

**San Ysidro School District
Superintendent Employment Agreement
between Gina Acosta Potter
and
San Ysidro School District**

The GOVERNING BOARD OF THE SAN YSIDRO SCHOOL DISTRICT, (“GOVERNING BOARD “or “District”), having its principal place of business at 4350 Otay Mesa Road, San Ysidro, California 92173, and Gina Acosta Potter (“SUPERINTENDENT”) enter into this Employment Agreement (“Agreement”) and agree to the following conditions and terms:

1. TERM

The District hereby employs SUPERINTENDENT for a term of three (3) years, commencing on May 14, 2018 and terminating on June 30, 2021 (“Initial Term”).

Should the Superintendent receive a satisfactory evaluation pursuant to this Agreement, this Agreement will be extended for an additional year, so long as the term of the Agreement does not at any time exceed three (3) years. An amendment for the extension of the term of the Agreement, or other modifications to this Agreement, shall be approved at a regularly scheduled Board meeting.

2. SALARY

The SUPERINTENDENT shall be paid an annual base salary in accordance with the District’s Board approved Superintendent salary schedule beginning at \$198,686.32 (Step 5) on May 14, 2018 and shall be paid on the payroll period in effect for twelve-month employees of the District.

During each year of this Agreement, the SUPERINTENDENT’s annual base salary shall be in accordance with the attached salary schedule and not any negotiated salary increase for any other group of employees. Any and all adjustments pursuant to the attached schedule shall be contingent upon an annual evaluation which indicates an overall satisfactory performance. The determination of an overall rating of satisfactory performance is within the sole and absolute discretion of the Board.

In an effort to maintain equity with other certificated and administrative personnel, the Superintendent’s salary schedule may be reviewed and increased at the discretion of the GOVERNING BOARD by July 1, 2020, or for the beginning of the third (3rd) year of this Agreement. Any latter updated Superintendent salary schedule shall be approved at a regularly scheduled Board meeting. Such review and increase is in the sole and absolute discretion of the Board.

3. FRINGE BENEFITS

The SUPERINTENDENT shall be entitled to all fringe benefits that are granted to the certificated senior management employees of the District, including, but not limited to, the member retirement contributions to the California State Teachers Retirement System

(STRS), illness, injury and leaves. Health benefits as set forth in Section 5 below, and vacation, sick leave and holidays as set forth in Section 7 below. Such benefits shall not be reduced for the SUPERINTENDENT during the term of this Agreement.

4. DUTIES AND RESPONSIBILITIES

The GOVERNING BOARD pursuant to the California Education Code section 35035 hereby appoints the SUPERINTENDENT to serve as Chief Executive Officer of the GOVERNING BOARD. The Governing Board shall retain the authority for adopting policies, which shall be implemented by the SUPERINTENDENT. The SUPERINTENDENT shall be delegated all powers and duties necessary for efficient management and administration of the District to the full extent permitted by law.

- A. All powers and duties which may lawfully be delegated to the SUPERINTENDENT are to be performed and executed by the SUPERINTENDENT in accordance with the policies adopted by the GOVERNING BOARD and subject to those powers specifically vested in the GOVERNING BOARD by the California Education Code. The SUPERINTENDENT will faithfully perform the duties and functions of the SUPERINTENDENT for the District, will comply with GOVERNING BOARD directives, District policy, and District rules and regulations in accordance with state and federal law.
- B. Additionally, the SUPERINTENDENT will serve as Secretary to the GOVERNING BOARD pursuant to California Education Code section 35031.
- C. The SUPERINTENDENT will perform the duties and exercise the powers prescribed for a superintendent by Section 35035 of the California Education Code. The SUPERINTENDENT shall have the authority to accept resignations of personnel, for and on behalf of the GOVERNING BOARD, and designate subordinate personnel to do the same; fill vacant positions with the understanding that all personnel are subject to the approval of the GOVERNING BOARD as reflected in Board Resolutions; assign and direct employees of the District; and organize, reorganize and arrange central office, administrative and supervisory staff, as she believes best serves the District.
- D. The SUPERINTENDENT agrees to comply with all state, federal, and local laws, and Board policies and regulations regarding disclosure of any potential conflicts of interest.
- E. The SUPERINTENDENT will provide leadership, guidelines, and directions to ensure that policies related to curriculum instruction, pupil personnel services, personnel, budget, and business affairs are carried out.
- F. The SUPERINTENDENT will ensure staff report information regarding student learning and an analysis of student achievement and test scores, to the GOVERNING BOARD, at least one (1) time per year to coincide with the reporting of State testing results and/or the release of the year's California School Dashboard multiple measures

assessment and accountability reports.

