

**MILPITAS UNIFIED SCHOOL DISTRICT
SANTA CLARA COUNTY, CALIFORNIA
THIRD AMENDMENT TO THE
SUPERINTENDENT EMPLOYMENT AGREEMENT**

The Governing Board of the Milpitas Unified School District (“District” or “Board”) and Cheryl Jordan (“Superintendent”), collectively referred to as “the Parties,” enter into this Third Amendment to the Superintendent Employment Agreement (“Third Amendment”) on this 13th day of August 2019, based on the following:

RECITALS

WHEREAS, the Parties entered into a “Superintendent Employment Agreement” on February 14, 2017; and

WHEREAS, the Parties entered into a “First Amendment to the Superintendent Employment Agreement” on June 13, 2017 (“First Amendment”); and

WHEREAS, the Parties entered into a “Second Amendment to the Superintendent Employment Agreement” on June 26, 2018 (“Second Amendment”) (the Superintendent Employment Agreement as amended by the First Amendment and Second Amendment constitutes the “Contract”); and

WHEREAS, Paragraph 22 of the Contract authorizes the Parties to modify the Contract by written instrument executed by both Parties; and

WHEREAS, per Paragraphs 2 and 9, subparagraph (e), the existing Contract term ends June 30, 2021, unless an amendment to the Contract is made after Superintendent receives a satisfactory evaluation from the Board for the 2018-2019 school year; and

WHEREAS, Paragraph 5, subparagraph (a)(i), of the Contract authorizes the Board to grant Superintendent the same compensation increase granted to the District’s certificated management personnel, contingent on a satisfactory evaluation; and

WHEREAS, Superintendent received a satisfactory evaluation from the Board on June 25, 2019; and

WHEREAS, at the school board meeting on August 13, 2019, the Board approved an increase in compensation applicable to the District’s management personnel, including members of the Milpitas Management Association (“MMA”), in the amount of three percent (3.0 %) retroactive to July 1, 2018; and two point five percent (2.5%) effective July 1, 2019;

THEREFORE, based on the foregoing, the Parties wish to modify and amend the Contract, effective upon execution of this Third Amendment to the Contract and approval of this Third Amendment by the Board in open session during a regular school board meeting as follows:

AGREEMENT AND AMENDMENTS TO THE AGREEMENT

1. The Parties agree the recitals above are accurate.
2. The Parties agree to make the following amendments to the Contract.
3. Paragraph 2 of the Contract shall be revised to read as follows:

Term. The District hereby employs Cheryl Jordan as Superintendent of the Milpitas Unified School District for a period of three (3) years, beginning July 1, 2019 and ending June 30, 2022, unless this Agreement is terminated earlier or extended as provided by the terms of this Agreement and/or as required by law.

4. Paragraph 3 of the Contract shall be revised to read as follows:

Work Year. Superintendent ~~shall render no less than~~ is a twelve-month employee of the District with a per diem rate based upon two hundred twenty-one (221) days of full and regular service to the District per fiscal year (July 1st–June 30th), exclusive of Saturdays, Sundays and holidays as defined in Education Code sections 37220, with such work being scheduled at the direction of the Board. Days worked in excess of two hundred twenty-one (221) are considered non-work days. In the event that Superintendent is required to work more than two hundred twenty-one (221) days in the year, exclusive of Saturdays, Sundays and holidays, she shall be compensated for up to five (5) ~~224~~ additional days at her per diem rate. Upon written approval of the Board, the number of days may be increased.

5. Effective retroactive to July 1, 2018, Paragraph 5, subparagraph (a) of the Contract shall be revised to list an annual base salary of \$232,526.00. Effective July 1, 2019, Paragraph 5, subparagraph (a) of the Contract shall be revised to list an annual base salary of \$238,339.00.
6. Paragraph 5, subparagraph (c), of the Contract shall be revised to read as follows:

Vacation. In addition to the two hundred twenty-one (221) work days provided under this Agreement, Superintendent ~~shall be a 12-month employee and shall be~~ entitled to twenty-five (25) days of annual vacation with pay, ~~exclusive of the holidays provided under this Agreement.~~ Superintendent shall not accrue more than a total of twenty-five (25) vacation days during the term of this Agreement. If service for a full work year is not performed, Superintendent shall only accrue vacation days and receive compensation for that number of days proportional to those served during the work year.

