

# ALBANY UNIFIED SCHOOL DISTRICT

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made effective beginning the 1<sup>st</sup> day of July 2012, by and between the Governing Board of the Albany Unified School District ("District" or "Board") and Marla Stephenson ("Superintendent").

### 1. Term

District hereby employs Superintendent for a period of three (3) years, beginning July 1, 2012, and terminating on June 30, 2015, subject to the terms and conditions set forth below.

### 2. Salary

The Superintendent's initial annual base salary shall be Two Hundred and Thirty eight Thousand dollars (\$238,000.00) per annum payable in twelve (12) equal monthly payments. In addition, Superintendent shall receive the Longevity step applicable to all District administrators and managers based upon their years of administrative service in the District. Effective July 1, 2012, the Superintendent will be entitled to the longevity step associated with her thirteen (13) years of administrative service with the District. The administrator longevity grid is attached hereto as Attachment A.

During the years of the employment agreement the Superintendent will be entitled to have her salary increased by the percentage equal to the total compensation raise received by the members of the Albany Teachers Association in any given year.

The Board reserves the right to increase or decrease the Superintendent's salary for any year or any portion of a year of this contract with the mutual written consent of the Superintendent and the Board. A change in salary shall not constitute the creation of a new contract nor extend the termination date of this Agreement.

### 3. Work Year/Vacation

The Superintendent is a full-time certificated management employee and shall be required to render twelve (12) months of full and regular service to the District, with no less than two hundred twenty-five (225) days constituting a work year each school year during the term of this Agreement. However, the Superintendent shall be entitled to an additional twenty-five (25) days of vacation, excluding paid holidays as defined in Education Code section 37220. The Board expects the Superintendent to utilize this apportionment of vacation time every school year. When the Superintendent determines to be absent for five (5) or more consecutive days off of work, she shall give notice in advance to the Board President.

If this Agreement is terminated, the Superintendent shall be compensated for all unused, accrued vacation at the salary rate effective at the time of termination. The Superintendent's per diem shall be calculated by dividing the annual salary (base + longevity) by the number of work days, e.g., a denominator of 225 days. Vacation time may be accrued from year to year.

**4. Fringe Benefits**

**a. Health and Welfare Benefits**

The Superintendent shall be entitled to select and participate in, at the Superintendent's sole expense medical, dental and vision benefits offered under the District approved plans available to management employees in the District. The District will provide the Superintendent the option of paying for the health and welfare benefits pre-tax via the use of a section 125 Plan.

**b. Employee Contribution**

The District agrees to pay the Superintendent's employee contribution to State Teachers Retirement System (STRS), not to exceed 8% of the salary.

**c. Benefits Upon Retirement**

Should the Superintendent retire from the State Teachers Retirement System, while a District employee, she shall be entitled to receive District paid medical, dental and vision premiums for the Superintendent and her spouse or domestic partner until the end of the month in which the Superintendent reaches the age of seventy (70), at the same levels provided for the regular certificated employees of the District. Superintendent shall be entitled to receive any District Early Retirement Incentive, which is available to and under the same conditions as applicable to District certificated employees.

**d. Sick Leave**

The Superintendent shall accrue seventeen (17) days of sick leave each year of employment under this Agreement. Earned, unused, sick leave may be accumulated without limitation.

**5. Superintendent's Duties**

**a. General Duties**

The Superintendent is employed as District Superintendent and shall perform the duties of District Superintendent as prescribed by the laws of the State of California and the District's job description for the Superintendent, if any. The Superintendent shall have primary responsibility for execution of Board policy and responsibility for the duties prescribed by Education Code section 35035. The Superintendent shall be the Board's chief executive officer.

**b. Personnel Matters**

The Superintendent, after consultation with the Board, shall have the authority to organize and arrange the administrative and supervisory staff: including instruction, personnel, business and operational affairs which in her judgment best serve the District. The Superintendent shall have primary responsibility in making recommendations to the Board regarding all personnel matters, including selection, assignment, transfer and dismissal of employees.