- G. The SUPERINTENDENT will evaluate employees directly accountable to her and oversee the evaluation of other employees as defined by California law and Board policy.
- H. The SUPERINTENDENT will communicate openly, ethically, systematically, and in a timely manner to the Board, staff, and the community, and promptly inform the Board of critical issues or incidents.
- I. In order to improve communications, improve staff morale and community support, and to expedite the problem-solving process, the GOVERNING BOARD, individually and collectively, shall promptly refer 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 GOVERNING BOARD action.
- J. The SUPERINTENDENT and the GOVERNING BOARD agree to work together in a spirit of cooperation and teamwork to further the District's mission.
- K. The GOVERNING BOARD and the SUPERINTENDENT agree to perform their duties and responsibilities in a legal and ethical manner, including acting in a manner consistent with the fiduciary duties and responsibilities of the position.

5. WORK DAYS, PAID VACATION DAYS, SICK LEAVE, & HOLIDAYS

The SUPERINTENDENT work year shall be 220 days. The SUPERINTENDENT shall be required to render twelve months of full time service to the District, during each annual period covered by this Agreement. The SUPERINTENDENT shall accrue twenty-four (24) paid vacation days, non-work time, per year without loss of compensation (exclusive of holidays and weekends). The SUPERINTENDENT shall make every effort to schedule and take her accrued vacation days during the current and next succeeding year. If the SUPERINTENDENT has accrued forty (40) days of vacation, vacation accrual will cease until she has less than forty (40) days accrued. It is the SUPERINTENDENT's responsibility to ensure compliance with the vacation cap. At the termination of this Agreement as provided for in Section 14 below any unused vacation time shall be paid to the SUPERINTENDENT at the SUPERINTENDENT'S then existing daily rate of pay.

The SUPERINTENDENT shall be entitled to up to twelve (12) days of earned sick leave annually. Sick leave shall be accumulated as provided by State law and Board policy. SUPERINTENDENT's use of sick leave days shall be in accordance with policies applied to the District's other senior management employees. SUPERINTENDENT shall not be entitled to any buy-out or pay-out of unused sick leave days at the expiration or earlier termination of this Agreement.

The SUPERINTENDENT shall be entitled to the same seventeen (17) paid holidays granted other certificated/classified management of the District, including but not necessarily limited to

those defined in Education Code section 37220.

The determination of work days is based on the following formula:

<i>Days in year</i>	<i>365</i>
<i>Minus</i>	<i>104 weekend days</i>
<i>Equals</i>	<i>261 possible work days</i>
<i>Minus</i>	<i>17 paid holidays</i>
<i>Equals</i>	<i>244 possible work days</i>
<i>Minus</i>	<i>24 vacation days</i>
<i>Equals</i>	<i>220 work days</i>

6. MANAGEMENT HOURS

The parties recognize that the demands of the position will require the SUPERINTENDENT to average more than eight (8) hours a day and/or more than forty (40) hours per week. The parties agree that SUPERINTENDENT shall not be entitled to overtime compensation and that the SUPERINTENDENT is an exempt employee working in an administrative and professional capacity.

7. HEALTH BENEFITS

In addition to the other compensation listed in this Agreement, the SUPERINTENDENT shall be provided with health insurance coverage with all premium costs paid for by the District under the District's health, vision and dental insurance plans, for the SUPERINTENDENT, her spouse, and the Superintendent's dependents for the plans offered by the District and selected by the SUPERINTENDENT.

Should the SUPERINTENDENT retire from the District after nine (9) years of service or more, the District agrees that it shall continue to pay all premium costs for all such health, vision and dental insurance plans for the SUPERINTENDENT and her spouse until she turns the age of sixty-five (65).

8. PROFESSIONAL MEETINGS & PROFESSIONAL GROWTH

The SUPERINTENDENT shall endeavor to maintain and improve her professional competency by all means, including joining and participating in appropriate local, state, and national professional, educational, business, and service organizations and their activities, as well as workshops, visitations, and meetings. The District shall pay the Superintendent's membership dues in up to three (3) professional organizations of her election, such as the Association of California School Administrators (ACSA); and up to two (2) local service clubs, with prior written notification to the GOVERNING BOARD. The SUPERINTENDENT may serve in a leadership role in a professional, educational, business, or service organization, council, or committee.

