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*Attorneys for Plaintiff State of Arizona*

*Ex rel. Attorney General Mark Brnovich*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA ex rel. MARK  
15 BRNOVICH in his official capacity as  
16 Arizona Attorney General  
Plaintiff,

17 v.

18 KRISTI WILSON, an individual, DOUG  
19 WILSON, an individual, and BUCKEYE  
20 ELEMENTARY SCHOOL DISTRICT, a  
political subdivision of the State of Arizona,

21 Defendants.

Case No:

**COMPLAINT**

1 For its complaint against the Buckeye Elementary School District (“BESD”) and Kristi  
2 Wilson (“Wilson”), the State of Arizona ex rel. Attorney General Mark Brnovich (the “State”)  
3 hereby alleges as follows:  
4

### 5 INTRODUCTION

6 1. This is an action to recover illegally paid public monies from BESD to its  
7 Superintendent, Kristi Wilson, in violation of the Gift Clause of the Arizona Constitution, Ariz.  
8 Const. art. IX, § 7, and A.R.S. § 35-212. From July 2016 through December 2021, pursuant to  
9 three employment agreements, without documenting a public purpose, BESD paid Superintendent  
10 Wilson \$1,712,976 “additional compensation,” for total compensation of \$3,274,505. This total  
11 compensation was about 100 percent more than what the State’s three largest districts paid their  
12 superintendents during a five-year-period period. Approximately 33 percent of the \$1,712,976  
13 was incorrectly paid to or on behalf of Wilson after BESD misapplied or miscalculated certain tax  
14 withholdings.  
15  
16

17 2. The Auditor General provides financial audits and accounting services to the State  
18 and political subdivisions, investigates possible misuse of public monies, and conducts  
19 performance audits and special reviews of school districts, State agencies, and the programs they  
20 administer. The Auditor General conducted a performance audit of BESD pursuant to A.R.S.  
21 § 41-1279.03, and in April 2022 issued a report, *A Performance Audit of Buckeye Elementary*  
22 *School District—Report 2 of 2* (the “Auditor General Report”), which contained detailed findings  
23 of the payments described in this Complaint. This performance audit report was the second in a  
24 series of two reports on BESD. A true and correct copy of the Auditor General Report is attached  
25  
26

1 as Exhibit A.

2 3. The first report focused on BESD's efficiency and effectiveness in administration,  
3 plant operations and maintenance, food service, and transportation. In its first report, the Auditor  
4 General noted that compared to its peer districts' average, BESD spent 54 percent more per pupil  
5 on executive administration, including the superintendent's salary and benefits package. Due to  
6 concerns with this percentage, the Auditor General issued conducted additional investigation and  
7 issued the Auditor General Report, focusing only on executive administrative spending, and  
8 particularly Wilson's salary and benefits package.  
9  
10

11 4. The Auditor General Report made three findings. First, it found that over 5-1/2  
12 years, BESD paid Wilson \$1,712,976 "additional compensation" of \$3,274,505 total  
13 compensation, which was about 100 percent more than State's 3 largest school districts spent, on  
14 average, on superintendent compensation. The Auditor General Report's second finding related  
15 to Arizona's public records law and concluded that BESD was not transparent when it omitted  
16 Wilson's "additional compensation" amounts and other critical information that would have  
17 enabled the public to monitor BESD and Wilson's performance in two of three employment  
18 agreements. Finally, the Auditor General's Report concluded that BESD miscalculated Wilson's  
19 "required withholdings," overpaying an estimated \$571,256 "additional compensation," or 33  
20 percent of total paid.  
21  
22

23 5. Arizona's Gift Clause prohibits the payment of public monies unless such payment  
24 serves a public purpose and the value to be received by the public is not "far exceeded by the  
25 consideration being paid by the public." *See Wistuber v. Paradise Valley Unified Sch. Dist.*, 141  
26

1 Ariz. 346, 349 (1984).

2 6. None of the three employment agreements between Wilson and BESD document a  
3 public purpose or any additional value BESD received for Wilson's "additional compensation,"  
4 and all of Wilson's described job duties remained the same before and throughout the three  
5 employment agreements.  
6

7 7. The State brings this action pursuant to A.R.S. § 35-212(E) to recover monies  
8 illegally paid to Wilson.  
9

#### 10 **PARTIES**

11 8. Plaintiff is the State of Arizona ex rel. Mark Brnovich, Attorney General.

12 9. Defendant BESD is a political subdivision of the State of Arizona and is based in  
13 Buckeye, Arizona.