**c. Administrative Functions.** The Superintendent, as chief executive officer, shall:

- (1) Review all policies adopted by the Board and make appropriate recommendations to the Board;
- (2) Periodically evaluate or cause to be evaluated all District employees;
- (3) Advise the Board of sources of funds that might be available to implement present or contemplated District programs;
- (4) Assume responsibility for those duties specified in Education Code section 35250;
- (5) Endeavor to maintain and improve her professional competence by all available means, including subscription to and reading of appropriate periodicals and membership in appropriate professional associations;
- (6) Establish and maintain positive community, staff and Board relations;
- (7) Serve as liaison to the Board with respect to all matters of employer-employee relations and make recommendations to the Board concerning those matters;
- (8) Recommend to the Board District goals and objectives;
- (9) Unless unavoidably detained, or for reasons determined by the Board or mutually agreed upon by the Board and Superintendent, the Superintendent shall attend all regular, special, and executive session meetings of the Board.

**d. Board Responsibilities**

- (1) The Board recognizes the importance of individually and collectively referring, in a timely manner, all "criticisms, complaints and suggestions called to its/their attention to the Superintendent for study and recommendation, and shall refrain from individual interference with the administration of school policies, except through Board action;
- (2) In addition to directing all complaints, criticisms, suggestions concerning the District or any of its personnel directly to the Superintendent, as set forth above, the Board agrees that it shall work with the Superintendent in a spirit of cooperation and teamwork, and shall provide the Superintendent with periodic opportunities to discuss Board/Superintendent relationships. Whenever it is deemed desirable by either a majority of the Governing Board or by the Superintendent, an outside advisor will be mutually selected by the Board and the Superintendent, and shall be paid for by the District, to facilitate discussion of the relationships of the Board and Superintendent, in advancement of the best interests of the District

**6. Evaluation**

**a. Goals, Objectives, and Process**

The Board shall annually endeavor to evaluate the working relationship between the Board and the Superintendent. The Parties will endeavor to reach a mutually agreeable evaluation instrument; however, if the Parties are unable to reach an agreement, the Board will select the evaluation instrument. The evaluation will be based upon the factors contained in the evaluation instrument and any mutually agreed upon District goals and objectives. By no later than June 1 of each year of this Agreement, the Superintendent shall submit to the Board a written document detailing priorities, goals and tasks to be addressed by the Superintendent for the following school year. The Governing Board will review the document and if necessary, will modify the document, with the agreement of the Superintendent. After review by the Governing Board and any amendments, these priorities, goals and tasks will become the Superintendent's goals and objectives for the school year.

The Board shall assess in writing the performance of the Superintendent on the identified goals and objectives no later than November 1 of each year. The Board shall devote a portion of at least one meeting annually for discussion and evaluation of the performance and working relationship between the Superintendent and the Board. Every effort will be made to conduct this meeting by a date to be determined by the Board and the Superintendent. Such meeting to discuss the actual evaluation shall only be conducted in closed session. Evaluations shall be based upon the mutually developed and agreed upon performance goals and objectives for that year's evaluation. The Board and the Superintendent shall also meet quarterly during the course of the year to give oral feedback to the

Superintendent concerning the Superintendent's progress towards meeting the mutually agreed upon goals and objectives, and making any agreed upon modifications to those goals and objectives. After reviewing the performance of the Superintendent based upon the agreed upon goals and objectives established for the school year, the Board shall notify the Superintendent in writing whether the Superintendent has performed, in the Board's judgment, satisfactorily or unsatisfactorily.

An evaluation shall be deemed to be "satisfactory" if a majority of the Board members have rated the Superintendent's performance as satisfactory. A copy of the evaluation shall be delivered to the Superintendent and a copy of the evaluation shall be placed in the Superintendent's personnel file. The Superintendent shall then have ten (10) days from receipt of the evaluation to respond in writing to the evaluation.

The Board shall, if requested by the Superintendent, meet and discuss the contents of the evaluation with the Superintendent within a reasonable time after the Superintendent has heard or received the evaluation. Evaluations of the Superintendent shall only be discussed in closed session.

