

**EMPLOYMENT AGREEMENT
BETWEEN THE BOARD OF TRUSTEES OF
THE CAPISTRANO UNIFIED SCHOOL DISTRICT**

AND

KIRSTEN M. VITAL, SUPERINTENDENT

This Employment Agreement (the "Agreement") is entered into between the Board of Trustees ("Board") of the Capistrano Unified School District ("District") and Kirsten M. Vital ("Superintendent").

1. **TERM**

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, 2018, or until this Agreement is terminated by either party as set forth below. Superintendent, with consent from the Board President, may move up the Start Date, subject to Superintendent using best efforts to secure release from all other current contractual obligations.

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.

On the second 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. **SALARY**

Commencing as of Start Date, the annual salary for Superintendent shall be Three Hundred Five Thousand Dollars (\$305,000) for the term of this Agreement. This salary will be payable in twelve (12) equal installments in accordance with the District's normal payment cycle, and prorated for any partial month's service. This annual salary shall be effective for the term of this Agreement, unless increased by action of the Board. Such an increase would not constitute a new agreement, nor extend the term of this Agreement. The Board shall consider adjustments to Superintendent's salary on an annual basis.

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.

Superintendent shall receive a one-time stipend of up to Fifteen Thousand dollars (\$15,000) for relocation assistance. This stipend shall be made payable to Superintendent no later than thirty (30) days following certification of relocation.

3. **DUTIES AND RESPONSIBILITIES**

Superintendent shall be governed by and shall perform all duties and responsibilities as set forth in the California Education Code, as well as all rules and regulations of the State Board of Trustees and rules, regulations, policies, and directives of the Board. This includes acting as the Chief Executive Officer of the District.

Superintendent shall comply with all Board directives, state and federal law, as well as District policy and District rules and regulations as they currently exist, or may hereafter be adopted or amended.

A. **Personnel Matters**

Superintendent shall be responsible for the direction, supervision, and assignment of teachers and other employees of the schools under her supervision; organize, reorganize, and arrange the administrative and supervisory staff, subject to the direction of the Board, including instruction and business affairs, as best serves the District; be responsible for the recommendation and selection of all personnel, except as to any positions designated as Board staff, subject to the direction of the Board.

In all personnel matters, Superintendent shall present her recommendation to the Board. In the event that the Board does not approve said recommendation, Superintendent shall submit another recommendation to the Board within a reasonable time.

B. **Other Duties**

Superintendent shall personally, or by direction:

- i. Review all policies adopted by the Board and make appropriate recommendations to the Board;
- ii. Periodically evaluate employees, as provided by California law and Board policy;
- iii. Advise the Board of all possible sources of funds which might be available to implement present or contemplated District programs; and
- iv. Working cooperatively with the Board as a liaison between the District and the community and assuming responsibility for a program of public relations for the Board and District and for creating and managing a cooperative working relationship between the District and the community; and
- v. Such other duties as may be prescribed by the Board from time-to-time in accordance with law.

4. **BOARD-SUPERINTENDENT RELATIONS**

The Board and Superintendent agree to work together in a spirit of cooperation and teamwork to further the District's mission. The Board and Superintendent agree to perform their duties and responsibilities in a legal and ethical manner, including acting in a manner consistent with fiduciary duties and responsibilities of the position. The Board members shall, in their positions, formulate and adopt the policies of the District. It shall be Superintendent's responsibility to administer the policies of the District, including the handling of criticism, complaints, and suggestions brought to the Board.

5. **DISTRICT GOALS AND OBJECTIVES**

Working with the Board, the staff and the community, the Superintendent shall submit to the Board, no later than October 15 of each year of this Agreement, an analysis of the needs of the District and recommendations as to the District goals and objectives for the school year. These will be reviewed by the Board and modified by mutual agreement if deemed necessary, and become the Superintendent's priority tasks for the year. In the event the Board and Superintendent fail to agree in any year on these goals and objectives, the Board shall establish the annual goals and objectives.

6. **EVALUATION**

At least once each year during the term of this Agreement, to be done by June 15 of each year, the Board and the Superintendent shall meet for the purpose of mutual evaluation of the performance of the District and the Superintendent. A mid-year evaluation may be given in November of each year. The Board shall receive at least one month's advance notice of these dates from the Superintendent.