14 10. Defendant Kristi Wilson is an individual who, upon information and belief, resides  
15 in Maricopa County. At the time of filing this complaint, Defendant Wilson serves as the  
16 superintendent of BESD and has held that position since 2013. Upon information and belief,  
17 Wilson undertook actions and omissions described herein on behalf, and for the benefit, of her  
18 marital community  
19

20 11. Defendant Doug Wilson is an individual who, upon information and belief, resides  
21 in Maricopa County. Upon information and belief, Defendant Doug Wilson is the spouse of  
22 Defendant Kristi Wilson.  
23

#### 24 **JURISDICTION AND VENUE**

25 12. The Court has jurisdiction over actions seeking declaratory relief pursuant to Article  
26

1 VI, § 14 of the Arizona Constitution and A.R.S. §§ 12-123, and 12-1831.

2 13. This Court has jurisdiction over claims brought pursuant to A.R.S. § 35-212 under  
3 Article VI, Section 14 of the Arizona Constitution.

4 14. Venue is proper in Maricopa County under A.R.S. § 12-401.

5  
6 **FACTUAL BACKGROUND**

7 15. Kristi Wilson is currently the superintendent of BESD. She has held this position  
8 since 2013.

9  
10 16. As of fiscal year 2019, BESD has approximately 5,200 students in seven schools.  
11 Of those 5,200 students, 24 percent passed math, 28 percent passed English language arts, and 42  
12 percent passed science assessments. About 66 percent of these students qualify for free/reduced  
13 price meals. Four of BESD’s seven schools have a D or F letter grade, which requires BESD to  
14 work with the Arizona Department of Education to create an integrated action plan to improve  
15 student achievement. The average teacher working for BESD earned \$44,536—15 percent below  
16 the State average.

17  
18 17. From fiscal year 2014 through fiscal year 2016, Wilson’s annual compensation  
19 averaged \$172,813.

20  
21 18. Beginning in fiscal year 2017, however, BESD entered into three separate  
22 employment agreements with Wilson in which BESD agreed to pay to, and on behalf of, Wilson  
23 “additional compensation” related to retirement service credits with the Arizona State Retirement  
24 System (“ASRS”) and unused leave totaling \$1,712,976.

1           19.    Employment Agreement One covered fiscal years 2017-2019,<sup>1</sup> had a base salary of  
2 \$165,000, and called for BESD to provide Wilson with “additional compensation” to allow  
3 Wilson to purchase one year of retirement service credit with the ASRS for each fiscal year of the  
4 agreement (three years) and specified the compensation was limited to \$1,800 per pay period  
5 (\$46,800 annually), net of required withholdings. The agreement also allowed for Wilson to be  
6 paid at her current per diem rate for up to 30 unused vacation days. Although the per diem rate  
7 was not defined in the employment agreement, BESD used Wilson’s base salary to calculate the  
8 unused vacation leave payout.<sup>2</sup> Wilson’s described job duties did not change from her previous  
9 employment agreement. Employment Agreement One is attached as Exhibit B.  
10

11  
12           20.    Employment Agreement Two covered fiscal years 2019-2021, had a base salary of  
13 \$175,000, and also called for BESD to provide Wilson with “additional compensation” to allow  
14 Wilson to purchase retirement service credit with the ASRS. However, this agreement did not  
15 specify or limit compensation amounts for Wilson’s retirement service credit purchases to one  
16 year for each year of employment and did not describe or place a limit on the compensation dollar  
17 amount. Instead, the agreement called for BESD to provide Wilson with an unstated amount of  
18 “additional compensation” to complete the purchase of remaining retirement credit on the “2016-  
19  
20

21  
22 <sup>1</sup> Each of Wilson’s employment agreements technically covered three fiscal years, but  
23 Agreements One and Two effectively covered only two fiscal years because the last year of each  
24 of those agreements was void when BESD entered into the subsequent employment agreement  
25 with Wilson, which included the prior agreement’s final year.

26 <sup>2</sup> For payments of unused vacation leave to non-separating employees, the Arizona Department  
of Administration follows the Fair Labor Standards Act as a best practice and pays at the  
employee’s base salary.

1 2019 purchase service agreement.” BESD also agreed to provide Wilson with “additional  
2 compensation” for “purchase service agreements beginning 2018-2021,” but no dollar amount,  
3 number of agreements, or time limit was stated. This “additional compensation” was to be net of  
4 required withholdings, and BESD agreed to pay Wilson’s share of FICA (social security and  
5 Medicare taxes) payments. This agreement also allowed Wilson to be paid at her current per diem  
6 rate for up to 30 unused vacation days. However, this agreement defined “per diem rate” as  
7 Wilson’s base salary as well as nine extra compensation elements: Wilson’s ASRS-related  
8 compensation, FICA payments, performance-based pay, and amounts BESD paid for Wilson’s  
9 tax deferred annuity, transportation allowance, telephone allowance, professional memberships,  
10 “community involvement,” and attendance at professional meetings and conferences. Wilson’s  
11 described job duties did not change. Employment Agreement Two is attached as Exhibit C.  
12

