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ATKINSON ANDERSON LOYA

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**AGREEMENT FOR RESIGNATION
AND RELEASE OF ALL CLAIMS**

1. Parties. This Settlement Agreement, Resignation, and Release of all Claims ("Agreement") is made by and between Luciano Ortiz ("Employee") and the Grossmont Union High School District ("District").
2. Recitals.
 - a. There exists a controversy concerning Employee's continued employment with the District.
 - b. On or about March 18, 2016, Employee filed a claim for damages against the District, alleging, among other things: defamation and negligent supervision and retention of Employees. On March 21, 2016, Employee followed up his claim with a formal demand letter. The claim was denied by the District on April 14, 2016.
 - c. On or about April 1, 2016, the District served Employee with a **NOTICE OF PROPOSED RECOMMENDATION TO DISMISS AND STATEMENT OF CHARGES** concerning particular allegations of misconduct.
 - d. On April 16, 2016, Employee requested a "Right to Sue" letter from the Department of Fair Employment and Housing (DFEH Charge No. 761183-223105).
 - e. On April 12, 2016, after a *Skelly* meeting, the District issued Employee a **NOTICE OF RECOMMENDATION TO DISMISS AND STATEMENT OF CHARGES**.
 - f. Employee desires to resign from his employment and the District desires to facilitate and accept Employee's resignation. This Agreement separates Employee's employment with the District and serves as a settlement agreement and release of all possible claims and differences by Employee concerning his employment with the District and any and all occurrences connected with or during such employment.

Disclaimer. The Parties' actions under this Agreement are solely the product of a compromise of the conflicting claims of the Parties, and are made in consideration of Employee's execution of the releases contained herein and other various acts, including, but not limited to, the submission of his request for voluntary resignation. The Parties' actions under this Agreement shall not be considered in any way an admission of any liability or wrongdoing by Employee or the District, or its Board of Education, employees, officers, students, or witnesses, or any agents, attorneys, representatives, successors, or assigns of either party.

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3. Employee Agrees:

- a. To resign from employment effective September 30, 2016. A copy of the executed resignation is attached hereto and made a part hereof as Exhibit 1. This resignation shall become irrevocable upon execution of this Agreement by Employee other than as stated in Section 7 and Section 12.
- b. To forever relinquish and give up any rights he may have with respect to being reinstated to his former position, or to any other position, with the District.
- c. To dismiss DFEH Charge No. 761183-223105.
- d. To withdraw his March 18, 2016 claim against the District. ✓
- e. That he has freely and voluntarily entered into this Agreement and that no promises or threats were made to him to induce him to sign this Agreement, other than the promises set forth herein.
- f. To submit all requests for verification of his employment to the District's Assistant Superintendent, Human Resources. The Assistant Superintendent, Human Resources shall verify only Employee's dates of employment, position held, and salary, and the fact that Employee voluntarily resigned.

4. District Agrees:

- a. To immediately withdraw any charges against Employee.
- b. To, within ninety (90) days of the approval of this Agreement by the District, the Governing Board shall pay Employee eighty thousand dollars (\$80,000.00) in consideration of the terms and conditions of this Agreement. Seventy-thousand five-hundred dollars (\$70,500.00) of this payment shall be considered wages and will be subject to normal salary withholding and deductions. The remaining nine-thousand five-hundred (\$9,500.00) of that sum shall be paid by separate check payable to "Grady and Associates" for Employee's attorney's fees. In addition to the \$80,000.00 settlement sum, the District will pay Employee for all vacation accrued up to Employee's resignation date. ✓
- c. Should Employee fail to execute and provide his executed Agreement to the District prior to his resignation date of September 30, 2016, Employee may receive a salary overpayment. In the event Employee receives an overpayment of salary due to the District's receipt of his executed resignation after September 30, 2016, Employee agrees that such overpayments of salary will be deducted from the \$70,500.00 payment described in Section 4(b), above.
- d. Not to contest Employee's eligibility for unemployment benefits during the term for which employee is eligible to receive said benefits. The District shall truthfully respond to any Employment Development Department ("EDD") inquiries. Actual determination of benefits shall be at the discretion of the EDD

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and the District makes no promises or guarantees regarding Employee's eligibility for benefits.