The District shall also pay on behalf of the Superintendent expenses incurred in attendance for regional, state, or national conferences, seminars, hearings, professional meetings, or professional growth which are devoted to matters that in the Superintendent's judgement relate to the benefit and welfare of the District.

The District shall provide a reasonable amount of time for the SUPERINTENDENT to participate in professional growth activities that would serve to improve the capacity of the SUPERINTENDENT to perform her professional duties. The District shall fund the registration, travel, and other expenses related to professional development trainings each year, such as, but not limited to, a Superintendent's Academy or the California School Board Association's Masters in Governance workshop. Any travel or other expenses required to attend the latter professional development trainings shall be paid for or reimbursed by the District. Additionally, the District shall fund a coach of the SUPERINTENDENT'S choice with prior approval of the GOVERNING BOARD.

9. PROFESSIONAL ACTIVITIES

The SUPERINTENDENT may utilize accrued, unused vacation entitlements to undertake consultative work, speaking engagements, writing, lecturing, or professional duties and obligations outside the scope of her employment as District SUPERINTENDENT. The Superintendent may undertake outside professional duties and obligations, such as working as an educator in an institution of higher education, provided that such outside professional duties and obligations do not interfere or conflict with the Superintendent's performance of her professional obligations to the District, are subject to prior written notification to the GOVERNING BOARD.

10. EXPENSES

In accordance with its policies, the District shall pay for or reimburse the SUPERINTENDENT for all actual, reasonable, and necessary expenses incurred in the performance of her duties. For reimbursement, the SUPERINTENDENT shall submit expense claims to the GOVERNING BOARD for expenses of the prior month. The SUPERINTENDENT's expense claim shall be supported by appropriate written documentation prior to reimbursement. All reimbursements shall be subject to ratification by the GOVERNING BOARD. However, expenses related to business travel by personal vehicle shall not be reimbursed in accordance with this provision, unless the business travel extends outside of San Diego county.

11. TECHNOLOGY

The SUPERINTENDENT shall be issued technology devices necessary to discharge her duties such as, but not limited to, a cellular phone, laptop computer, desktop computer, and a portable broadband device MiFi hotspot. The District shall pay actual costs and expenses associated with owning, licensing, operating, and maintaining District owned technology devices. This does not include costs associated with maintaining home internet access. All technology devices so provided are the property of the District and the District shall have the right to control the access to, and use of, technology devices through its Board policies, including its technology use policies, personnel policies, and its risk management policies.

12. EVALUATION

The GOVERNING BOARD and the SUPERINTENDENT shall confer by end of September of each year to develop mutually agreed upon goals, objectives, and standards. Based thereon, the SUPERINTENDENT shall be evaluated annually.

The GOVERNING BOARD and SUPERINTENDENT shall mutually agree upon the evaluation instrument that the GOVERNING BOARD will use to assess the Superintendent's performance. The evaluation instrument shall include an overall job performance rating scale with criteria of "Outstanding," "Satisfactory," and "Growth Needed."

The SUPERINTENDENT will present the GOVERNING BOARD with a written self-evaluation which mirrors the form of the mutually agreed upon written evaluation instrument by end of May of each year.

At a regularly scheduled Board meeting prior to end of September of each year, the SUPERINTENDENT will present the GOVERNING BOARD with a report on the state of the District.

Prior to end of June of each year, the GOVERNING BOARD will devote a closed session portion of at least one (1) meeting to a discussion and evaluation of the Superintendent's performance utilizing the mutually agreed upon written evaluation instrument. A post-evaluation meeting shall be held between the GOVERNING BOARD PRESIDENT and the SUPERINTENDENT to review the Superintendent's written evaluation. The SUPERINTENDENT shall be provided a copy of the written evaluation prior to June 30, annually. The SUPERINTENDENT shall have the right to make a written reaction or response to the evaluation, and such response shall become a permanent attachment to the Superintendent's evaluation.

The Superintendent's evaluation shall be recognized as a confidential personnel document and shall be duly protected as such, unless disclosure is authorized by the mutual consent of the GOVERNING BOARD and the SUPERINTENDENT or as otherwise required by law.

13. LIFE INSURANCE

The District shall provide the SUPERINTENDENT \$250,000.00 term life insurance coverage (without cash value) at a premium rate not to exceed \$50.00 a month. The term of said insurance shall be for the duration of this Agreement or any extension of said Agreement.

