July 16, 2014

TO: Santa Clara County Board of Education

FROM: Leon Beauchman, Board President

SUBJECT: County Superintendent of Schools Contract

Associated Goal
Goal 1: Improve student equity and reduce access discrepancies to high quality education

Background
Dr. Xavier De La Torre, former County Superintendent of Schools of the Santa Clara County Office of Education ("SCCOE") accepted the position of Superintendent at a school district in El Paso Texas. Dr. De La Torre’s last day of employment with SCCOE was March 21, 2014.

The Board appointed Dr. Mary Ann Dewan to serve in the capacity of Interim County Superintendent of Schools. The Board retained the services of a search firm to conduct a nation-wide recruitment process to hire a permanent County Superintendent.

After conducting a search process, including establishing a search committee, the Board selected Jon R. Gundry to be the next Santa Clara County Superintendent of Schools. Mr. Gundry is currently the Superintendent of the Pasadena Unified School District. Should the Board approve the contract, Mr. Gundry will assume the position of County Superintendent of Schools on August 1, 2014.

Requested Action
Approve County Superintendent of Schools contract

Attachment

LB: msm
AGREEMENT BETWEEN
BOARD OF EDUCATION OF SANTA CLARA COUNTY
AND COUNTY SUPERINTENDENT

This Agreement is made by and between the Santa Clara County Board of Education ("Board") and Jon Gundry ("County Superintendent" or "Gundry").

WHEREAS, the Board is vested with authority to appoint a County Superintendent of Schools for the Santa Clara County Office of Education ("SCCOE");

WHEREAS, the Board desires to appoint Jon Gundry to the position of County Superintendent of Schools and Gundry desires to be appointed to the position of County Superintendent;

NOW THEREFORE, in consideration of the provisions and mutual promises specified herein, the Board and Jon Gundry agree as follows:

1. TERM OF APPOINTMENT. The Board hereby appoints Jon Gundry as County Superintendent for a term commencing August 1, 2014 and ending June 30, 2018, subject to the terms and conditions set forth in this Agreement.

2. DUTIES AND RESPONSIBILITIES OF COUNTY SUPERINTENDENT. As County Superintendent, Gundry shall carry out the duties of the County Superintendent of Schools as prescribed by the laws of the State of California and the Education Code, and in any consistent job description, Board policy or administrative regulation and goals that the Board may adopt from time to time concerning or governing the duties of the County Superintendent.

3. COMPENSATION AND BENEFITS.
   A. BASE SALARY. Commencing August 1, 2014, County Superintendent's annual base salary shall be Two Hundred and Ninety-Five Thousand and 00/100 Dollars ($295,000.00), payable in twelve equal monthly installments of $24,583.33. Commencing July 1, 2015 and effective each July 1 that this Agreement is in effect, provided that County Superintendent has not been rated as less than "satisfactory" as determined by the Board pursuant to the evaluation process described in Article 9, County Superintendent's base salary shall be adjusted by the allowable rate of inflation. The rate of inflation shall be based on the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations (San Francisco-Oakland-San Jose area) from the preceding July as allowed by California Government Code Sections 3511.1(b) and 3511.2 (a). The Board reserves the right to increase County Superintendent's salary for any year or any portion of a year of this Agreement with the mutual written consent of the County 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.

   B. HEALTH AND WELFARE BENEFITS. County Superintendent shall be entitled to the same health and welfare benefits that are available to fulltime management employees of the SCCOE and upon the same terms and conditions. If County Superintendent reaches the age of 65 during the term of this Agreement or any extension thereof, and provided that this Agreement is not terminated "for cause," County Superintendent shall be provided health insurance coverage as is available to fulltime management employees of SCCOE up to age 75, provided that County Superintendent retires from employment with SCCOE. Further, County Superintendent agrees that his primary health insurance coverage shall be through Medicare and that such health insurance benefits described above shall be secondary to Medical insurance coverage.
This provision shall not apply if County Superintendent does not retire and obtains medical coverage from a subsequent employer.