13  
14  
15 21. Employment Agreement Three covered fiscal years 2021-2023, had a base salary  
16 of \$189,000, and again called for BESD to provide Wilson with “additional compensation” to  
17 allow Wilson to purchase retirement service credit with the ASRS. Like Agreement Two, this  
18 agreement also did not specify or limit compensation amounts for Wilson’s retirement service  
19 credit purchases. Instead, the agreement called for BESD to provide Wilson with an unstated  
20 amount of “additional compensation” to complete the purchase of remaining retirement credit on  
21 “the” purchase service agreement. BESD also agreed to provide Wilson with “additional  
22 compensation” to complete the purchase of remaining retirement credit for “a purchase service  
23 agreement ending in 2021-22.” This “additional compensation” was to be net of required  
24 withholdings, and BESD agreed to pay Wilson’s share of FICA payments “on both of the service  
25  
26

1 purchase agreements.” This agreement also defined the per diem rate to be Wilson’s base salary  
2 plus the nine other extra compensation elements described in Agreement Two, but also added that  
3 Wilson could be paid for up to 50 days of both unused vacation days and unused personal leave  
4 days. Wilson’s described job duties again did not change. Employment Agreement Three is  
5 attached as Exhibit D.  
6

7 22. Pursuant to the “additional compensation” and “per diem rate” for unused pay  
8 described in these three employment agreements, from July 2016 through December 2021 BESD  
9 paid Wilson \$1,712,976 in addition to her base salary of \$1,561,529 for a total compensation of  
10 \$3,274,505.  
11

12 23. Of this \$1,712,976 “additional compensation,” BESD paid to or on behalf of Wilson  
13 a total of \$1,509,311 for Wilson to purchase eleven years of retirement service credit, at five  
14 different school districts in another state, with the ASRS. These ASRS-related amounts ranged  
15 from \$95,726 to \$464,112 annually and included monies BESD paid to Wilson and to other  
16 entities on Wilson’s behalf. Specifically, BESD paid an estimated \$885,634 directly to the ASRS  
17 for Wilson’s retirement credits, \$358,109 to Wilson directly, and \$265,568 to taxing agencies and  
18 the ASRS on Wilson’s behalf. In November 2021, when Agreement Three was effective, BESD  
19 made the final payment for Wilson’s purchase of eleven years of retirement service credit with  
20 the ASRS.  
21  
22

23 24. The remaining \$203,665 of Wilson’s “additional compensation” was related to  
24 payments for unused leave. As described above, while prior payments to Wilson for unused leave  
25 were paid like other school districts and the State of Arizona, using only her base salary to  
26



1 calculate unused leave payouts, employment Agreements Two and Three included ASRS-related  
2 “additional compensation” amounts to be applied to calculations for unused leave payouts. This  
3 resulted in Wilson receiving substantially higher payouts for unused leave. Specifically, from  
4 December 2018 through December 2021, BESD paid Wilson \$203,665 for unused vacation and  
5 personal leave that was based exclusively on the ASRS-related “additional compensation” Wilson  
6 received. This amount was 55 percent of the total \$372,755 BESD paid Wilson for unused leave  
7 during this time period.  
8

9  
10 25. Finally, from July 2016 through December 2021, BESD miscalculated “required  
11 withholdings” for Wilson’s “additional compensation” when it failed to correctly apply pretax  
12 status and certain compensation limits for ASRS-related payments. As a result, of the \$1,712,976  
13 “additional compensation” BESD paid to and on behalf of Wilson, it overpaid an estimated  
14 \$571,256, or 33 percent, of the total paid.  
15

16 26. In all three of Wilson’s employment agreements, BESD agreed to pay Wilson not  
17 only for purchases of retirement service credits with the ASRS, but also for required State and  
18 federal taxes and any other required withholdings on those purchases of retirement service credits.  
19

20 27. All five of Wilson’s 2016 through 2018 ASRS service purchase agreements for the  
21 purchase of eleven years of retirement service credit called for payments to be made through  
22 payroll deductions, which BESD complied with. This payment practice is approved by the IRS  
23 as a pretax salary reduction that reduces the participating member’s taxable income by the amount  
24 of the payroll deduction authorized under the agreement.  
25

26 28. However, BESD calculations for Wilson’s “deductions of required state and federal

1 taxes” associated with this ASRS-related “additional compensation,” did not account for Wilson’s  
2 pretax status of ASRS service credit payments or retirement contributions. Accordingly, because  
3 Wilson’s ASRS service credit payments and retirement contributions did not increase Wilson’s  
4 federal and State income tax liabilities, no deductions were required, and BESD should not have  
5 paid these taxes. Likewise, when calculating amounts for deductions for any other required  
6 withholdings, BESD did not always correctly account for certain compensation caps and  
7 thresholds, which limited the amount Wilson must contribute to fund ASRS pension benefits and  
8 social security and Medicare (FICA) taxes.  
9