14. TERMINATION

The SUPERINTENDENT'S status as SUPERINTENDENT and all of the SUPERINTENDENT'S rights under this Agreement may be terminated as follows:

14.1 **Mutual Consent, Retirement, Resignation, Death Disability**

- A. At any time by mutual consent of the GOVERNING BOARD and the SUPERINTENDENT. Any mutual termination, including a cash settlement shall be subject to the provisions of Government Code section 53260, which restricts any cash settlement to no more than the lesser of then monthly salary times twelve (12) months or the remaining term of the Agreement.
- B. Upon the death of the SUPERINTENDENT.
- C. Upon the giving of ninety (90) days' notice by the SUPERINTENDENT prior to the proposed termination date. The SUPERINTENDENT and the GOVERNING BOARD may agree, in writing, to waive the ninety (90) day notice requirement.
- D. By a vote of the GOVERNING BOARD of not less than 3 to terminate the Agreement whether with or without cause, for any reason by providing ninety (90) days advance written notice to the SUPERINTENDENT in accordance with Education Code 35031.

14.2 **Termination for Cause**

The SUPERINTENDENT shall fulfill all aspects of this Agreement. Throughout the term of this Agreement, the SUPERINTENDENT shall be subject to discharge for cause. Cause includes, any of the following: a material breach of contract, conviction of a felony, the SUPERINTENDENT'S failure to perform her duties, or violations of District policies and procedures and/or any other grounds enumerated in the Education Code as establishing cause for the discharge of certificated employees.

The GOVERNING BOARD shall not discharge for cause the SUPERINTENDENT until a written statement of the grounds for discharge has been served upon the SUPERINTENDENT. Within 15 days of the written statement provided to the SUPERINTENDENT an information conference will be held with the SUPERINTENDENT to review the grounds for discharge. Within thirty (30) days, unless otherwise agreed to by both the GOVERNING BOARD and the SUPERINTENDENT, the SUPERINTENDENT shall be entitled to a hearing in closed session with the GOVERNING BOARD at which time the SUPERINTENDENT shall have the right to have a representative of her choice, at the closed session hearing with the GOVERNING BOARD. The hearing with the GOVERNING BOARD shall be the SUPERINTENDENT'S exclusive right to a hearing otherwise required by law. Failure to exercise her right to a hearing or failure to attend the hearing shall constitute a waiver of her right to have such hearing with the GOVERNING BOARD. The SUPERINTENDENT shall not be entitled to severance or any other pay or benefits in the event she is terminated for cause as defined herein above.

14.3 Termination of Agreement Without Cause

The GOVERNING BOARD and the SUPERINTENDENT further agree that, notwithstanding other provisions of this agreement, the GOVERNING BOARD shall have the right and option to terminate this Agreement by providing written notice of its intent to terminate and termination to the SUPERINTENDENT. Such termination under this paragraph may occur without cause or without a hearing, at any time, notwithstanding any other provisions herein, regardless of the remaining term of the Agreement.

In consideration for the exercise of this right, the District shall pay to SUPERINTENDENT from the date of termination until the expiration of this Agreement, or for a period of twelve (12) months, whichever is less, an amount equal to the monthly salary of the SUPERINTENDENT multiplied by the number of months left on the unexpired term. Additionally, the SUPERINTENDENT shall be entitled to the health insurance benefits that the SUPERINTENDENT has elected for the same period of time.

If the GOVERNING BOARD terminates the Agreement without cause, in no event shall maximum cash settlement that the SUPERINTENDENT may receive be greater than twelve (12) months in accordance with California Government Code, Section 53260. Pursuant to Government Code section 53243.2, any funds received by the SUPERINTENDENT from the District as a buyout, resulting from the Board's decision to terminate the SUPERINTENDENT without cause, shall be fully reimbursed to the District if the SUPERINTENDENT is convicted of a crime involving the abuse of her powers of office.

15. APPLICABLE LAW

This Agreement is subject to all applicable laws of the State of California, rules and regulations of the State Department of Education, and policies of the Board, all of which are a part of the terms and conditions of this Agreement, unless otherwise provided herein.

16. 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 and not by GOVERNING BOARD policies, administrative regulations, Management Handbooks, or similar documents unless this Agreement expressly incorporates such policies or regulations.

17. INDEMNITY

In accordance with the provisions of Government Codes 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 the 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 with the scope of employment.

