

**EMPLOYMENT CONTRACT  
BETWEEN DONALD EVANS  
AND THE BERKELEY UNIFIED SCHOOL DISTRICT**

This Employment Contract ("Contract") is by and between Donald Evans, Ed.D. ("Superintendent") and the Governing Board ("Board") of the Berkeley Unified SCHOOL DISTRICT ("District").

NOW, THEREFORE, Board offers and Superintendent accepts, employment as District Superintendent.

FURTHERMORE, in consideration of the foregoing and of the terms and conditions set forth herein, Board and Superintendent hereto agree as follows:

**Section A. Contract Term**

1. Board employs Superintendent commencing on July 1, 2016 and ending on June 30, 2019 unless such employment is terminated earlier pursuant to the provisions of this Contract or extended as otherwise provided herein or by law.

**Section B. Work Year and Hours of Work**

2. Superintendent shall render twelve (12) months of full and regular service to District each school year, beginning July 1 and ending on June 30, with the exception of vacations, District-approved holidays, and approved leaves as set forth in the Contract. It is understood that the demands of the position of Superintendent will require more than eight (8) hours a day and/or forty (40) hours per work week. Superintendent is not entitled to receive overtime compensation. The Superintendent's work year shall be two hundred twenty-five (225) workdays (226 in a leap-year).

**Section C. Compensation**

3. Superintendent is employed as a full-time employee of District with an annual salary of           [ANTICIPATED SALARY FOR 2016-17]           (\$           ). The annual base salary shall be payable on the last day of each month in installments of one-twelfth (1/12) of the annual base salary for services rendered during the preceding month, with proration for a period of less than a full year of service. The daily rate for the purpose of prorating the annual salary provided for in the Contract shall be \$           .

4. For the 2016-2017 fiscal year only, Superintendent shall receive a one-time lump sum bonus of three percent (3%) of his salary for 2016-2017.

5. The annual salary and/or fringe benefits may be increased at the sole discretion of Board and will be considered annually at a regularly scheduled board meeting. Any increase in salary shall be discussed and approved in open session at a regular Board meeting pursuant to Government Code Section 54956, subdivision (b). A change in salary during the term of the Contract shall not constitute the creation of a new contract or extend the termination date of the Contract.

6. Longevity Bonus

On June 30, 2018, assuming as of that date the Superintendent has been continuously employed by the Board as Superintendent and the Board has renewed his contract for future years, the Superintendent shall receive a one-time longevity payment of \$10,000.

On June 30, 2020, assuming as of that date the Superintendent has been continuously employed by the Board as Superintendent and the Board has renewed his contract for future years, the Superintendent shall receive a one-time longevity payment of \$10,000.

**Section D. Fringe Benefits**

Medical, Dental and Vision Insurance

7. During his/her employment under the Contract, Superintendent may select any medical, dental, and vision plan available to other certificated management employees within District. Superintendent shall be responsible for any employee contribution of the plan selected per negotiation with the Board, which in the 2016-2017 fiscal year shall be the same as that of other certificated management employees within District.

Retirement Contribution

8. Superintendent is responsible for his employee share of contributions to CalSTRS.

**Section F. Work Related Expenses**

Reimbursement for work related expenses

9. District shall reimburse Superintendent for all documented ordinary and necessary expenses, including mileage reimbursement, incurred relative to employment as Superintendent and consistent with Board policies, regulations, and guidelines applicable to other certificated management employees.

10. Unless otherwise addressed in the Contract, if the Superintendent seeks to be reimbursed for the cost of traveling outside of the District, such as for attending an out-of-district conference, the Superintendent shall obtain written approval from Board President.



## Participation in Professional Associations

11. District shall pay Superintendent's annual dues to the Association of California School Administrators (ACSA). Consider the following language as an alternative: (Prof Assoc Dues/Service Club Expenses) District shall pay the Superintendent's expenses and dues for membership in professional organizations including the Association of California School Administrators (ACSA), the National Association of School Superintendents (NASS) and such other professional associations as the Superintendent may participate in.

12. District shall reimburse the Superintendent for all reasonable expenses incurred by him/her in connection with District business. Such reimbursement shall include dues and other expenses associated with membership in a service club to be selected by the Superintendent. The District shall also pay on behalf of the Superintendent expenses incurred in attendance for regional, state or national conferences, seminars, hearings or meetings which are devoted to matters that in the Superintendent's judgment relate to the benefit and welfare of the District, provided such attendance does not interfere with Superintendent's responsibilities to the District.