10  
11 29. As a result, after deducting ASRS service credit payments and “required  
12 withholdings,” BESD paid an estimated \$501,875 not required by the employment agreement  
13 terms. Of this overpayment amount, an estimated \$358,109 was incorrectly paid directly to  
14 Wilson and \$143,766 was incorrectly paid on behalf of Wilson for federal and State taxes, FICA  
15 taxes, and ASRS contributions.  
16

17 30. Additionally, because BESD included the \$501,875 described above when  
18 calculating Wilson’s “per diem rate of pay” for unused leave payouts from December 2018  
19 through December 2021, BESD paid Wilson an additional estimated \$69,381 not required by  
20 employment agreement terms.  
21

22 31. After all the payments described above, under Wilson’s three employment  
23 agreements, her annual salary ranging from a low of \$338,986 to a high of \$799,846. This amount  
24 not only far exceeded Wilson’s prior annual BESD compensation, but also the reported average  
25 annual compensation amounts of peer districts’ superintendents and the superintendents of  
26

1 Arizona's three largest districts, which ranged from a low of \$208,600 to a high of \$306,179. For  
2 fiscal years 2017 through 2021, Wilson's compensation was 163 percent higher (or about 2-1/2  
3 times higher) than the reported average of peer districts' superintendents,<sup>3</sup> and 108 percent higher  
4 (or more than 2 times higher) than superintendents of Arizona's three largest districts.<sup>4</sup>  
5

6 **COUNT I**

7 **(A.R.S. § 35-212 - Violation of the Gift Clause)**

8 32. Plaintiff incorporates by reference the foregoing allegations as if set forth fully  
9 herein.

10 33. BESD paid Wilson \$1,712,976 above Wilson's base salary. From 2016 to 2021,  
11 BESD paid Wilson total compensation of \$3,274,505.  
12

13 34. None of the three employment agreements between Wilson and BESD document a  
14 public purpose or any additional value BESD received for the \$1,712,976 in additional  
15 compensation, and all of Wilson's described job duties remained the same before and throughout  
16 the three employment agreements.  
17

18 35. The foregoing payments of compensation far exceeds, and were grossly  
19 disproportionate to, the consideration that BESD received in return from Wilson.

20 36. By the foregoing payments of compensation, BESD violated the Gift Clause of  
21 Arizona's Constitution, Ariz. Const. art. IX, § 7, and illegally paid public money in violation of  
22

23  
24 

---

<sup>3</sup> BESD peer districts include Avondale ESD, Creighton ESD, Littleton ESD, and Madison ESD.  
25 Each of these districts averaged about 5,400-5,700 students in fiscal year 2019.

26 <sup>4</sup> Arizona's three largest districts are Chandler USD, Mesa USD, and Tucson USD. Each of  
these districts averaged about 42,000-59,000 students in fiscal year 2019.

1 A.R.S. § 35-212.

2 **COUNT II**

3 **(A.R.S. § 35-212 – Non-Contractual Payment of Funds – Violation of Gift Clause)**

4 37. Plaintiff incorporates by reference the foregoing allegations as if set forth fully  
5 herein.

6 38. As explained herein and in the Auditor General Report, BESD failed to apply pretax  
7 status and certain compensation limits for Wilson’s ASRS-related payments.  
8

9 39. As a result, BESD violated A.R.S. § 35-212 when it paid to or on behalf of Wilson  
10 \$571,256 more than what it was required to pay Wilson under her three employment agreements.  
11

12 40. Alternatively, BESD violated the Gift Clause of Arizona’s Constitution, Ariz.  
13 Const. art. IX, § 7, and illegally paid public money in violation of A.R.S. § 35-212 when it paid  
14 Wilson \$571,256 more than what it was required to pay Wilson under her three employment  
15 agreements.  
16

17 **PRAYER FOR RELIEF**

18 Based on the foregoing, the State respectfully requests that the Court grant the following  
19 relief:

- 20 1. A declaration that Wilson’s “additional compensation” violated the Gift Clause of  
21 the Arizona Constitution and is, therefore, recoverable under A.R.S. § 35-212.
- 22 2. A declaration that Wilson received amounts as compensation that BESD was not  
23 required to pay under any agreement with Wilson, and that such amounts were  
24 illegally paid and recoverable under A.R.S. § 35-212.
- 25 3. Recovery of all monies illegally paid in violation of the Gift Clause of the Arizona  
26 Constitution and A.R.S. § 35-212, as permitted under A.R.S. § 35-212(E).