C. EXPENSE REIMBURSEMENT. The Board shall reimburse County Superintendent for necessary expenses actually incurred in the performance of his duties. The annual amount of such expenses shall be budgeted and the Board must approve a budget transfer into such account County Superintendent shall charge job-related expenses to a credit card issued in County Superintendent’s name and County Superintendent shall submit such credit card statements to the Board each month for review and approval of expenditures at a regularly scheduled Board meeting.

D. AUTOMOBILE ALLOWANCE. County Superintendent requires the use of an automobile in order to fulfill his duties and responsibilities. County Superintendent shall be granted a monthly allowance in the amount of $1,000.00 for automobile expenses, including but not limited to auto insurance. This allowance shall be used at the County Superintendent’s discretion and he shall not be required to provide documentation.

E. ELECTRONIC COMMUNICATIONS EXPENSE: County Superintendent shall provide himself with such electronic communications devices required to perform his duties including a laptop, tablet and cell phone and the data service plans required for such equipment. The Board shall reimburse County Superintendent for the expense of such by means of a $250 per month stipend.

F. PROFESSIONAL DUES. The Board shall pay County Superintendent's annual membership dues for any six (6) professional associations that County Superintendent believes are reasonable and beneficial to the performance of his duties.

G. RELOCATION EXPENSES. The County Superintendent hereby agrees to relocate his primary residence to Santa Clara County. The Board shall pay to County Superintendent $30,000.00 for expenses incurred or to be incurred in County Superintendent's relocation of his primary residence to Santa Clara County and to assist County Superintendent in transitioning his primary residence to Santa Clara County. Such payment shall be made to County Superintendent no later than October 1, 2014. If County Superintendent accepts full time employment elsewhere within 18 months of employment, County Superintendent shall reimburse SCCOE the $30,000 relocation stipend.

H. DEFERRED COMPENSATION: Beginning on July 1, 2016, and effective each July 1 of the term of this Agreement, County Superintendent shall be eligible for a deferred compensation contribution of $20,000. The Board shall make this deferred compensation contribution if County Superintendent satisfies the Performance Goals jointly established by the Board and County Superintendent. These Performance Goals shall be established within the first six months of this Agreement and shall be in writing.

4. VACATION.

A. County Superintendent shall be required to render twelve (12) months of full and regular service to SCCOE during each school year, except that he Gundry shall be entitled to twenty-five (25) days of annual vacation with pay. In the event vacation is not taken during the school year in which it is granted, it may only be accumulated to a total of fifty (50) days. Upon accruing 50 earned and unused vacation days, County Superintendent shall not accrue any further vacation days unless and until the number of accrued days falls below 50. At the conclusion of each fiscal year during the term of this Agreement, County Superintendent may redeem for cash payment up to ten (10) days of
earned and unused vacation. Any such election by County Superintendent shall be submitted in writing to the Board President and to the Assistant Superintendent responsible for process such payments. Any such cash payments shall be at the County Superintendent’s then per diem rate of pay. In the event of expiration or termination of this Agreement, County Superintendent shall be entitled to compensation for unused vacation at the salary rate effective during the last year of the Agreement.

B. Annual vacation is accrued upon commencement of services at the beginning of a school year. If service for the full school year is not performed, County Superintendent shall only receive that number of vacation days which is proportional to the number of months of the school year served. If County Superintendent has taken vacation days in excess of that proportion, County Superintendent hereby consents to an offset on his final paycheck representing the amount of the excess vacation days used. When County Superintendent determines to be absent for five (5) or more consecutive days off of work, he shall give notice in advance to the Board President.

5. SICK. LEAVE. County Superintendent shall be entitled to fifteen (15) days of sick leave or personal necessity per year of employment under this Agreement. Earned, unused sick leave may be accumulated without limitation.

6. MEDICAL EXAMINATION. Prior to July 1 during each calendar year of this Agreement, County Superintendent shall undergo a comprehensive medical examination by County Superintendent’s primary physician and shall file with the Board a written medical statement verifying County Superintendent's physical competence to perform his job duties. The written medical statement filed with the Board shall be retained as a confidential personnel record. The Board shall pay for any costs associated with, such medical examination not covered under County Superintendent’s health insurance, so long as the examination is conducted within Santa Clara County.

