendent's accrued vacation time reach fifty-two (52) days, the Superintendent will cease to accrue further vacation days until the Superintendent's accrued vacation time falls below fifty-two (52) days. In the event of resignation, retirement, termination or other separation of employment from the District, the Superintendent shall be entitled to compensation for all unused accrued vacation, not to exceed fifty-two (52) days, at her then current daily rate of compensation or portion thereof. Except as expressly provided herein, the Superintendent shall not be entitled to compensation for unused accrued vacation time.

10. **LEAVES**

Except as otherwise provided in this Agreement, the Superintendent shall be provided with one (1) day per month sick leave absence, credited in advance for her current year's sick leave entitlement upon initial employment with the District. Earned sick leave may be accrued and accumulated as provided by the Education Code and Board rules and regulations.

11. **REIMBURSEMENT FOR EXPENSES**

The Superintendent shall receive the following reimbursements:

All actual and necessary expenses incurred in the performance of her duties, including membership dues in the Association of California School Administrators, the American Association of School Administrators, one other of her choosing, and one community service club. Membership dues shall be paid directly by the District to the organizations. For reimbursement, the Superintendent shall submit an expense claim to the Board in writing for the Superintendent's reimbursable expenses for the prior month. The Superintendent's expense claim shall be supported by appropriate written documentation verifying the contents of the report prior to the Board's authorization of reimbursement.

12. **HEALTH AND WELFARE BENEFITS**

The Superintendent shall receive any health and welfare plan offered to other District certificated management employees for herself and her dependents. Upon Superintendent's retirement from the District, the District shall pay the full premium costs for the Superintendent to be covered under any health and welfare plan offered to other certificated management employees, until Superintendent is eligible for Medicare.

At such a time Superintendent is eligible for Medicare, she shall have the option to continue the District plan at her own cost.

The Board, at the sole expense of the District, shall obtain and maintain a term policy (without cash value), insuring the life of the Superintendent, including but not limited to accidental death, in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) Dollars. Superintendent shall have the option to continue the plan upon her retirement, at her own cost, at the current District group rates.

13. **OTHER EMPLOYMENT**

Should the Superintendent be selected as a finalist for other employment, the Board shall be notified within seven days.

14. **AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual written agreement of the parties.

15. **TERMINATION OF AGREEMENT**

A. Resignation

The Superintendent may resign and terminate this Agreement provided that she has given the Board written notice at least sixty (60) calendar days in advance of the effective date of termination, unless otherwise agreed by the Board.

B. Mutual Agreement

The District and the Superintendent may, by mutual written agreement, terminate the Agreement at any time. Any mutual termination including a cash settlement shall be subject to the provisions of Government Code section 53260, which restricts any cash settlement to no more than the lesser of the then monthly salary times twelve (12) months or the remaining term of the Agreement.

C. Termination by Board – For Cause

This Agreement and the services of the Superintendent may be terminated by the Board at any time for material breach of this Agreement, when the Superintendent has neglected to adequately perform her duties under the Agreement, or for and of the grounds enumerated under Education Code Section 44932. The Board shall not terminate this Agreement under this section until a written statement of the grounds for termination has first been served upon the Superintendent. The Superintendent shall thereafter be entitled to a conference with the Board at which time the Superintendent shall be given an opportunity to respond to the grounds for termination. The Superintendent may be represented by counsel at the conference with the Board at her own expense. Any decision to terminate for a material breach shall be effective upon the date determined by the Board.

D. Termination by Board – Without Cause

The Board may, for any reason, without cause or a hearing, terminate this Agreement at any time. In consideration for the exercise of this right, the District shall pay to Superintendent a monthly sum equal to the difference between the Superintendent's salary in effect during her last month of service and the amount earned after the effective date of termination for the remainder of this Agreement or twelve (12) months, whichever is less. Payments to Superintendent shall be made on a monthly basis unless the Board agrees otherwise.

For purposes of this Agreement, the term "salary" shall include only the Superintendent's regular monthly base salary and shall not include the value of any other form of compensation or benefit, or reimbursements received under this Agreement. Payments made pursuant to this termination without cause provision may be subject to applicable payroll deductions and 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 purposes; accordingly, no deductions shall be made for retirement purposes.

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 constitute

reasonable liquidated damages for the Superintendent, fully compensate the Superintendent for all tort, contract and other damages of any nature whatsoever, whether in law or equity, and do 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 sections 53260, et seq.