## **Section G. Leaves**

### Illness Leave

13. Superintendent shall accrue illness leave at the rate of one ( 1 ) day per month.

14. Accrued unused illness leave shall not be compensable upon separation.

### Vacation

15. Superintendent shall accrue paid vacation at the rate of two ( 2 ) days per month, exclusive of the paid holidays provided by law or policy to 12-month certificated management employees. All vacation must be scheduled in advance and approved by Board President. Superintendent may not accrue more than twenty four ( 24 ) days of vacation at any time. Once this maximum accrual level is reached, Superintendent will cease accruing additional vacation until his or her balance falls below this level.

Superintendent shall limit the number of vacation days taken on student attendance days to no more than three (three) per academic calendar year. Additional vacation days taken on student attendance days can be approved by the Board president.

### Personal and other leaves

16. Superintendent shall be entitled to all other personal necessity, bereavement, or other leaves provided to District's certificated management employees.

## Reporting

17. The Superintendent shall report, in the same manner as other Certificated management, his usage of the leaves provided in this contract and shall notice the President of the Board if he will be out of the District for a day or more.

### **Section H. Professional Development**

18. If requested by Board President or at Superintendent's option, District shall provide a reasonable amount of paid release time and related expenses for Superintendent to participate in the following operations, programs and other activities conducted or sponsored by local, state or national school administrator and/or school board associations, not to exceed more than 10% of the Superintendents work days without Board approval. If Superintendent participates in any such activity, he or she shall provide a timely report to Board.

### **Section I. General Duties**

19. Pursuant to Article 3 (commencing with Section 35026) of Chapter 1 of Part 21 of Division 3 of Title 2 of the Education Code, Superintendent shall be the Chief Executive Officer of District.

20. Superintendent shall perform, at the highest level of competence, all services, duties, and obligations required by (i) the Contract, (ii) the District Superintendent job description, (iii) applicable laws and regulations, (iv) Board rules, regulations, and policies and as otherwise directed by Board. Superintendent may delegate his or her duties to a responsible, District employee at Superintendent's discretion unless otherwise stated in applicable laws and regulations, found in Board rules, regulations, and policies, or otherwise prohibited by Board.

21. Superintendent shall have primary responsibility for the management of all District affairs. In carrying out his duties, Superintendent shall provide educational leadership to the District and make student learning and student success his highest priorities. Superintendent shall endeavor to maintain and improve his or her professional competence by all available means, including subscription to and reading of appropriate periodicals and membership in appropriate associations.

22. Superintendent shall be responsible for the operations of District including, but not limited to, the areas of general administration, instruction, human resources, communications, government relations, facilities, and business affairs.

23. For any time period during which at least one District facility is open and Superintendent is unavailable, Superintendent shall appoint a responsible, competent District employee to temporarily fulfill Superintendent's duties and, when doing so, shall notify Board President.

## **Section J. Administrative and Board-Related Duties**

24. Superintendent shall establish and maintain positive community, staff, and Board relations.
25. Superintendent shall attend every Board meeting and Board committee meeting unless excused in writing by Board President. This duty may not be delegated unless permitted in writing by Board President.
26. Superintendent shall serve as Secretary to Board and perform the duties as prescribed in Section 35025 of Chapter 1 of Part 21 of Division 3 of Title 2 of the Education Code.
27. Superintendent shall have primary responsibility for the execution of Board policies, although primary responsibility for the formulation of Board policies is retained by Board. Superintendent will review all policies adopted by Board and make appropriate recommendations to Board for addition, deletion, or modification.
28. Superintendent shall be responsible for the development and execution of administrative regulations required or necessary for the implementation of Board policies and shall place any new or modified administrative regulation on the agenda of a Board meeting.
29. As permitted by any applicable law including, but not limited to, the Brown Act, Superintendent shall, in advance of Board meetings, keep all Board members advised of emerging issues that could have a material impact on the Board or District.
30. Superintendent shall serve as liaison to Board with respect to all matters of employer-employee relations and shall make recommendations to Board concerning those matters.
31. Superintendent shall submit financial and budgetary reports to Board and shall advise Board on possible sources of funds to carry out District programs.
32. Annually, Superintendent shall prepare and submit a recommended District budget to the Board, with supporting financial information to assist Board in approving a sound budget.
33. Superintendent shall enter into contracts for and on behalf of District, subject to Board approval or ratification as required by law.
34. Superintendent shall have such other duties properly delegated to him by Board policies or by other Board actions.