The Board's evaluation and assessment of the Superintendent shall be reasonably related to the position description of the Superintendent and the goals and objectives of the District for the year subject to the evaluation and assessment. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. There shall be one written evaluation based on the majority opinion of the Board. A copy of the written evaluation shall be delivered to the Superintendent. The Superintendent shall have the right to make a written reaction or response to the written evaluation. This response will become a permanent attachment to the written evaluation in the Superintendent's personnel file. Within thirty (30) days of Board's delivery of the written evaluation to the Superintendent, the Board shall meet with the Superintendent to discuss the evaluation.

Superintendent's evaluation and assessment of performance, including evaluation criteria and performance goals and objectives, will be private and confidential. Unless specifically prohibited by law or otherwise requested by Superintendent, all discussions regarding these matters shall be held in a closed session of the Board.

7. **OUTSIDE PROFESSIONAL ACTIVITIES**

Superintendent may utilize accrued unused vacation entitlements to undertake outside third-party professional consulting services such as consultative work, speaking engagements, writing, lecturing or other professional duties and obligations, subject to prior notice to the President of the Board. Outside third-party professional consulting services may be performed provided they do not interfere with or conflict with Superintendent's performance of her duties under this Agreement. The obligation rests with Superintendent to comply with the Fair Political Practices Act of 1974 and any regulations promulgated by the Fair Political Practices Commission.

8. **MEDICAL EXAMINATIONS**

Superintendent shall have an annual comprehensive medical examination not later than May 1 of each year, by a licensed physician. The physician shall report in writing to the Board whether the Superintendent is able to perform the essential functions of her position and any limitations on that ability. All uninsured costs of said medical examination and report shall be paid by the District. This report shall be treated as confidential information by the Board.

9. **VACATION AND SICK DAYS**

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. 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.

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.

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

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.

10. **LEAVE OF ABSENCE**

Superintendent shall be provided all leave benefits which are provided the District's management employees.

11. **ASSOCIATION MEMBERSHIPS**

The Board shall pay for Superintendent's annual membership dues to the Association of California School Administrators and, to the extent permitted by applicable law and approved by the Board in advance, to such other professional groups in which Superintendent deems it necessary or appropriate to maintain and improve her professional skills. In addition, recognizing the importance of a strong working relationship between schools and the communities they serve, the District shall pay dues, membership fees, and related fees for membership in service and civic associations, if permitted by state law and approved by the Board in advance.

12. **HEALTH AND WELFARE BENEFITS**

Superintendent shall be eligible for the same fringe benefits, including group health insurance, disability insurance and life insurance, which are granted to the District's other management employees according to the salary level or other basis provided by the Board in connection with such benefits, with the expense for premiums to be shared by Superintendent and the District in

the same proportion as with other management employees. The provision of such benefits to Superintendent shall be at her personal election and she authorizes her share of the premiums and expenses for any such benefits selected to be deducted periodically in accordance with the District's regular policies and procedures from the salary payments that she receives from the District.

13. **EXPENSES**

Superintendent shall be entitled to reimbursement for reasonable actual and necessary expenses that she incurs in the performance of her duties under this Agreement. Claims by Superintendent for the reimbursement of such expenses shall be made in accordance with the terms of applicable District expense reimbursement policies, regulations, and procedures.

14. **ADMINISTRATIVE SUPPORT**

The District shall provide Superintendent with such facilities, equipment, supplies and clerical assistance as appropriate to the Superintendent's position and necessary for the adequate performance of her duties. The District shall provide the Superintendent, at District expense with the appropriate technology that will assist the Superintendent in the performance of her job duties and responsibilities. All equipment shall remain the property of the District and must be used and employed in strict compliance with District policies applicable to their use.

15. **OTHER EMPLOYMENT**

Superintendent will notify the Board in writing if she becomes a finalist for employment by another school district or any other employer.

16. **AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual written agreement of the parties.

17. **TERMINATION OF AGREEMENT**

A. **Mutual Termination**

The District and Superintendent may, by mutual written agreement, terminate the Agreement at any time. Any mutual agreement of the parties is subject to the restrictions set forth in California Government Code Section 53260, which restricts a maximum cash settlement equal to the then monthly salary times eighteen (18) months or the remaining term of the Agreement, whichever is less.

Pursuant to Government Code Section 53261, health and welfare benefits may be paid pursuant to the same limitations as provided in Government Code Section 53260 or until the employee finds other employment, whichever period of limitation occurs first.

