

**EMPLOYMENT AGREEMENT BETWEEN  
JAIME SILVA  
AND THE  
BRAWLEY ELEMENTARY SCHOOL DISTRICT  
IMPERIAL COUNTY, CALIFORNIA**

This Employment Agreement (hereinafter "Agreement") is entered into by and between the Governing Board of the Brawley Elementary School District of Imperial County, California (hereinafter referred to as the "Board") and Jaime Silva (hereinafter referred to as "Superintendent"). The Board and the Superintendent hereby agree to the following terms and conditions:

1. **TERM OF AGREEMENT.** The Superintendent is hereby employed by the Board as the Superintendent of the Brawley Elementary School District ("District"). The term of employment for the Superintendent shall be for the period commencing August 15, 2016 and ending June 30, 2018.

Upon satisfactory evaluation of the Superintendent on or before the first regularly scheduled Board meeting in June of each school year, the Board shall meet with the Superintendent prior to June 30 of that same school year to discuss whether to offer the Superintendent a one-year extension to the remainder of the Agreement term. If an extension is offered, it shall be memorialized as a written addendum to this Agreement.

2. **SALARY.** The salary of the Superintendent calculated on an annual basis (12 months) shall be One Hundred Eighty Thousand Dollars (\$180,000.00) per year, payable at the rate of Fifteen Thousand Dollars (\$15,000.00) each calendar month. The daily rate for the Superintendent is determined by dividing the Superintendent's annual salary by 224. The Board reserves the right to increase the annual salary for the Superintendent provided, however, such increase shall neither constitute a new agreement nor extend the term of this Agreement unless otherwise approved by the Board.

The Superintendent is a certificated management employee who is exempt from overtime.

3. **DUTIES AND RESPONSIBILITIES.** The Superintendent shall have the authority of Superintendent as prescribed by the laws of the State of California. The Superintendent shall be the chief executive officer of the District, shall act as Secretary to the Board, and shall have such powers and duties that are delegated to him by the Board. The Superintendent shall have the primary responsibility for execution of Board Policy, and the Board shall retain the responsibility for formulating and adopting said policy. The parties agree individually and collectively not to interfere with or usurp the responsibilities of the other party. The Superintendent shall have primary responsibility for all personnel matters, including selection, assignment and transfer of all employees,

subject to prior approval of the Board. In all personnel matters, the Superintendent shall present his recommendations to the Board. In the event the Board does not approve said recommendation, the Superintendent shall submit another recommendation to the Board within a reasonable time.

The Superintendent agrees to competently, efficiently and effectively carry out all of him assigned duties and responsibilities.

4. **BOARD-SUPERINTENDENT RELATIONS.** The Superintendent shall work with the Board in developing and maintaining a spirit of cooperation and teamwork in which the Board shall accept responsibility for formulating and adopting policy and for taking action on matters which by law require Board action. Subject to directives and mandates established by the Board, administrative responsibility and commensurate authority for administering the school system is delegated by the Board to the Superintendent. Board members shall endeavor in good faith to refer to the Superintendent, for study and recommendation, criticisms, complaints, and suggestions brought to their attention.
5. **EVALUATION.** 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 duties 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 may, but need not, contain the following evaluation criteria: Board/Superintendent relations, community relations, staff and personnel relations, educational programs, business and financial matters, and professional and leadership development. 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 for purposes of public disclosure in response to a Public Records Act request under Government Code section 6250.

Once each year, the Board and Superintendent shall meet and establish goals and objectives for the current year. The Superintendent shall submit proposed written goals and objectives to the Board. The proposed goals and objectives may be revised by the Board following consultation with the Superintendent. The final goals and objectives shall be reduced to writing, and will be among the criteria by which the Superintendent is evaluated pursuant to this section.

The yearly evaluation of the Superintendent shall be completed by June 1 of each year.

The Board may evaluate the Superintendent more frequently than once each year if deemed necessary by the Board. Failure by the Board to conduct the annual evaluation provided for herein shall be considered to be a satisfactory evaluation.