5. General Release:

- a. In further consideration of the promises and representations contained herein, Employee hereby releases the District and each of its officers, trustees, employees, attorneys, agents, both potential and prospective, successors and assigns ("Released Parties") of and from any and all employment-related claims, known or unknown, which may exist at the time of execution of this Agreement, and waives any claim to monetary damages that may arise therefrom. Nothing in this Agreement shall be construed to mean Employee is releasing or waiving claims to enforce this Agreement, claims arising after his execution of this Agreement, workers' compensation claims, claims for unemployment insurance benefits, or claims that, by law, cannot be waived. In the event Employee unknowingly sues or unknowingly initiates an action or proceeding against a Released Party, Employee agrees to dismiss the action with prejudice within a reasonable time, not to exceed thirty (30) calendar days, after receiving written notification that the party is a Released Party.
- b. The aforementioned claims specifically include, but are not limited to, all loss, liability, damages, charges, complaints, demands, and causes of action arising directly or indirectly out of the employer-employee relationship between the Parties, and shall specifically include all causes of action and any claims under (1) Title VII of the Civil Rights Act of 1964, (race, color, religion, sex and national origin discrimination); (2) the Americans with Disabilities Act; (3) 42 U.S.C. Section 1981 (disability discrimination); (4) 29 U.S.C. Section 206(d)(1) (equal pay); (5) the Educational Employment Relations Act; (6) the National Labor Relations Act; (7) the California Constitution; (8) the United States Constitution, including the First, Fifth, and Fourteenth Amendments; (9) the California Fair and Employment and Housing Act (discrimination based upon race, color, national origin, ancestry, physical or mental disability, medical condition, religion, marital status, sex, sexual orientation or age), and any claims for money damages associated therewith. This list is expressly understood by the Parties not to be all-inclusive, and Employee knowingly executes this Agreement with the express intent of releasing the District from any and all claims and causes of action, past or present, to the greatest extent allowable under the law.
- c. Except as stated above, it is understood and agreed that this release extends to all claims of every nature whatsoever, and all rights under Section 1542 of the Civil Code of the State of California are hereby expressly waived. Section 1542 of the Civil Code referred to herein reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

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KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

d. It is expressly understood and agreed by Employee that this Agreement is in full accord, satisfaction, and discharge of any claims by him and that this Agreement has been executed with the express intent of effectuating the legal consequences provided in California Civil Code section 1541: to wit, the extinguishment of all obligations as herein described.

6. Covenant Not To Sue. Employee hereby covenants not to knowingly sue or knowingly initiate against the District, or any of the Released Parties, any action or proceeding, or to participate in same, individually or as a member of a class, under any policy, contract, law or regulation, federal, state or local, pertaining in any manner whatsoever to the subject of this dispute, including, but not limited to, Employee's employment with the District, and arising from any fact or circumstance known at the time of execution of this Agreement.

7. Age Discrimination Waiver:

The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act ("OWBPA"), 29 USC. §§ 626, *et. seq.*, further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, Employee acknowledges that he is knowingly and voluntarily, for just compensation in addition to anything of value to which Employee was already entitled, waiving and releasing any rights he may have under the ADEA and/or OWBPA. Employee further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a. This waiver/release is written in a manner understood by Employee.
- b. Employee is aware of and has been advised of his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.
- c. Employee is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days.
- d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the effective date of this Agreement.