### **Section K. Personnel Duties**

35. Superintendent may appoint a cabinet of senior District administrators to advise Superintendent and shall evaluate all cabinet members pursuant to their contracts as well as Board policies and regulations.
36. Superintendent shall have primary responsibility for making timely and appropriate recommendations to Board regarding personnel matters, including the employment of personnel and any release, non-reelection, or termination of an employee, and provide periodic reports of resignations and retirements.. Upon request by Superintendent, Board may authorize Superintendent to employ personnel without Board approval.
37. As required by Education Code Section 35035, and subject to the approval of Board, Superintendent is responsible for assigning all District employees employed in positions requiring certification qualifications. He or she shall also be responsible to periodically evaluate or cause to be evaluated all District employees.
38. Superintendent shall provide leadership and direction in negotiations with all labor groups.

### **Section L. External Relation Duties**

39. Superintendent shall represent District before the public, and shall maintain such a program of public relations as may serve to improve understanding and to keep the public informed about District activities, needs, and results.
40. Superintendent will act as the primary liaison with the local, state, and federal agencies and elected representatives.
41. Superintendent is encouraged to attend appropriate local community meetings. Reasonable expenses thereby incurred shall be reimbursed in accordance with Paragraphs 9 and 10 of the Contract.
42. Superintendent shall regularly report to Board on all external relations activities.

### **Section M. Additional Requirements**

#### Medical Exam

43. In light of the unique nature of the professional duties of Superintendent, Superintendent shall receive, at district expense, a complete medical examination prior to February 15 of each Contract Year. The examination shall be conducted by a licensed physician selected by Superintendent. The written statement which shall be provided to Board President shall be limited to the physician's determination of the continued fitness of Superintendent to

perform the duties required under the Contract, with or without reasonable accommodations. The statement shall otherwise be confidential. Nothing in this provision precludes Board from directing Superintendent to submit to a fitness for duty exam at any time, or as otherwise permitted by law.

#### Driver's License

44. Superintendent is required to maintain a valid California Driver's License and have a vehicle available at all times to perform the duties of the position.

#### Additional Duties

45. Superintendent shall carry out all lawful activities as directed by Board from time to time.

### **Section N. Evaluation**

46. Board shall evaluate Superintendent in each year, utilizing the process set forth in Paragraphs 47 through 54, inclusive.

47. Prior to September 1 of each year, Board shall meet to mutually establish Superintendent's performance goals and objectives for that school year based on the duties and responsibilities set forth in the Contract, Board's strategic planning priorities and any other criteria chosen by Board. These goals and objectives shall be reduced to writing and, at Board discretion, may include input provided by Superintendent.

48. Prior to October 1 of each year, Board shall, in writing, provide Superintendent with the evaluation instrument the Board will use to assess Superintendent's performance based on the goals and objectives established pursuant to Paragraph 50. The evaluation instrument shall include an overall job performance rating of "Exceeds Expectations," "Satisfactory," "Needs Improvement," and "Unsatisfactory." Superintendent may provide input to the evaluation instrument, and if Superintendent elects to do so, must provide such input on the instrument by November 15.

49. Prior to April 1 of each year, Superintendent shall remind Board in writing of Board's evaluation obligations under the Contract, and Superintendent and Board shall agree on dates for Superintendent's evaluation and the other steps of the evaluation process as described herein.

50. Prior to May 31 of each year, Superintendent shall provide Board with an annual report regarding the state of the District and shall also schedule a presentation based on the report at a regularly scheduled Board meeting.

51. Prior to June 1 of each year, Superintendent shall present Board with a written self-evaluation. The self-evaluation shall mirror the form of the written evaluation instrument.

52. Prior to June 30 of each year, and after receiving Superintendent's state of the District report and self-evaluation, each of the following shall occur:

- Each Board member shall individually complete the evaluation instrument;
- Board will devote a portion of at least one (1) meeting to a discussion and evaluation of Superintendent's performance, including the working relationship between Superintendent and Board.
- Board President shall be responsible for utilizing the individual Board member evaluations and Board discussion to prepare a single, evaluative document that communicates Board's collective feedback and expectations.

53. The evaluation of Superintendent by Board will be in writing and placed in a sealed envelope in Superintendent's personnel file marked as follows: "Confidential. Only to be opened upon authorization of Board." A copy of the evaluation will be provided to Superintendent.

54. Failure of Board to complete the evaluation process does not constitute a material breach of the Contract and shall not result in the amendment or extension of the Contract. Failure of Board to evaluate Superintendent shall not preclude Board from giving notice of termination or nonrenewal in accordance with Paragraphs 56 through 60, inclusive.