6. **HEALTH AND WELFARE BENEFITS.** The Superintendent shall be provided with District-paid medical, dental, vision and life insurance benefits. The benefit package and the employee contribution thereto shall be the same as that of other certificated management employees of the District.

7. **LEAVES.** The Superintendent shall receive the same leave benefits as other certificated management employees of the District. As a 12-month employee he shall be entitled to receive twelve (12) days of sick leave each school year.
8. **WORK YEAR.** The Superintendent is a full-time certificated management employee who is required to render competent services during the term of this Agreement for two hundred twenty-four (224) contract work days per year (July 1 - June 30).
9. **EXPENSES.** The Superintendent shall be reimbursed for all necessary and reasonable business expenses incurred on behalf of the District which are documented and submitted pursuant to the procedures of the District. Such business expenses include, but are not limited to, business-related travel (lodging, meals, parking, tolls), mileage at the District approved rate, and the cost of membership dues in local service organization(s). In addition, the District shall pay the Superintendent's annual dues to ACSA. The Superintendent shall not exceed the amounts budgeted for such purposes by the Board.
10. **VACATION AND HOLIDAYS.** The Superintendent shall be entitled to earn 26 days' vacation per year and shall receive holidays defined by Education Code section 32770. Accrual of vacation is based upon time employed with the District and shall not exceed 26 days each year. Unused vacation shall accrue from year-to-year up to a maximum of 36 days and shall cease to accrue until the accrued amount is reduced below 36 days. Thereafter, vacation will accrue on a prospective basis so long as the total accrual remains under the 36 day maximum.

Upon termination of this Agreement, the Superintendent shall be entitled to compensation for all unused accrued vacation days to a maximum of 36 days at the then-current rate of pay.

11. **RENEWAL OF AGREEMENT.** If prior to May 15, 2018, the Board does not send or personally deliver a written notice to the Superintendent that this Agreement shall not be renewed, this Agreement shall be renewed automatically for the same term under the same terms and conditions pursuant to Education Code section 35031. In the event this Agreement is automatically extended, the Board shall ratify such extension in a public session of the Board.

This provision shall not be implemented and no automatic extension shall apply unless the Superintendent, between April 1, 2018 and April 15, 2018, sends or personally delivers to each member of the Board written notice regarding this provision including the effect of the May 15, 2019 deadline.

Additionally, the Superintendent acknowledges and agrees that if he fails to provide written notice to Board members between April 1, 2019 and April 15, 2018, this section, at the option of the Board, shall constitute timely written notice of non-renewal pursuant to Education Code section 35031 and this Agreement.

## 12. TERMINATION OF EMPLOYMENT

### 12.1 Termination by Mutual Agreement

This Agreement may be terminated, during the term of the Agreement, by mutual agreement of the parties, evidenced by a separate agreement, in writing, which supersedes this Agreement.

### 12.2 Termination for Cause

12.2.1 The Board reserves the right to unilaterally terminate this Agreement for cause and without the consent of the Superintendent. Cause, under this Agreement, is defined as any of the following:

12.2.1.1 The failure or inability of the Superintendent to perform any substantial duties required under this Agreement.

12.2.1.2 The commission by the Superintendent of any act of dishonesty, fraud, misrepresentation, or other acts of moral turpitude.

12.2.1.3 A substantial breach of any covenant or condition of this Agreement by the Superintendent.

12.2.1.4 The commission or omission of any act by the Superintendent which would constitute a permissible "for cause" termination under federal or California law (including pursuant to the California Education Code), and District policies or regulations.

12.2.2 In the event of a proposed termination of this Agreement for cause or material breach, the Board shall give at least thirty (30) days' prior written notice to the Superintendent with specific charges which shall constitute the basis for termination or cause or material breach of this Agreement.

The Superintendent shall be given a reasonable opportunity, in closed session, to respond either orally or in writing or both, before any final decision by the Board on the proposed termination of this Agreement.

