

**CAPISTRANO UNIFIED SCHOOL DISTRICT
33122 Valle Road
San Juan Capistrano, California**

**AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT BETWEEN THE BOARD OF TRUSTEES OF THE
CAPISTRANO UNIFIED SCHOOL DISTRICT AND KIRSTEN M. VITAL, SUPERINTENDENT**

This Amendment No. 1 to Employment Agreement between the Board of Trustees of the Capistrano Unified School District and Kirsten M. Vital, Superintendent ("Amendment") is made and entered into June 15, 2016, by and between the Board of Trustees ("Board") of Capistrano Unified School District ("District") in the County of Orange, State of California, and Kirsten M. Vital, Superintendent ("Superintendent").

RECITALS

WHEREAS, the District employed the Superintendent pursuant to an Employment Agreement ("Agreement") dated November 13, 2014; and,

WHEREAS, the District and the Superintendent desire to amend the Agreement.

NOW, THEREFORE, the Board offers, and the Superintendent accepts, the following amendments to the Agreement:

1. Paragraph 1 of the Agreement is hereby replaced and amended as follows:

1. TERM

1.1 The Board hereby employs Kirsten M. Vital as Superintendent of the Capistrano Unified School District for a term commencing on August 26, 2014, ("Start Date") and ending the effective date of June 30, 2020, or until this Agreement is terminated by either party as set forth below.

1.2 Superintendent shall be required to render twelve (12) months of full and regular service to the District during each annual period covered by this Agreement, exclusive of vacation, recognized holidays, and sick and other approved leaves.

1.3 On each anniversary of this Agreement, and every twelve (12) months thereafter, subject to Superintendent receiving positive evaluations in line with Section 5 herein, the Board shall place on the agenda for discussion an extension of term of this Agreement at least one (1) additional year.

2. Paragraph 2 of the Agreement is hereby replaced and amended as follows:

2. SALARY

2.1 The Superintendent's current salary shall continue until increased to Three Hundred Nineteen Thousand Two Hundred Forty-Four Dollars (\$319,244) per year effective July 1, 2016, for the term of the Agreement. The Superintendent's salary shall be payable in twelve (12) equal installments in accordance with the District's normal payment cycle, and prorated for any partial month's service and continuing for the remainder of this Agreement term 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 Agreement shall be One Thousand Four Hundred Nineteen Dollars (\$1,419).

2.2 The District agrees to make a onetime discretionary payment on or before June 30, 2016 to the Superintendent in the sum of Fourteen Thousand Two Hundred and Forty-Four Dollars (\$14,244.00). This onetime discretionary payment to the Superintendent shall not create or constitute an obligation by the District to make the same or any other similar payment to the Superintendent in the future under the Agreement.

2.3 The annual salary may be increased at the sole discretion of Board. 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 Agreement shall not constitute the creation of a new contract or extend the termination date of the Agreement.

2.4 Superintendent will retain 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.

3. Paragraph 9 of the Agreement is hereby replaced and amended as follows:

9. VACATION AND SICK DAYS

9.1 Superintendent shall be required to render twelve (12) months of service to the District during each annual period covered by this Agreement, except that she shall be entitled to twenty-five (25) 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.

9.2 Unused vacation days will accrue on an annual basis as long as Superintendent's accrued vacation does not exceed fifty (50) days. Should Superintendent's accrued vacation time reach fifty (50) days, Superintendent will cease to accrue further vacation days until Superintendent's accrued vacation time falls below fifty (50) days. At any time during the term of this Agreement, of the twenty-five (25) vacation days accrued each year, the Superintendent may at her option cash out up to ten (10) of said vacation days at the daily rate set in Paragraph 2.1 herein.

9.3 In the event of termination of this Agreement, Superintendent shall be entitled to compensation for all unused accrued vacation, not to exceed fifty (50) days, at her then current daily rate of compensation or portion thereof.

9.4 Vacations shall be used as to not interfere with the operations of the District.

9.5 Superintendent shall accrue paid sick leave at the rate credited to other management employees. Earned sick leave shall be cumulative. District shall not compensate Superintendent for unused or accrued sick leave at the time of the termination of the position, or the expiration of this contract.

4. Paragraph 17 of the Agreement is hereby renamed, replaced and amended as follows, except as otherwise provided:

17. CONTRACT NON-RENEWAL

17.1 Notice: Should the Board determine that it does not wish to negotiate and execute a new contract at the end of the term of the Agreement, the Board shall give written notice of the decision to the Superintendent at least forty-five (45) days prior to the end of the Agreement, as required pursuant to Education Code Section 35031. The Parties expressly agree to waive the term of the automatic renewal provision established in Education Code Section 35031. Rather, if the Board fails to provide notice of non-renewal, the Agreement shall automatically be renewed on the same terms but only for a period of one year.