Upon retirement or separation from the District, the SUPERINTENDENT will continue to be indemnified and defended by the District for any actions taken against her related to the scope of her employment as the SUPERINTENDENT.

18. MODIFICATION

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

19. TRANSFER AND ASSIGNMENT

The SUPERINTENDENT may not assign or transfer any rights granted or obligations assumed under the Agreement.

20. CONSTRUCTION

This Agreement shall not be construed more strongly in favor of or against either party regardless of which party is responsible for its preparation.

21. GOVERNING BOARD APPROVAL

This effectiveness of this Agreement shall be contingent upon approval by District's GOVERNING BOARD as required by law.

22. WAIVER

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party and contractual rights by custom, estoppel or otherwise.

23. INDEPENDENT REVIEW

This SUPERINTENDENT has had the opportunity to obtain, and has obtained, independent legal or other professional advice with regard to this Agreement, and the consequences thereof, including tax and retirement consequences. The SUPERINTENDENT acknowledges that the terms of this Agreement have been read and fully explained by her representative (s) and that those terms are fully understood and that voluntarily accepted.

24. BINDING EFFECT

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

25. SAVINGS CLAUSE/SEVERABILITY

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 shall be given effect.

without the invalid provisions or applications and the provisions of this Agreement are declared to be severable. If, during the term of this Agreement, it is found that a specific clause of the Agreement violates Federal or State law, the remainder of the Agreement shall not be affected by such ruling and shall remain in force.

26. RENEWAL OF AGREEMENT

This Agreement may be renewed under the current terms and conditions on or before the first day of July of each year, provided notice is given by the GOVERNING BOARD to notify the SUPERINTENDENT in writing as least ninety (90) days prior to the expiration of this Agreement. In the event of renewal as delineated herein, the GOVERNING BOARD shall take action at its next regularly scheduled meeting to extend the Agreement by written amendment to the next succeeding June 30.

27. REVIEW OF AGREEMENT

Each year between January 1 and June 30, the parties may meet in good faith to review the entire Agreement and mutually consider proposed modifications or additions. No changes shall be adopted without the express written acceptance of the SUPERINTENDENT and approval of the GOVERNING BOARD at a regularly scheduled Board meeting.

28. ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreements between the parties. It supersedes and replaces any prior agreement between the parties. The parties acknowledge that there are no oral understandings, terms, or conditions, and neither party has relied upon any representations, whether express or implied, not contained in this Agreement.

29. ABUSE OF OFFICE PROVISIONS.

In accordance with Government Code section 53243 et seq., and as a separate contractual obligation, if the SUPERINTENDENT receives a paid leave of absence or cash settlement and this Agreement is terminated for any reason, such paid leave or cash settlement shall be fully reimbursed to the District by the SUPERINTENDENT if the SUPERINTENDENT is convicted of a crime involving an abuse of office or the position of SUPERINTENDENT. In addition, if the District funds the criminal defense of the SUPERINTENDENT against charges involving abuse of office or position and the SUPERINTENDENT is then convicted of such charges, the SUPERINTENDENT shall fully reimburse the District all funds expended for the SUPERINTENDENT'S criminal defense. 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 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 fully implement the requirements of Government Code section 53260, subdivision (b). In addition, if this Agreement is terminated, any cash settlement related to the termination that SUPERINTENDENT receives from the District shall be fully reimbursed to the

District if the SUPERINTENDENT is convicted of a crime involving an abuse of her office or position. For purposes of this provision, "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 and (b) a crime against public justice, including but not limited to, a crime described in Title & (commencing with Section 92) of Part 1 of the Penal Code.

30. SIGNATORY CLAUSE

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

GOVERNING BOARD, of and on behalf of, SAN YSIDRO SCHOOL DISTRICT.

Rosaleah Pallasigue, Board President

Date

Irene Lopez, Board Vice President

Date

Marcos A. Diaz, Board Clerk

Date

Antonio Martinez, Board Member

Date

Rodolfo Linares, Board Member

Date

GOVERNING BOARD Approval Date: _____

ACCEPTANCE OF LETTER

I hereby accept the above offer of employment and agree to be bound hereby, to comply with the terms and conditions hereof, and to fulfill all of the duties of SUPERINTENDENT, Chief Executive Office, and Secretary to the GOVERNING BOARD of the SAN YSIDRO SCHOOL DISTRICT during the term specified in the foregoing employment contract.

ACCEPTED AND AGREED:

Gina Acosta Potter, Superintendent

Date