### 12.3 Termination at Will

12.3.1 The Board reserves the right to terminate this Agreement "at will," without alleging or demonstrating cause and without the consent of the Superintendent. Any such termination shall be in writing and shall specify the effective date of the termination.

12.3.2 Each of the parties agrees that as a condition precedent to the Board having the right to terminate this Agreement "at will" that the Board shall

pay, concurrently with the termination of the Superintendent, an amount equal to twelve (12) months' salary, which the parties agree is a fair, just and reasonable liquidated damage for the emotional distress or other compensable damages associated with separation from employment, provided, however, such payment shall not exceed the monthly salary requirements of Government Code section 53260 specifying that the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, not to exceed 12 months. The Superintendent's health benefits will continue at the expense of the District for twelve (12) months upon such termination or for such lesser period as provided in Government Code section 53260.

Notwithstanding the above, if the Board terminates its contract of employment with Superintendent, the Board shall not provide cash or non-cash settlement to the Superintendent in any amount if the Board believes and subsequently confirms, pursuant to an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices.

The intent of the above sections is to satisfy the requirements of Government Code sections 53260-53264, and this Agreement shall be interpreted consistent with these statutes.

#### 12.4 Unilateral Termination by Superintendent

The Superintendent may, at his option, unilaterally terminate this Agreement by giving written notice on or before May 1 that he will not fulfill the obligations of the Agreement during the succeeding school year, or after the beginning of the school year, by giving at least sixty (60) days written notice to the Board that he wishes to be relieved of the Agreement for the remainder of the period of the Agreement.

### 13. PROVISIONS REQUIRED BY GOVERNMENT CODE SECTIONS 53243, 53243.1, 53243.2, 53243.3, AND 53243.4.

#### Article 2.6. Abuse of Office

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 positions.

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 provisions 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. The purpose 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 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.

14. **PROFESSIONAL MEETINGS AND DEVELOPMENT.** The Superintendent is expected to attend appropriate professional meetings at local, state and national levels. The Superintendent is also expected to endeavor to maintain and improve his professional competence by subscribing to and reading appropriate periodicals, by maintaining memberships in appropriate professional organizations, and other professional development as appropriate. Prior notice shall be given to the Board when the Superintendent attends a function outside of the District in accordance with District policies.

15. **PROFESSIONAL SUPPORT.** The Superintendent shall be provided with such equipment and technology, supplies, and clerical assistance as appropriate to the Superintendent's position and necessary for the adequate performance of Superintendent's duties including, but not limited to, a laptop computer, a cellular telephone with email and data capabilities, and Internet access. If there is disagreement between the Superintendent and the Board with regard to professional support items or resources, the Board's determination shall be final.
16. **OUTSIDE PROFESSIONAL ACTIVITIES.** With prior approval of the Board, the Superintendent may undertake for consideration outside professional activities, including consulting, speaking and writing. The Superintendent's outside professional activities shall not occur during regular work hours. In no event will the Board be responsible for any expense attendant to the performance of such outside activities.
17. **MISCELLANEOUS PROVISIONS.** This Agreement is subject to the applicable laws of the State of California and to the rules and regulations of the State Board of Education.

The Superintendent shall maintain all required credentials as a Superintendent during the term of this Agreement.

This Agreement contains the full and complete agreement between the Superintendent and the Board regarding the matters specified herein.

Except as otherwise provided in this Agreement, this Agreement can be changed or modified only by a written document signed by both parties except that the Board reserves the right to increase the Superintendent's salary at any time pursuant to section 2.

If any term or provision of this Agreement is determined to be illegal by a court of competent jurisdiction, then such term or provision shall be severed from this Agreement and the remaining terms and provisions shall be in full force and effect.

18. **RATIFICATION.** The Superintendent and the Board agree this Agreement is not binding or enforceable unless it is ratified by the Board at a regular public meeting of the Board.

  
\_\_\_\_\_  
Jaime Silva, Superintendent

July 1, 2016  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Cesar Guzman, Governing Board President

\_\_\_\_\_  
Date

Ratified in an open session at a regular meeting of the Governing Board on: July \_\_, 2016.

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date