17.2 Superintendent Duty to Notify Board: Between ninety (90) days and one hundred and twenty (120) days prior to the end of the Agreement, the Superintendent shall, in writing, remind each Board member of the Board's obligation to give written notice pursuant to Paragraph 17.1. Failure by the Superintendent to provide notice to the Board shall invalidate the notice requirement under the previous paragraph and shall operate as a waiver of the automatic renewal provision in Education Code Section 35031 and in Paragraph 17.1.

17.3 Termination for Cause: Notwithstanding any other provision of the Agreement, the Superintendent may be terminated for cause prior to the expiration of the Agreement, for any of the following:

- Failure by the Superintendent to possess or maintain a valid California Administrative Credential;
- Suspension or revocation of the Superintendent's California Administrative Credential;
- Neglect of Duty;
- Physical or mental inability of the Superintendent to perform her duties;
- Material breach of the Agreement;
- The Superintendent is selected as the final candidate for any other position during the term of the Agreement and she fails to notify the Board President within five (5) days of her selection as set forth in Paragraph 17.7; or,
- Any other legally permissible reason.

Any other legally permissible reason includes, but is not limited to, conduct that is seriously detrimental to the District. Conduct that is seriously detrimental to the District includes, by way of illustration and not limitation, failure of good behavior, either during or outside of duty hours, which is of such a nature that it causes discredit to the District, unprofessional conduct, or incompetence. The Superintendent acknowledges that she is one of the District's most visible representatives and is required to maintain higher standards of personal conduct than many other employees. In order to represent the District with integrity and high ethical standards, the

Superintendent shall avoid professional or personal situations that might reflect negatively on the Superintendent, the District or the Board.

17.3.1 Prior to terminating the Superintendent for cause, the Board shall give the Superintendent thirty (30) days written notice of its intention to terminate her for cause. Such written notice shall include a statement of the specific acts or omissions which give rise to the proposed action. No action shall be taken on a proposed termination for cause until the Superintendent has had an opportunity to meet with the Board to be heard by way of explanation, defense, or a showing that the specific acts or omissions have been corrected. This opportunity to be heard shall be provided within fifteen (15) calendar days after the Superintendent is served the notice of the Board's intention. This meeting with the Board is not an evidentiary hearing. The Parties are expected to provide each other with a reasonable, complete explanation of their positions and either party may be accompanied by an attorney. The Superintendent's right to meet with the Board shall be exclusive of any right to any other hearing otherwise required by law.

17.3.2 Any decision to terminate the Superintendent for cause shall be effective upon the date determined by the Board, except that such date shall not be sooner than thirty (30) calendar days after the notice of termination is given to the Superintendent. In the event that the Superintendent is terminated for cause, all rights and obligations of the Parties under the Agreement shall be deemed fully satisfied on the effective date of the termination and the Superintendent shall not be entitled to any further benefit under the Agreement including, but not limited to, the benefits described in Paragraph 12, inclusive.

17.3.3 A determination as to whether cause exists to terminate the Superintendent shall always be at the sole discretion of the Board.

17.4 Termination by Death: The Agreement shall terminate immediately upon the death of the Superintendent and all rights and obligations of the Parties under the Agreement shall be deemed fully satisfied.

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

17.6 Superintendent Indemnification: The District shall include the Superintendent as a named insured in its liability and errors and omissions insurance policies.

17.6.1 The District shall, to the full extent permitted by law, defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against her in her personal capacity or in her official capacity as an

agent and/or employee of the District, provided that the incident arose while the Superintendent was acting on matters related to her employment with the District.

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

17.7 Superintendent Notice of Termination or Prospective Employment: The Superintendent may terminate the Agreement by providing the District with written notice of intent to terminate. This notice shall be provided not less than sixty (60) calendar days prior to termination. The Superintendent and the District may agree in writing to a termination notice of less than sixty (60) calendar days. The Superintendent shall notify the District within five (5) days in the event she is selected to be interviewed as the final candidate for other employment.

17.8 Provisions Not Replaced or Amended: Notwithstanding the foregoing, for the original term of the Agreement, that is August 26, 2014 through June 30, 2018, Paragraphs 17.A and 17.C of the Agreement remain in place, full-force and effect, and are not amended by this Amendment.

17.9 Provisions Effective July 1, 2018 through June 30, 2020, and Thereafter if the Term of Agreement is Further Extended:

17.9.1: Paragraph 17.A of the Agreement is replaced and amended as follows:

Mutual Termination: The Board and the Superintendent may, by mutual consent, terminate the Agreement before its expiration.

If the Agreement is terminated pursuant to this Paragraph 17.A, the maximum cash settlement that the Superintendent may receive shall either be: (i) an amount equal to the monthly salary of the Superintendent multiplied by the number of months left on the unexpired term of the Agreement; or (ii) an amount equal to the monthly salary of the Superintendent multiplied by twelve (12), whichever is less. This Paragraph is set forth herein because it is required by subdivision (a) of Government Code Section 53260 but the Parties agree that it shall be superseded as set forth herein and by the provisions set forth in Paragraph 17 in the event that the Superintendent is terminated for cause.