7. OTHER EMPLOYMENT OPPORTUNITIES. County Superintendent shall immediately notify the Board in writing if he accepts an invitation for an interview for employment elsewhere.

8. OUTSIDE PROFESSIONAL ACTIVITIES. The Superintendent shall devote his time, attention and energy to the business of the SCCOE. However, the Superintendent may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties and obligations which are of a short-term duration; said outside professional activities may be performed for consideration with prior approval of the President of the Governing Board and provided the activities do not interfere with or conflict with the Superintendent’s performance of his duties under this Agreement. The Board President shall be notified if the Superintendent plans to attend any conference outside the SCCOE for three (3) or more days.

9. PERFORMANCE EVALUATION. The Board shall annually evaluate County Superintendent's performance. No later than October 1 of each year of this Agreement, the Board and County Superintendent shall meet to agree upon mutual goals for the school year and such goals shall be provided to County Superintendent in writing. No later than June 30 of each year of this Agreement, the Board shall conduct a review, evaluation and assessment of the County Superintendent and the manner, effectiveness and degree to which the County Superintendent has achieved the established goals. A copy of the written evaluation shall be provided to County Superintendent. Within thirty (30) days of the delivery of the written evaluation to County Superintendent, the Board shall meet with the County Superintendent to discuss the evaluation. The Superintendent shall have the right to submit a written response to the Board’s evaluation.
In the event that the Board determines that the County Superintendent's performance is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, such unsatisfactory performance, and the evaluation shall include specific recommendations for improvement.

10. TERMINATION OF EMPLOYMENT.

10.1 General

A. Mutual Consent: This Agreement may be terminated at any time by mutual consent of the Board and Superintendent upon thirty (30) days prior written notice.

B. County Superintendent: County Superintendent may terminate the County Superintendent’s obligations under this Agreement by giving the Board sixty (60) days written notice of his resignation or retirement.

C. Incapacity/Disability: In the event the County Superintendent is unable to serve in his position due to any physical or mental condition, this Agreement may be terminated by action of the Governing Board upon sixty (60) days’ notice. The County Superintendent’s disability/incapacity shall be determined by a Board selected physician.

D. Death: In the event of County Superintendent’s death, this Agreement shall be deemed terminated.

10.2 Termination for Cause:

The Board may terminate Superintendent for good cause including, but not limited to: (1) acts done in bad faith to the detriment of the SCCOE; (2) refusals or failures to act in accordance with specific provisions of this Agreement or lawful Board directives; (3) material breach of this Agreement; (4) conviction of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; (5) occurrence of any event which would justify dismissal of a tenured teacher as set forth in Education Code section 44932; (6) the failure or inability of County Superintendent to adequately perform any duties required under this Agreement, including but not limited to failure to meet the written goals and objectives pursuant to Article 9 in a timely or diligent manner.

If the Board believes that cause to terminate the Agreement exists, it shall meet with the County Superintendent. If the County Superintendent disputes the cause, the Superintendent shall then be entitled to a conference before the Board in closed session. County 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 County Superintendent shall have the right to have counsel attend at his own expense.

If the Board, after considering all the information presented, decides to terminate this Agreement, it shall provide the County Superintendent with a written decision setting forth the cause for termination and findings supporting its decision. The decision of the Board shall be final. County Superintendent’s conference before the Board shall be deemed to satisfy the County 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. County 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 County Superintendent’s administrative remedies and then authorizes the Superintendent to contest the Board’s determination in a court of competent jurisdiction.

Should the Board terminate this Agreement for cause, as defined above, the Board shall give written notice to County Superintendent which shall specify the grounds for termination, and the effective date of termination. Any termination by the Board shall be without prejudice to any other remedy available to the Board in law or equity or any other ground or termination stated in this Agreement.

Superintendent may be terminated in accordance with Government Code section 53260 if the Board believes, and an independent audit subsequently confirms, that Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. Notwithstanding any other provision of this Agreement, in such case Superintendent’s final compensation shall be determined in accordance with subdivision (b)(1) of Section 53260.