#### **Section O. Contract Extension**

55. This Contract may be extended by the Board for one (1) additional year one time only. If the Contract is extended, this extension shall be approved publicly by the Board at the next regular Board meeting subsequent to this extension. If this Contract is extended by operation of this Paragraph 55, this provision continues to apply to the Contract as extended to the extent allowed by law.

#### **Section P. Non-Renewal of Employment Contract**

56. Should the Board determine that it does not wish to re-employ Superintendent under any successor contract, the Board shall give written notice of this decision to Superintendent pursuant to Education Code section 35031 at least three (3) months (rather than the statutory forty-five (45) days) prior to the end of this Contract, or any successor Contract.

57. Superintendent shall remind the Board of the requirement to give this notice, in writing, at the last regular Board meeting that is at least sixty (60) calendar days before the last day to

give the notice required in Paragraph 56. Failure by Superintendent to provide such notice as set forth herein shall invalidate the additional notice period set forth in Paragraph 56.

### **Section Q. Termination of Employment Contract**

58. Notwithstanding Section A, Paragraph 1, this employment Contract may be terminated prior to its normal expiration by:

- (a) Failure by Superintendent to maintain a valid California Administrative Credential.
- (b) Mutual written agreement of the parties.
- (c) Retirement of Superintendent.
- (d) Physical or mental inability of Superintendent to perform his duties.
- (e) Termination for Cause.

1. Should Superintendent be terminated for cause, this Contract may be terminated.

2. Cause, as used in this provision means conduct which is seriously prejudicial to District. This shall include, by way of illustration and not limitation:

- A. any cause set forth in Education Code section 44932;
- B. any act of unprofessional conduct not otherwise set forth in Education Code section 44932;
- C. any act in bad faith that causes detriment to the District;
- D. incompetency;
- E. neglect of duty;
- F. failure or refusal to follow Board directions (subject to any right to reasonable accommodation as set forth under State or federal law); or
- G. material breach of this Contract.

In applying this provision, the parties acknowledge that Superintendent is one of the District's most visible representatives and is expected to maintain high standards of personal conduct and to avoid situations that might reflect negatively on the District. Determination of whether cause exists shall be in the sole discretion of the Board.

3. Should the Board elect to terminate this Contract for cause prior to its expiration pursuant to Paragraph 58(e) (1) through (3) herein, the Board shall notify Superintendent in writing. Upon request, the Board shall serve upon Superintendent a reasonably detailed statement of the facts upon which the Board has determined that cause exists. Superintendent shall be afforded an opportunity for a meeting which shall include the right to be represented by counsel and the right to call witnesses. If Superintendent chooses to be accompanied by legal counsel at such meeting. Superintendent shall bear any costs therein. Such meeting shall be conducted in closed session (unless otherwise required by law to be held in open

session). Superintendent shall be provided a written decision describing the results of the meeting.

(f) In the sole discretion of the Board as set forth in Paragraph 59 below.

59. Notwithstanding any other provision of this Contract, the Board shall have the sole right to terminate this Contract during its term as set forth in this section. The parties mutually acknowledge that California Government Code section 53260(a) provides that if this employment Contract is terminated, the maximum cash settlement that Superintendent may receive shall be an amount equal to the monthly salary of Superintendent multiplied by the number of months left on the unexpired term of the Contract. However, if the unexpired term of the Contract is greater than eighteen (18) months, the maximum cash settlement shall be an amount equal to the monthly salary of Superintendent multiplied by eighteen (18). (California Government Code, section 53260(a).) In recognition of this maximum, the parties expressly agree that if the Board terminates this Contract before its normal expiration, except pursuant to Paragraph 58(e) (1) through (3) above, it shall pay to Superintendent his base salary for the lesser of either twelve (12) months or for the number of months remaining on this Contract. The twelve (12) month payment period shall commence on the date of written notification of the Board's decision to terminate this Contract.

60. If Superintendent is gainfully employed, or commences drawing retirement benefits from a retirement system during any portion of the time he is being compensated by the District pursuant to Paragraph 59, such earnings shall reduce, on a dollar-for-dollar basis, the District's obligation under Paragraph 59. For each affected month during the period of time Superintendent is to be compensated by the District pursuant to Section 59, the Superintendent shall provide the District with a statement of earnings, if any, which shall become a pro-rated dollar-for-dollar offset against the District's monthly obligation under Paragraph 59 for the following month.

61. The compensation set forth in Paragraphs 59 and 60 above shall be the only compensation of any kind which shall be due to Superintendent if this Contract is terminated by the Board pursuant to Paragraph 57(f).

#### **Section R. Other Employment Opportunities**

62. Superintendent shall notify the Board President in advance of any interview for another employment opportunity, regardless of the type of opportunity.