- 1 4. Award Plaintiff's reasonable costs and attorney's fees.  
2 5. Provide such other relief as the Court deems just and proper.  
3 RESPECTFULLY SUBMITTED this 28th day of December, 2022.  
4

5 **MARK BRNOVICH**  
6 **ATTORNEY GENERAL**

7 By /s/ Michael S. Catlett  
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18 *Ex rel. Attorney General Mark Brnovich*  
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# EXHIBIT A

# Buckeye Elementary School District

## Report 2 of 2

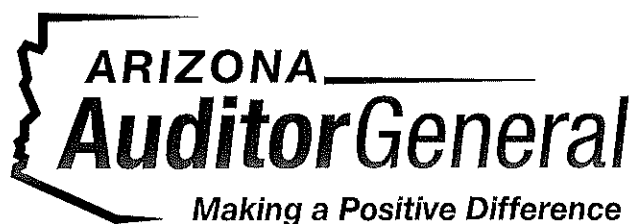
From July 2016 through December 2021, the District paid to or on behalf of its superintendent over \$1.7 million of "additional compensation." This "additional compensation" brought the superintendent's total compensation for that time to about \$3.3 million, which was about 100 percent more than what the State's 3 largest districts spent, on average, on superintendent compensation, resulting in a possible gift of public monies. Also, inconsistent with the core purpose of public records laws, the District omitted "additional compensation" amounts and other critical information in 2 of the superintendent's employment agreements. Moreover, because the District miscalculated "required withholdings" related to the "additional compensation," an estimated \$571,256 of the over \$1.7 million was paid beyond employment agreement terms. We have submitted our report to the Arizona Attorney General's Office for appropriate action.

### Performance Audit

April 2022  
Report 22-202

A Report to the Arizona Legislature

Lindsey A. Perry  
Auditor General





The Arizona Auditor General's mission is to provide independent and impartial information and specific recommendations to improve the operations of State and local government entities. To this end, the Office provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits and special reviews of school districts, State agencies, and the programs they administer.

## The Joint Legislative Audit Committee

Representative **Joanne Osborne**, Chair  
Representative **Tim Dunn**  
Representative **Steve Kaiser**  
Representative **Jennifer L. Longdon**  
Representative **Pamela Powers Hannley**  
Representative **Rusty Bowers** (ex officio)

Senator **Nancy Barto**, Vice Chair  
Senator **Rosanna Gabaldon**  
Senator **David Livingston**  
Senator **Juan Mendez**  
Senator **Kelly Townsend**  
Senator **Karen Fann** (ex officio)

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LINDSEY A. PERRY  
AUDITOR GENERAL

ARIZONA  
AUDITOR GENERAL

MELANIE M. CHESNEY  
DEPUTY AUDITOR GENERAL

April 12, 2022

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

The Honorable Mark Brnovich, Attorney General

Governing Board  
Buckeye Elementary School District

Dr. Kristi Wilson, Superintendent  
Buckeye Elementary School District

Transmitted herewith is a report of the Auditor General, *A Performance Audit of Buckeye Elementary School District—Report 2 of 2*, conducted pursuant to Arizona Revised Statutes §41-1279.03. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience. This performance audit report is the second in a series of 2 reports on the District. The first report focused on the District's efficiency and effectiveness in administration, plant operations and maintenance, food service, and transportation. This second report focuses on 1 aspect of administration—executive administrative spending, and particularly the superintendent's salary and benefits package—due to concerns identified during our audit.

As outlined in its response, the District does not agree with the findings and recommendations but plans to implement or implement modifications to the recommendations. My Office will follow up with the District in 6 months to assess its progress in implementing the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

*Lindsey A. Perry*

Lindsey A. Perry, CPA, CFE  
Auditor General



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## Report Highlights

**Finding 1: Over 5-1/2 years, District paid superintendent \$1,712,976 “additional compensation” of \$3,274,505 total compensation, which was about 100 percent more than State’s 3 largest districts spent, on average, on superintendent compensation and may have been a gift of public monies in violation of Arizona Constitution**

1

District paid superintendent over \$1.7 million of “additional compensation”

“Additional compensation” approved by governing board without documented public purpose increased superintendent’s July 2016 through December 2021 annual compensation far above prior compensation and peer superintendents’ compensation

Recommendations

**Finding 2: District was not transparent when it omitted superintendent’s “additional compensation” amounts and other critical information that would have enabled the public to monitor the District and superintendent’s performance in 2 of 3 employment agreements**

5

District omitted critical information related to superintendent’s “additional compensation” in 2 of 3 employment agreements

Although voting governing board members were aware they were agreeing for the District to pay for the superintendent’s purchase of retirement credits, none knew the District was paying for 11 years, and most did not know the costs of those credits

Recommendation

**Finding 3: District miscalculated superintendent’s “required withholdings,” overpaying an estimated \$571,256 “additional compensation,” or 33 percent of total paid**

8

Recommendations

**Summary of recommendations: Auditor General makes 5 recommendations to the District**

10

**Appendix: Summary of “additional compensation” provisions in superintendent’s fiscal years 2017 through 2023 employment agreements**

a-1

**Auditor General’s comments on District response**

b-1

**District response**

## Figures

1 District’s superintendent’s annual compensation was more than peer district superintendents’ and 3 largest Arizona district superintendents’ average annual compensation  
Fiscal years 2017 through 2021  
(Unaudited)