**b. Failure to Evaluate**

The evaluation procedures and requirements set forth in this Agreement shall be the exclusive means by which the Superintendent is evaluated and is intended to supersede any other provision regarding evaluation which might exist in applicable law or by virtue of any District rules, regulations and Policies. Any failure on part of the Board to meet the requirements or deadlines set forth in the Agreement shall not release the Superintendent from fully and faithfully performing the services under this Agreement or constitute as a default by the District of its obligations under this Agreement.

**c. Contract Extension/Salary Consideration**

If the Superintendent is evaluated by the Board as "Meeting job requirements" or better, for any school year of this Agreement, the Board will communicate that assessment to the Superintendent and offer to extend the contract. The Superintendent shall accept or reject such proposed extension by the second board meeting in February. If the Superintendent agreed to the proposed extension, the Board will act upon by voting and extending the Employment Agreement at the next board meeting in Open Session.

**7. Termination of Agreement**

**a. Mutual Consent**

This Agreement may be terminated at any time by mutual consent of the Board and the Superintendent.

**b. Non-Renewal of Agreement by the District**

The Board may elect not to renew this Agreement upon its expiration by providing written notice to the Superintendent in accordance with Education Code section 35031 (currently 45 days prior notice) or other applicable provisions of law.

**c. Termination for Cause**

The Board may terminate the Superintendent for good cause including , but not limited to: (1) acts done in bad faith to the detriment of the District; (2) refusals or failures to act in accordance with specific provisions of this Agreement or Board directives; (3) breach of this Agreement; (4) unsatisfactory performance; if the performance is related to an evaluation goal or objective and if an action plan has been implemented pursuant to Section 5 above, the Board may make a final decision on whether the action plan and performance has been successful and may then terminate under this provision ; (5) misconduct or dishonest behavior; or (6) conviction of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person. The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties of the parties under this Agreement. If such cause exists, the Board shall meet with the Superintendent. If the Superintendent disputes the cause, the Superintendent shall then be entitled to a conference before the Board in closed session. The Superintendent shall have a reasonable opportunity to respond to all matters raised. The conference with the Board shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. The Superintendent shall have the right to have counsel attend, at her own expense. If the Board, after considering all evidence presented, decides to terminate this Agreement, it shall provide the Superintendent with a written decision. The decision of the Board shall be final. The Superintendent's conference before the Board shall be deemed to satisfy the Superintendent's entitlement to due process of law and shall be the Superintendent's exclusive right to any conference or hearing otherwise required by law. The Superintendent waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the Superintendent's administrative remedies and then authorizes the Superintendent to contest the Board's determination in a court of competent jurisdiction.

**d. Termination 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 the remainder of any salary due under this Agreement, not to exceed twelve (12) months. Payments to Superintendent shall be made on a monthly basis unless the parties agree 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 stipends, reimbursements or benefits 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, along with the District’s agreement to provide health benefits, constitutes reasonable liquidated damages for the Superintendent, fully compensates the Superintendent for all tort, contract and other damages of any nature whatsoever, whether in law or equity, and does 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.*

Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Superintendent and the Superintendent shall not be entitled to the cash, salary payments, health benefits or other non-cash settlement as set forth above. This provision is intended to implement the requirements of Government Code section 53260(b). The provisions of Government Code section 53260 are incorporated into this Agreement by this reference.

**e. Disability**

Upon written evaluation by a licensed physician designated by the District indicating the inability of the Superintendent to perform the essential functions of the position, with or without reasonable accommodation, this Agreement may be terminated by the Board upon written notice to the Superintendent and after providing a reasonable opportunity to respond. The District may allow the Superintendent to continue in employment until expiration of current and accumulated sick leave and differential leave, but upon receipt of the written evaluation specified above, may immediately assign another employee the duties of Superintendent.

**8. Expense Reimbursement**

The District shall reimburse the Superintendent for actual and necessary expenses incurred within the scope of the Superintendent's employment, so long as such expenses are permitted by District policy or incurred with prior approval of the Board. For reimbursement, the Superintendent shall submit an expense claim in writing supported by appropriate written documentation.