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SEP-28-2016 12:55

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- e. Employee is hereby advised that he should consult with an attorney prior to executing this Agreement.
- f. Employee has had an opportunity to discuss this waiver and release with, and to be advised with respect thereto, by an attorney of his choice, and that he does not need any additional time within which to review and consider this Agreement.
- g. Employee has seven (7) days following the Parties' full and complete execution of this Agreement to revoke the Agreement.
- h. This Agreement shall not be effective until the expiration of the seven (7) day revocation period set forth in the preceding paragraph.

8. Confidentiality.

- a. The Parties acknowledge and agree that the terms and provisions of this Agreement were made in confidence and shall remain confidential to the greatest extent possible under the law. Neither party shall knowingly disclose or cause or allow to be disclosed, privately or publicly, any of the terms or provisions of this Agreement to any person or entity, except as necessary to comply with law, or in the event that legal proceedings are commenced to enforce any obligations of a party hereto. The Parties jointly recognize the District may have the obligation to report information concerning Employee and this Agreement including, but not limited to, the Ralph M. Brown Act (Government Code section 54950, *et seq.*), the California Public Records Act (Government Code section 6250, *et seq.*) and other applicable statutes and regulations.
- b. Employee shall direct all requests for employment references to the District's Assistant Superintendent of Human Resources, who shall report only the dates of Employee's employment, his position, salary at the time of resignation and that he voluntarily resigned. Failure by Employee to direct such requests as indicated herein shall release the District from any requirements of this subsection. Employee understands and agrees that any breach of Section 8 by the District shall not constitute grounds for rescission of this Agreement.
- c. Sealing of disciplinary charges: The District agrees to place the disciplinary charges (described in Section 2(c), (e) above) against Employee in a sealed envelope within Employee's personnel file. This Agreement shall be affixed to the outside of the sealed envelope by staple. The disciplinary charges shall not be removed from the sealed envelope unless required by law, or if necessary for the District to prepare its defense against a legal claim presented by Employee.

9. Representation. Each party acknowledges that he/it has carefully read this Agreement and has been advised fully by independent counsel of his/its own choice throughout all of the negotiations which preceded the execution of this Agreement. Each party acknowledges that the only promises made to induce him/it to sign this Agreement are those stated herein. Having been fully advised and informed, each party voluntarily enters into this Agreement, including Employee's waiver of rights.

9-30-16

10. Integration, Modification, Construction, Captions, and Severability.

- a. This Agreement constitutes the entire agreement between the Parties, and there exist no other agreements, warranties or representations other than those expressly mentioned herein. This Agreement is the final and complete expression of the mutual understandings of the Parties.
- b. This Agreement may only be amended by written instrument signed by the Parties and shall be construed under and governed by the laws of the State of California, without regard for its conflict of law provisions.
- c. This Agreement shall be interpreted as if each party contributed equally in the drafting and construction of all of the language and each of the terms herein.
- d. The captions and headings used in this Agreement are for convenience only and shall not be interpreted to limit or affect in any way the meaning of the language or terms contained herein.
- e. If any part of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining parts of this Agreement shall remain in full force and effect, with such illegal, invalid or unenforceable parts severed from this Agreement.

11. Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and together will constitute a binding and enforceable agreement as if all Parties had executed the same copy hereof. Facsimiles or scanned signatures shall be deemed binding as if they are original signatures.


12. Board Approval. This Agreement shall not be binding upon the District until ratified by a vote of the Board of Education at a duly noticed meeting thereof. Employee's resignation shall be automatically rescinded if the Board fails to ratify this Agreement, in which case Employee shall be restored to his employment status prior to his resignation, subject to the rights and responsibilities thereof.

Date: Sept. 30, 2016



Luciano Ortiz

Date: 9/30/2016



Julie Mottershaw
Assistant Superintendent of Human Resources
Grossmont Unified School District

225

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RESIGNATION

I, Luciano Ortiz, hereby resign my employment with the Grossmont Union High School District effective September 30, 2016.

Dated: September 30, 2016



Luciano Ortiz

EXHIBIT 1