3



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2	Two of superintendent's 3 employment agreements lacked critical information related to "additional compensation"	5
3	District errors resulted in estimated overpayments of \$571,256, or 33 percent, of total "additional compensation" paid to or on behalf of superintendent July 2016 through December 2021	8

## Tables

1	District paid more than \$1.7 million "additional compensation" of about \$3.3 million total compensation July 2016 through December 2021	Report Highlights
2	"Additional compensation" District paid to superintendent was related to retirement service credit and unused leave July 2016 through December 2021	2
3	Superintendent's unused leave compensation amounts not disclosed in employment agreements December 2018 through December 2021	6

## Buckeye Elementary School District Report 2 of 2

**In our fiscal year 2019 performance audit of Buckeye Elementary School District, Report 1 of 2 (Report 21-208), we identified that compared to its peer districts' average, the District spent 54 percent more per pupil on executive administration, including the superintendent's salary and benefits package. This second report focuses on that aspect of administrative spending.**

As shown in Table 1, the District may have violated the Arizona Constitution's gift clause when from July 2016 through December 2021, pursuant to 3 employment agreements, without documenting a public purpose, it paid its superintendent \$1,712,976 "additional compensation" within total compensation of \$3,274,505, which was about 100 percent more than what the State's 3 largest districts paid their superintendents, on average.<sup>1</sup>

Also, inconsistent with the core purpose of public records laws, the District omitted critical information associated with this "additional compensation" in 2 of these employment agreements. Moreover, because the District miscalculated "required withholdings" related to this "additional compensation," the District overpaid the superintendent an estimated \$571,256, or 33 percent, of the \$1,712,976 paid. We have submitted our report to the Arizona Attorney General's Office for appropriate action.

**Table 1**  
**District paid more than \$1.7 million "additional compensation" of about \$3.3 million total compensation July 2016 through December 2021**

Fiscal year	Base salary, performance pay, & benefit payments	"Additional compensation" payments	Total compensation payments
2016/17	\$ 257,934	\$ 95,726	\$ 353,660
2017/18	243,260	95,726	338,986
2018/19	275,234	524,612	799,846
2019/20	275,540	454,255	729,795
2020/21	306,843	433,152	739,995
Partial 2021/22 <sup>1</sup>	202,718	109,505	312,223
<b>Totals</b>	<b>\$1,561,529</b>	<b>\$1,712,976</b>	<b>\$3,274,505</b>

<sup>1</sup> As described in footnote 1, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports.

### DISTRICT OVERVIEW

The superintendent has held this position since 2013 and, as of this report date, remains in that capacity. Additionally, 4 of the 5 governing board members serving as of this report date held their position since at least April 2016 when the governing board approved the first of 3 employment agreements calling for the superintendent to be paid "additional compensation." During their tenure and as of fiscal year 2019:

- Like the prior 3 fiscal years, District students performed below their peer group and students State-wide on State assessments. Of the approximately 5,200 District students: 24 percent passed math, 28 percent passed English language arts, and 42 percent passed science assessments.
- Of the District's 7 schools, 4 had a D or F letter grade, resulting in the District working with the Arizona Department of Education to create an integrated action plan to improve student achievement.
- The District had a poverty rate of 16 percent, and about 66 percent of the students qualified for free/reduced price meals.
- The District's average teacher salary of \$44,536 was about 15 percent below the State average.

<sup>1</sup> This "additional compensation" relates to a "Retirement Credit" provision included in 3 of the superintendent's employment agreements from fiscal years 2017 through 2023 that called for the District to provide the superintendent with "additional compensation" net of "required withholdings" for the superintendent's purchase of retirement credits through the Arizona State Retirement System (ASRS). Additionally, 2 of these agreements called for the "additional compensation" to be factored in when determining the payments for the superintendent's unused leave. The superintendent represented to us that the superintendent was purchasing retirement credits with the ASRS for 11 years of employment at 5 different school districts in another state, and the purchase would be complete in November 2021. Consequently, our analysis covers the District's payments for the superintendent's "additional compensation" from July 2016 through December 2021. The 3 employment agreements are summarized in the Appendix.

## Over 5-1/2 years, District paid superintendent \$1,712,976 “additional compensation” of \$3,274,505 total compensation, which was about 100 percent more than State’s 3 largest districts spent, on average, on superintendent compensation and may have been a gift of public monies in violation of Arizona Constitution

Arizona Constitution, Art. IX, §7, commonly referred to as “Arizona’s gift clause,” requires that a governmental entity only use public monies for a public purpose and that the value to be received by the public is not to be far exceeded by the consideration being paid by the public.<sup>1</sup> The District may have unlawfully gifted public monies when, without documenting any public purpose, it paid “additional compensation” of \$1,712,976 to or on behalf of its superintendent from July 2016 through December 2021. This “additional compensation” brought the superintendent’s total compensation for that time period to \$3,274,505, which was about 100 percent more than what the State’s 3 largest districts spent, on average, on superintendent compensation.