**9. Automobile**

The Superintendent shall not be provided an automobile allowance. The Superintendent will be allowed, however, to submit the mileage incurred in performing her duties as any other certificated or classified employee of the District and will be reimbursed at the IRS approved rate.

**10. Professional Memberships**

District agrees to pay Superintendent's annual professional membership dues in the Association of California School Administrators during the term of this Agreement. The District shall also pay for membership for one additional professional organization or one local community service organization.

**11. Annual Reporting Requirements**

The Superintendent shall report to the Board in writing on an annual basis the Superintendent's use of sick leave and vacation days.

**12. Professional Meetings**

The Superintendent is expected to attend appropriate professional meetings at local and state levels. Prior approval of the Board shall be obtained when the Superintendent attends a function outside of the state. To the extent authorized by law, the District shall pay expenses related to attendance at all such meetings, including mileage or other travel expenses, as set forth above.

**13. Notice of Seeking Employment**

In all cases, the Superintendent immediately shall notify the Board should she decide to seek other employment. The Superintendent agrees to provide written notice to the Board within twenty-four (24) hours of filing an application. Once the Superintendent is determined to be a successful candidate with another employer, the Board and the Superintendent will develop a plan selecting an appropriate replacement and the Superintendent will assist in the transition.



**14. Waiver**

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

**15. Indemnity**

In accordance with the provisions of Government Code §825 and 995, the District shall defend the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in Superintendent's individual capacity, or official capacity as an agent and employee of the District, provided that the incident giving rise to any such demand, claim, suit, action, or legal proceeding arose while the Superintendent was acting within the scope of employment. Unless there is a finding of criminal action, actual fraud, corruption or actual malice, the District shall hold harmless and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in Superintendent's individual capacity or in Superintendent's official capacity as an agent and employee of the District, provided that the incident giving rise to any such demand, claim, suit, action, or legal proceeding arose while the Superintendent was acting within a scope of Superintendent's employment. Such indemnification and hold harmless shall be for any and all claims arising out of or related to this contract and its provisions, duties and responsibilities of the Superintendent's job performance, including any extensions of this Agreement.

**16. 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 all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. This is an integrated document.

**17. Governing Law**

This Agreement has been executed and delivered within the State of California, and rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

**18. 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.

**19. Execution**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

**20. No Assignment**

The Superintendent may not assign or transfer any rights granted or obligations assumed under this Agreement.

**21. Modification**

This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument executed by both parties.

**22. Exclusivity**

To the extent permitted by law, the parties agree that the employment relationship between the District and the Superintendent shall be governed exclusively by the provisions of this Agreement.

**23. Independent Representation**

The Superintendent and the Board each recognize that in entering into this Agreement, the parties have relied 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. The Superintendent acknowledges and agrees that legal counsel for the Board represents the Board's interests exclusively and that no attorney-client relationship exists between Superintendent and legal counsel to the Board.

**24. Management Hours**

The parties recognize that the demands of the position will require Superintendent to average more than eight (8) hours a day and/or more than 40 hours per week. The parties agree that Superintendent shall not be entitled to overtime compensation or compensatory time off.

**25. Savings Clause**

If any provision of this Agreement or its application is held invalid, the invalidity shall not affect the other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and the provisions of this Agreement are declared to be severable.

**26. Board Approval**

The effectiveness of this Agreement shall be contingent upon approval by Districts' Boards as required by law.

**27. Binding Effect**

This Agreement shall be for the benefit of and shall be binding upon all parties and their respective successors, heirs, and assigns.

**28. Execution of Other Documents**

The parties shall cooperate fully in the execution of any other documents and in the completion of any other acts that may be necessary or appropriate to give full force and effect to this Agreement.

AGREED to on \_\_\_\_\_ day of May 2012.

\_\_\_\_\_  
Paul Black  
Board President

\_\_\_\_\_  
Marla Stephenson  
Superintendent

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