B. **Termination by Board – For Cause**

This Agreement and the services of Superintendent may be terminated by the Board at any time for cause.

“Cause” in this section means a breach of obligations under this Agreement; intentional engagement in any competitive activity which would constitute a breach of the duty of loyalty or of obligations under this Agreement; commission of an act of fraud, embezzlement, theft, material dishonesty or any other material violation of law that occurs during or in the course of Superintendent’s employment by the District; failure to substantially perform the duties required as Superintendent of the District (other than as a result of incapacity due to physical or mental illness); and conduct by Superintendent that is demonstrably and materially injurious to the District, monetarily or otherwise, or any cause enumerated in Education Code Section 44932.

Dismissal for cause shall be effective upon action taken by the Board and all salary and benefits provided by this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to said action shall be paid to Superintendent within thirty (30) days of said action.

Should the Board terminate this Agreement for cause, the Board shall give written notice to Superintendent and shall specify the grounds for termination and the effective date. Superintendent shall be entitled to counsel, at her own expense, at a conference with the Board to respond to the grounds for termination.

C. Termination by Board – Without Cause

The Board unilaterally and without cause may terminate this Agreement and Superintendent’s employment. In consideration of the Board’s right to terminate this Agreement without cause, the Board shall pay Superintendent’s then current salary for the remainder of the Agreement, but not to exceed a period of eighteen (18) months.

Upon termination of this Agreement without cause, Superintendent shall continue to receive the health and welfare benefits in Section 12, for the remainder of this Agreement, not to exceeding eighteen (18) months, or until Superintendent finds other employment, whichever occurs first.

D. Non-Renewal of Agreement

Pursuant to the Education Code Section 35031, the Board may elect not to renew this Agreement, and/or not to reemploy Superintendent upon the expiration of this Agreement.

18. GOVERNING LAW

This Agreement is subject to all applicable laws of the State of California and the lawful rules and regulations of the Board, as well as the regulations of the California State Board of Trustees. All such laws are hereby made a part of the terms and conditions of this Agreement.

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

To the extent applicable to school districts, this Agreement is subject to the provisions of Government Code Sections 53243-53243.4 which requires reimbursement under the circumstances stated therein, as listed below.

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 position.

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 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 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. 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.

20. **MODIFICATION**

With the exception of a possible change of the Start Date as contemplated in Section 1, no modification, supplement or amendment of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless the same is made in writing and duly executed by Superintendent and the Board.

21. **COUNTERPARTS**

This Agreement 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.

22. **SEVERABILITY**

The illegality, unenforceability or invalidity of any one or more covenants phrases, clauses, sentences, paragraphs or subparagraphs or sections of this Agreement, as determined by a court of competent jurisdiction shall not affect the remaining portions of this Agreement, or any part thereof; and if any provision, paragraph, or subparagraph of this Agreement is adjudged by a court of competent jurisdiction to be void or unenforceable in whole or in part, such provision, paragraph or subparagraph, or portion thereof, shall be deemed amended to conform to applicable

laws so as to be valid and enforceable to the fullest extent possible or, if it cannot be so amended without materially altering the intention of the parties as expressed herein, it shall be stricken and the remainder of this Agreement shall continue in full force and effect. Each provision, paragraph or subparagraph of this Agreement is separable from every other provision, paragraph or subparagraph, and constitutes a separate distinct covenant.

23. **INTERPRETATION**

Neither this Agreement nor any amendment hereto nor any uncertainty or ambiguity herein shall be construed or resolved against the District or Superintendent, whether under any rule of construction or otherwise. On the contrary, this Agreement and any amendment hereto has been reviewed by Superintendent and the District and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purpose and intentions of the parties hereto. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be used in the construction or the interpretation of the Agreement or any amendments hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date hereinafter set forth.

Dated: 6/25/14

By: [Signature]
John M. Aljay, Board President

ACCEPTANCE:

I hereby accept this Employment Agreement and agree to comply fully with each and every condition thereof, and to fulfill faithfully all of the duties of employment as Superintendent of Capistrano Unified School District.

Dated: July 17, 2014

By: [Signature]
Kirsten M. Vital

This Agreement was approved in open session by the Board of Trustees of the Capistrano Unified School District at a meeting/duly scheduled and held on June 25, 2014, at San Juan Capistrano, California

Attest: [Signature]
Gary Pritchard, Clerk of the Board