### District paid superintendent over \$1.7 million of “additional compensation”

The District entered into 3 employment agreements (see Appendix on page a-1) with the superintendent in which it agreed to pay to and on behalf of the superintendent “additional compensation” related to retirement service credits and unused leave totaling \$1,712,976 from July 2016 through December 2021, as follows and as shown in Table 2 on page 2:

- **\$1,509,311 of superintendent’s “additional compensation” was related to purchase of retirement service credits**—The District paid to or on behalf of the superintendent a total of \$1,509,311 “additional compensation” in excess of the superintendent’s base salary and benefits for the superintendent’s Arizona State Retirement System (ASRS) purchase of 11 years of retirement service credit at 5 different school districts in another state. These ASRS-related amounts ranged from \$95,726 to \$464,112 annually and included monies the District paid to the superintendent and to other entities on the superintendent’s behalf. Specifically, we estimated the District paid \$885,634 directly to the ASRS for the superintendent’s retirement credits, \$358,109 to the superintendent, and \$265,568 to taxing agencies and the ASRS on the superintendent’s behalf. As described in Finding 3 on pages 8 and 9, some of these amounts were incorrectly paid.
- **\$203,665 of superintendent’s “additional compensation” was related to payments for unused leave**—In 2 of the superintendent’s employment agreements, ASRS-related “additional compensation” amounts were included in the superintendent’s “per diem rate of pay” to be applied to calculations for unused leave

<sup>1</sup> See also *Wistuber v. Paradise Valley Unified School Dist.*, 141 Ariz. 346, 687 P.2d 354 (1984), *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010), and *Schires v. Carlat*, 250 Ariz. 371, 480 P.3d 639 (2021).

**Table 2****“Additional compensation” District paid to superintendent was related to retirement service credit and unused leave  
July 2016 through December 2021**

Fiscal year	Base salary, performance pay, & benefit payments	“Additional compensation” of ASRS-related payments	“Additional compensation” part of unused leave payments	Total compensation payments
2016/17	\$ 257,934	\$ 95,726	\$ 0	\$ 353,660
2017/18	243,260	95,726	0	338,986
2018/19	275,234	464,112	60,500	799,846
2019/20	275,540	404,417	49,838	729,795
2020/21	306,843	358,076	75,076	739,995
Partial 2021/22 <sup>1</sup>	202,718	91,254	18,251	312,223
<b>Totals</b>	<b>\$1,561,529</b>	<b>\$1,509,311</b>	<b>\$203,665</b>	<b>\$3,274,505</b>

<sup>1</sup> As described in footnote 1 in the Report Highlights, our analysis of the District’s payments for the superintendent’s “additional compensation” ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports.

payouts. Prior payments to the superintendent for unused leave were apparently paid like other school districts and the State of Arizona, using only the superintendent’s base salary to calculate unused leave payouts.<sup>2</sup> However, starting with fiscal year 2019, the District’s employment agreements with the superintendent had been changed to include a “per diem rate of pay” provision, which encompassed the superintendent’s base salary plus 9 extra compensation elements, including the superintendent’s “additional compensation.” This contract modification resulted in the superintendent receiving substantially higher payouts for unused leave. Specifically, from December 2018 through December 2021, the District paid the superintendent \$203,665 for unused vacation and personal leave that resulted from including this ASRS-related “additional compensation” in the superintendent’s “per diem rate of pay.” This amount was 55 percent of the total \$372,755 the District paid the superintendent for unused leave during this time period.

### **“Additional compensation” approved by governing board without documented public purpose increased superintendent’s July 2016 through December 2021 annual compensation far above prior compensation and peer superintendents’ compensation**

The superintendent’s annual compensation averaged \$172,813 for the superintendent’s first 3 years in that position—fiscal years 2014 through 2016—but then increased substantially thereafter without any documented public purpose or change in responsibilities and well beyond that of peer district superintendents.<sup>1</sup> Specifically, the superintendent emailed the District’s attorney in March 2016 with the subject line “contract,” writing that the superintendent had talked with another Arizona school district superintendent “for language specific to purchasing out of state years through a contract with the ASRS. This is something that I would like to be sure is included in the contract. I tried my best to take his language and insert it properly but I am thinking it needs cleaned up.”