#### **Section S. Termination by Death**

63. The Contract shall terminate immediately upon the death of Superintendent and all rights and obligations of the Parties under the Contract shall be deemed fully satisfied.

## **Section T. Liability for Taxes**

64. Notwithstanding any other provision of the Contract, District shall not be liable (except in cases of District errors or omissions) for any state or federal tax consequences to Superintendent, any designated beneficiary hereunder, or the heirs, administrators, executors, successors, and assigns of Superintendent. Superintendent shall assume sole liability for any state or federal tax consequences of the Contract or any related contract and agrees to indemnify and hold District harmless from such tax consequences.

## **Section U. Superintendent Indemnification**

65. District shall include Superintendent as a named insured in its liability and errors and omissions insurance policies.

66. District shall, to the full extent permitted by law, defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against him or her in his or her personal capacity or in his or her official capacity as an agent and/or employee of District, provided that the incident arose while Superintendent was acting on matters related to his or her employment with District, or acting within the course and scope of his employment.

67. In no event will any individual Board member be personally liable for indemnifying Superintendent.

## **Section V. General Provisions**

### Full and Complete Contract

68. The Contract is the full and complete contract between the Parties. It can be changed or modified only in writing signed by Superintendent and Board President or designee after Board approval.

### Entire Contract

69. The Contract contains the entire 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 the Contract. The Contract is intended by the Parties to be the sole instrument governing the relationship between the Parties unless a provision of law, now or hereinafter enacted, is specifically applicable to the Contract or to the relationship between Board and Superintendent.

### Applicable Laws

70. This Contract is subject to all applicable laws of the State of California, the rules and regulations of the State Board of Education, and Board rules, regulations, and policies. These laws, rules, regulations, and policies referenced herein are a part of the terms and conditions of the Contract as though fully set forth herein, except as they are expressly modified in this Contract.

### Construction

71. The Contract will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of the Contract, it is understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting hereof and no such contract term shall be construed or resolved against either party based on any rule of construction.

### Delivery of Notices

72. All notices permitted or required under the Contract shall be given to Superintendent at the following address: 2020 Bonar Street, Berkeley, California, 94702.

73. Such notices shall be deemed received when personally delivered or when deposited in the U.S. Mail. However, actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### Headings

74. The headings of sections of the Contract have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of the Contract.

### Attorney's Fees

75. In the event of any action or proceeding to enforce or construe any of the provisions of the Contract, Superintendent and Board shall each bear the cost of their own attorney's fees and costs regardless of the outcome of the action or proceeding.

### Severability

76. If any portion of the Contract is declared invalid or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforceability of the remaining provisions of the Contract.

## AB 1344

77. If Superintendent is convicted of a crime involving abuse of his or her office, Superintendent shall reimburse District for all applicable costs pursuant to Article 2.6 (commencing with Section 53243) of Chapter 2 of Part 1 of Division 2 of the Government Code.

78. Pursuant to Government Code Section 53243.2, any funds received by Superintendent from District resulting from Board's decision to terminate Superintendent without cause pursuant to Paragraphs 59 and 61, inclusive, shall be fully reimbursed to District if Superintendent is convicted of a crime involving the abuse of his or her powers of office. If District funds the criminal defense of Superintendent against charges involving the abuse of his or her office or position, and Superintendent is then convicted of those charges, Superintendent shall fully reimburse District for all District funds paid for Superintendent's criminal defense.

## Governing Law and Venue

79. The Contract, and the rights and obligations of the Parties, shall be governed by and construed in accordance with the laws of the State of California. The Parties also agree that in the event of litigation, venue shall be the proper state or federal court serving Alameda County, State of California.

## No Assignment

80. Superintendent may not assign or transfer any rights granted or obligations assumed in the Contract.

Next Page

Conflict with Board Policies

81. In the event of a conflict between the terms of the Contract, or any amendments thereto, and the terms of Board-adopted policies, the terms of the Contract shall prevail.

IN WITNESS, we affix our signatures to the Contract as the full and complete understanding of the relationships between the parties.

On Behalf of the GOVERNING BOARD OF THE BERKELEY UNIFIED SCHOOL DISTRICT:

<u>Beatriz Leyva-Cutler</u>	_____	_____
Name, Board President	Signature, Board President	Date

I, Donald Evans. Ed.D., accept Board's offer of employment and agree to comply with the Contract and fulfill all of the duties required herein as Superintendent of the Berkeley Unified School District.

_____	_____
Signature, Superintendent	Date

00233-00007/2259123.3