E. Non-Renewal of Agreement

Pursuant to the Education Code, section 35031, the Board may elect not to renew this Agreement, and/or not to reemploy the Superintendent upon the expiration of this Agreement pursuant to Education Code Section 35031.

F. Death or Disability

Death of the Superintendent shall immediately terminate this Agreement. In such event, all salary and other monetary amounts due to the Superintendent up to the time of death, if any, shall be paid to the Superintendent's estate unless otherwise declared in writing by the Superintendent or directed by the executor of her estate.

If, as a result of a physical or mental disability, the Superintendent is unable to perform the essential functions of her position, with or without reasonable accommodation, this Agreement may, at the Board's election, be terminated in accordance with applicable law.

16. GOVERNING LAW

This Agreement is subject to all applicable laws of the State of California and the lawful rules and regulations of the Board, as well as the regulations of the California State Board of Education. All such laws are hereby made a part of the terms and conditions of this Agreement.

17. SAVINGS

If, during the time it is in effect, any specific provision or clause of this Agreement is declared illegal or void under federal, state, or local law or regulation, the remainder of the Agreement not affected by such ruling shall remain in full force and effect.

18. CREDITABLE COMPENSATION/TAXES

Notwithstanding any other provision of this Agreement, the District shall not be liable for any state, federal, or employment tax consequences or retirement consequences as a result of this Agreement. Superintendent shall assume sole liability for all state, federal or employment tax consequences and retirement consequences and shall defend, indemnify and defend the District from all such consequences.

19. 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.

20. COMPLETE AGREEMENT

This Agreement constitutes and contains the entire agreement and understanding between the parties

concerning the Superintendent's employment with the District. This instrument supersedes and replaces the existing employment agreement and all prior negotiations and all agreements proposed or otherwise, whether written or oral.

21. **CONSTRUCTION**

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions of this Agreement and shall have no force or effect.

22. **INDEPENDENT REPRESENTATION**

The Superintendent and the Board each recognize that in entering into this Agreement, the parties have relied upon, or had the opportunity to consult with and rely upon, the advice of their own attorneys or other representatives, and that the terms of this Agreement have been completely read and explained to them by their attorneys or representatives, and that those terms are fully understood and voluntarily accepted.

23. **PROVISIONS REQUIRED BY GOVERNMENT CODE SECTIONS 53243, 53243.1, 53243.2, 53243.3 AND 53243.4**

To the extent applicable to school districts, this Agreement is subject to the provisions of Government Code Sections 53243-53243.4 which requires reimbursement under the circumstances stated therein, as listed below.

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including but not limited to, waste, fraud, and violation of the law

under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.


The intent of this Section is to satisfy the requirements in Government Code Sections 53243, 53243.1, 53243.2, 53243.3 and 53243.4, and this Agreement shall be interpreted consistent with these statutes.

24. PUBLIC RECORD

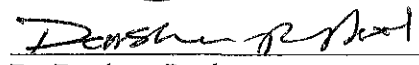
The parties recognize that, once final, this Agreement is a public record and must be made available to the public upon request.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date hereinafter set forth.

BOARD OF EDUCATION OF THE POWAY UNIFIED SCHOOL DISTRICT.

By:  March 7, 2017
Michelle O'Connor-Ratcliff,
Board President

By:  March 7, 2017
T.J. Zane,
Board Vice-President

By:  March 7, 2017
Dr. Darshana Patel,
Board Clerk


By: _____ March _____, 2017
Charles Sellers

By: _____ March _____, 2017
Kimberley Beatty

Acceptance

I hereby accept this Agreement for Employment and agree to comply fully with each and every condition thereof, and to fulfill faithfully all of the duties of employment as Superintendent of Poway Unified School District.

Dated: 3-7-17

By: 
Marian Kim-Phelps, Ed.D.

This Agreement was approved in open session by the Board of Education of the Poway Unified School District at a meeting duly scheduled and held on March 7, 2017, at San Diego County, California.

Attest: 
Clerk of the Board

EXHIBIT A
SUPERINTENDENT SALARY SCHEDULE

<i>Effective Date</i>	<i>Base Salary</i>
April 3, 2017	\$287,500.00
July 1, 2018	\$296,125.00
July 1, 2019	\$305,009.00