7. Paragraph 5, subparagraph (d), of the Contract, regarding Holidays, shall be removed in its entirety, and Paragraph 5, subparagraph (e), of the Contract shall be renumbered as the new Paragraph 5, subparagraph (d).
8. Paragraph 10, subparagraph (c), of the Contract shall be revised to read as follows:

Non-Renewal of Agreement by the District. The Board may elect not to renew this Agreement upon its expiration by providing Superintendent with written notice ~~at least ninety (90) days in advance of non-renewal~~ in accordance with

Education Code section 35031 (currently 45-days prior notice), or other applicable provisions of law. Superintendent shall inform the Board President of this notice requirement at least ninety (90) days in advance of expiration of this Agreement.

9. Paragraph 10, subparagraph (e), of the Contract shall be revised to read as follows:

Termination without Cause. If for any reason, without cause or a hearing, at any time the Board determines, in its sole discretion, that such action is in the best interest of the District, the Board may unilaterally terminate this Agreement. In the event of termination without cause, and pursuant to Government Code section 53260, the maximum cash settlement the Superintendent may receive shall be an amount equal to the monthly salary of Superintendent multiplied by the number of months remaining until expiration of the contract up to a maximum of twelve (12) months. Payments, if made, shall be made on a monthly basis and will only continue for the duration of time as covered in the settlement, up to twelve (12) months, or until Superintendent finds other employment, whichever occurs first. Pursuant to Government Code Section 53261, Superintendent's health benefits will be paid for the same duration of time as covered in the settlement, up to twelve (12) months, or until Superintendent finds other employment, whichever occurs first. In no event shall the District be liable to Superintendent for an amount of compensation greater than what the District would have had to pay for the remaining term as provided for in the existing Agreement.

Upon termination without cause, Superintendent shall be obligated to immediately and actively seek other comparable employment and to provide a monthly written statement to the Board President of efforts to secure such employment. In the event that Superintendent obtains other employment during this period, Superintendent shall immediately notify the Board President. From the date that Superintendent obtains other employment moving forward, the District's monthly payments to Superintendent shall cease.

For purposes of this Agreement, the term "salary" shall include only Superintendent's regular monthly base salary and shall not include the value of any other stipends, allowances, reimbursements or benefits received under this Agreement. All payments made pursuant to this termination without cause provision shall be subject to applicable payroll deductions, if any. No payments made pursuant to this early termination provision shall constitute creditable service, creditable compensation or compensation earnable for CalSTRS or CalPERS retirement purposes. Payments made pursuant to this termination without cause provision shall be considered as final settlement pay; accordingly, no deductions shall be made for retirement purposes. The Parties agree that any damages to Superintendent that may result from the Board's early termination of this Agreement without cause cannot be readily ascertained. Accordingly, the Parties agree that the payments made pursuant to this termination without cause provision, along with the District's agreement to provide health benefits, constitutes reasonable liquidated damages for Superintendent, fully compensates Superintendent for all tort, contract damages, and other damages of any nature whatsoever, whether in law or equity, and does not result in a penalty, provided that nothing contained herein shall be deemed to limit any remedy available to Superintendent for any action by the District which violates public policy. The

Parties agree that the District's completion of its obligations under this provision constitutes 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 section 53260, et seq., and that any payment of cash or other consideration to Superintendent pursuant to a settlement agreement resulting from the termination of this Agreement by the Board is subject to the limitations and requirements contained in Government Code sections 53260, et seq., and other applicable provisions of law, as the law may be amended from time to time.

10. The following new subparagraph (i) shall be added to Paragraph 10 of the Contract:

Non-solicitation of Employees. To the full extent permitted by law, during the term of this Agreement and for a period of twelve (12) months immediately following Superintendent's termination of employment with the District for any reason, whether voluntary or involuntary, Superintendent agrees not to directly solicit or recruit, or attempt to solicit or recruit, any employee of the District on behalf of herself or any other business or enterprise for purposes of employment or otherwise induce an employee from terminating or breaching an employment relationship with the District.

- 11 This Third Amendment supersedes any conflicting provisions in the Contract, and any ambiguity between this Third Amendment and the Contract is to be interpreted in accordance with this Third Amendment.
12. All other terms and conditions of the Contract are unchanged and unaffected by this Third Amendment and shall remain in full force and effect.
13. The Contract, as modified by this Third Amendment, constitutes the entire understanding and agreement between the Parties, and no addition to, or modification of, any term or provision of the Contract, as modified by this Third Amendment, shall be effective unless set forth in writing, signed by the Parties, and duly approved by the Board.

August 13, 2019

MILPITAS UNIFIED SCHOOL DISTRICT

Chris Norwood
President, Governing Board

Cheryl Jordan
Superintendent