10.3 Termination Without Cause.

The Board may unilaterally terminate this Agreement without cause at any time. If this Agreement is terminated, County Superintendent shall receive a lump sum payment of an amount equal to the monthly base salary of the Superintendent multiplied by the number of months left on the unexpired term of the contract. If the unexpired term of the contract is greater than twelve (12) months, the maximum cash settlement shall be an amount equal to the monthly base salary of the Superintendent multiplied by twelve (12). The parties specifically agree that all such payments will be in compliance with California Government Code sections 53260(a) and (b).

10.4 Non-Renewal by Board.

The Board may elect not to renew this Agreement upon its expiration by providing written notice to the County Superintendent in accordance with Education Code Section 35031 (currently 45 days prior notice). County Superintendent shall give the Board written notice of the provision at least thirty (30) calendar days in advance of the deadline.

10.5 Effect of Abuse of Office Conviction.

Notwithstanding any other provision of this Agreement, and as mandated by Government Code Section 53243 et. seq., in the event Superintendent is convicted of a crime constituting “abuse of office,” Superintendent shall reimburse the SCCOE to the fullest extent mandated by law (e.g. paid leave, criminal defense expenses, or any cash settlement.) In the event of such conviction, the SCCOE shall make no payments barred by Government Code Section 53243 et. seq.

11. QUALIFICATIONS: County Superintendent represents that as required by Education Code Section 1206, he possesses valid credentials issued by the California State Board of Education required for appointment to the office of County Superintendent.

12. INDEMNIFICATION OF SUPERINTENDENT: The Board shall defend, hold harmless, and indemnify the County Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the County Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident
giving rise to any such demand, claim, suit, action or legal proceeding arose while the County Superintendent was acting within the scope and course of his employment; and provided further, that such liability coverage is within the authority of Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after his employment with the SCCOE ends. In no case will individual Board members be considered personally liable for indemnifying the County Superintendent against such demands, claims, suits, actions and legal proceedings. This Section 11 shall survive the termination of this Agreement.

13. TAX/RETIREMENT ISSUES Notwithstanding any other provision of this Agreement, the Board shall not be liable for any state, federal, or employment tax consequences or retirement consequences as a result of this Agreement that are the responsibility of the individual taxpayer under the Internal Revenue Code or applicable state statutes. Superintendent shall assume sole liability for any state, federal or employment tax consequences and retirement consequences as described herein and shall defend, indemnify and defend the Board from any such consequences to the County Superintendent.

14. SAVINGS CLAUSE. If any provision of this Agreement is declared illegal or void under federal, state, or local law or regulation, the remainder of the Agreement shall not be affected by such ruling or regulation and shall remain in full force and effect.

15. AMENDMENT. Any amendment to this Agreement must be in writing and signed by the parties.

16. APPLICABLE LAWS. This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education, the Santa Clara County Charter (as it may be amended or modified), and to the Board Policies and Administrative Regulations of the Board. By this reference these laws, rules, regulations and policies are hereby made a part of this Agreement as though fully set forth herein.

17. ENTIRE AGREEMENT. This document constitutes the entire Agreement between the parties. No amendment or waiver of this Agreement or any provisions herein shall be effective unless in writing signed by all parties.

18. WAIVER. The written waiver by any part to this Agreement of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent or simultaneous breach.

19. COUNTERPARTS, This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

20. 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.

21. BOARD APPROVAL, The effectiveness of this Agreement shall be contingent upon approval by the Board in open session as required by law.
22. BINDING EFFECT. This Agreement shall be for the benefit of and shall be
binding upon all parties and their respective successors, heirs, and assigns.

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

The Board duly approved the terms and conditions of this Agreement, and the Board President is authorized to execute this Agreement on behalf of the Board.

For the Santa Clara County Board of Education:

By:

Leon Beauchman, President

I hereby accept this contract of employment and agree to comply with its terms and conditions and to fulfill all of the duties of the Santa Clara County Superintendent of Schools.

Date of Acceptance: July 16, 2014

Jon Gundry