17.9.2: Paragraph 17.B of the Agreement is replaced and amended as follows:

Termination by Board - Without Cause: The Board shall have the sole right to terminate the Superintendent without cause at any time before the expiration of the term of the Agreement.

If the Agreement is terminated pursuant to this Paragraph 17.B, the maximum cash settlement that the Superintendent may receive shall either be: (i) an amount equal to the monthly salary of the Superintendent multiplied by the number of months left on the unexpired term of the Agreement; or (ii) an amount equal to the monthly salary of the Superintendent multiplied by twelve (12), whichever is less.

5. Paragraph 19 of the Agreement is hereby replaced and amended as follows:

19. PROVISIONS REQUIRED BY GOVERNMENT CODE SECTIONS 53243, 53243.1, 53243.2, 53243.3, 53243.4 AND 53244

19.1 To the extent applicable to the District, this Agreement is subject to the provisions of Government Code sections 53243-53244 which requires reimbursement by the Superintendent under the circumstances stated therein, as listed below:

19.1.1 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 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 her or her office or position. (Gov. Code, § 53243.)

19.1.2 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 her or her office or position. (Gov. Code, § 53243.1.)

19.1.3 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 her or her office or position. (Gov. Code, § 53243.2.)

19.1.4 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 her or her office or position. (Gov. Code, § 53243.3.)

19.1.5 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. (Gov. Code, § 53243.4.)

19.1.6 (a) A local public officer, as defined in subdivision (b), who is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of, or in the performance of, his or her official duties shall forfeit any contract right or other common law, constitutional, or statutory claim against a local public agency employer to retirement or pension rights or benefits, however those benefits may be characterized, including lost compensation, other than the accrued rights and benefits to which he or she may be entitled under any public retirement system in which he or she is a member. The forfeiture provided by this section shall be in addition to, and independent of, any forfeiture of public retirement system rights and benefits pursuant to Section 7522.70, 7522.72, or 7522.74.

(b) For the purposes of this section, "local public officer" means a person, either elected or appointed, who exercised discretionary, executive authority in his or her employment.

(c) This section shall apply to any claim filed prior to the effective date of the act enacting this section, and still pending on that date, and any claim commenced after that date.

(d) Upon conviction, a local public officer as described in subdivision (a), and the prosecuting agency shall each notify the public employer who employed the local public officer at the time of the commission of the felony within 60 days of the felony conviction. The operation of this section is not dependent upon the performance of the notification required by this subdivision. (Gov. Code, § 53244.)

6. Paragraphs 15, 18, 21 and 22 of the Agreement are all deleted and replaced with the following:

"Intentionally left blank."

7. Paragraph 23 is hereby renamed, replaced and amended as follows:

23. GENERAL PROVISIONS

23.1 Full and Complete Contract: The Agreement is the full and complete contract between the Parties. It can be changed or modified only in writing signed by the Superintendent and the Board President or designee after Board approval. The Agreement 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 Agreement. The Agreement 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 Agreement or to the relationship between the Board and the Superintendent.

23.2 Applicable Laws: Except as modified by an express term of the Agreement, the Agreement 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 Agreement as though fully set forth herein.

23.3 Construction: The Agreement 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 Agreement, 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.

23.4 Delivery of Notices: All notices permitted or required under the Agreement shall be given to the Superintendent at the following two addresses: (1) 33122 Valle Road, San Juan Capistrano, California 92675; and (2) the home address of the Superintendent on file at the District's personnel office.

23.4.1 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.

23.5 Headings: The headings of sections of the Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of the Agreement.

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

23.7 Severability: If any portion of the Agreement 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 Agreement.

23.8 Governing Law and Venue: The Agreement, 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 Orange County, State of California.

23.9 No Assignment: The Superintendent may not assign or transfer any rights granted or obligations assumed in the Agreement.

23.10 Conflict with Board Policies: In the event of a conflict between the terms of the Agreement, or any amendments thereto, and the terms of Board-adopted policies, the terms of the Agreement shall prevail.

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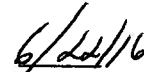
23.11 Counterparts: This Agreement, and any amendment thereto, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement.

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

On Behalf of the BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT:

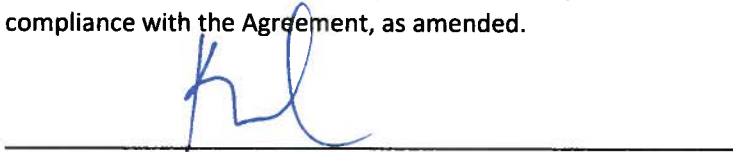


Signature, Amy Hanacek, President Board of Trustees

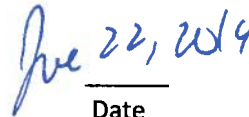


Date

I, Kirsten M. Vital accept the Board's offer to amend the Agreement as set forth in this Amendment and I shall fulfill all of the duties required as the Superintendent of Capistrano Unified School District in compliance with the Agreement, as amended.



Signature, Superintendent



Date