Subsequently, the District included in the superintendent’s 3 employment agreements from fiscal years 2017 through 2023, a “Retirement Credit” provision that resulted in “additional compensation” without documenting a public purpose. The District’s attorney collaborated with the superintendent’s attorney in drafting the first

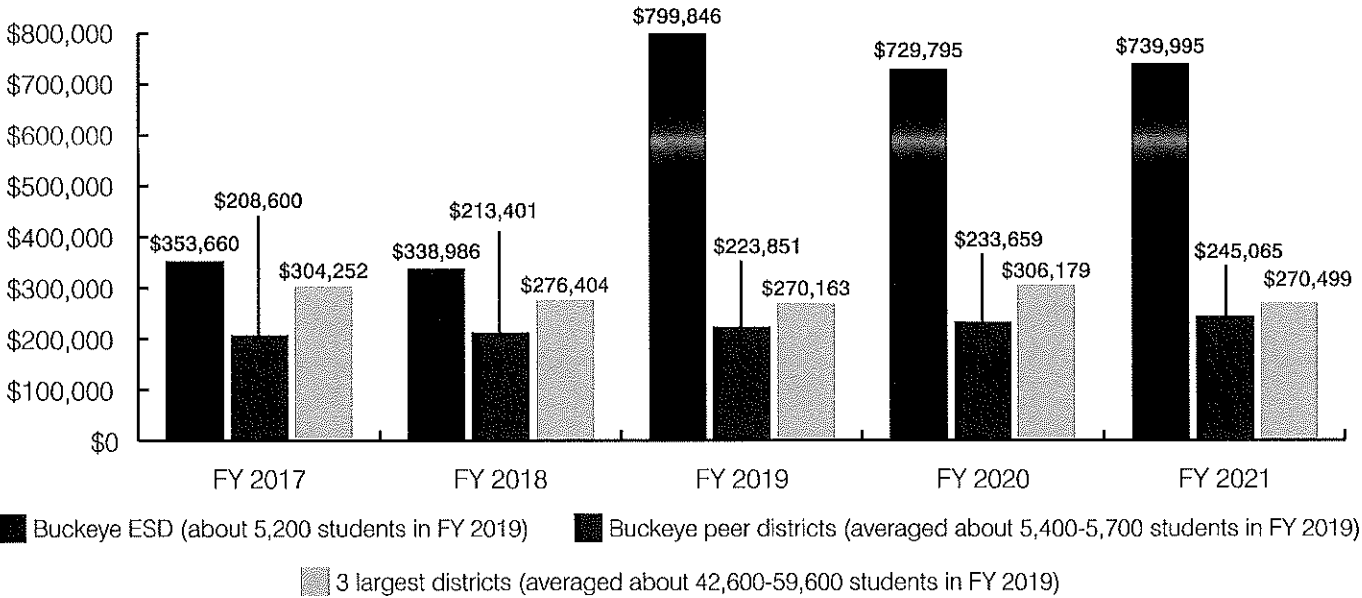
<sup>2</sup> For payments of unused vacation leave to nonseparating employees, the Arizona Department of Administration follows the Fair Labor Standards Act as a best practice and pays at the employee’s base salary. Likewise, the 4 peer school districts referred to in this report also paid at the superintendents’ base salary rates for unused leave of nonseparating superintendents in fiscal year 2019.

agreement prior to governing board approval, but we were unable to confirm further attorney involvement prior to the governing board's approval of the last 2 agreements.<sup>3</sup> As shown in Table 2 on page 2, this "additional compensation" exceeded all the superintendent's other compensation and benefits, including base salary, performance-based pay, and amounts the District paid for the superintendent's tax-deferred annuity, transportation and telephone allowances, professional memberships, "community involvement," and attendance at professional meetings and conferences.

Moreover, this "additional compensation" was evidently not for additional duties as the superintendent's job duties and responsibilities remained the same. Specifically, although employment agreements from fiscal years 2013 and 2014 were not available, the duties described in the superintendent's employment agreements from fiscal years 2015 through 2023 did not change. Likewise, during our interview with the superintendent, the superintendent did not claim this "additional compensation" was related to an increase in responsibilities. Rather, the superintendent said it was a negotiated contract term that the superintendent and the governing board thought would be a good way to meet desires on both ends.

Finally, the superintendent's annual compensation increased dramatically under these 3 employment agreements, ranging from a low of \$338,986 to a high of \$799,846, which not only far exceeded the superintendent's prior annual District compensation, but also the reported average annual compensation amounts of peer districts' superintendents and the superintendents of the State's 3 largest districts, which ranged from a low of \$208,600 to a high of \$306,179 (see Figure 1). For fiscal years 2017 through 2021, the District's superintendent's compensation was 163 percent higher (or about 2-½ times higher) than the reported average of peer districts' superintendents, and 108 percent higher (or more than 2 times higher) than superintendents of the State's 3 largest districts. The State's 3 largest districts averaged about 10 times the number of District students in fiscal year 2019.

**Figure 1**  
**District's superintendent's annual compensation was more than peer district superintendents' and 3 largest Arizona district superintendents' average annual compensation<sup>1</sup>**  
**Fiscal years 2017 through 2021**  
(Unaudited)



<sup>1</sup> The 3 largest districts were Chandler USD, Mesa USD, and Tucson USD. Surveyed peer districts included Avondale ESD, Creighton ESD, Littleton ESD, and Madison ESD. One-time payments, such as for moving expenses and severance payments, were excluded.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent compensation survey information received from the districts. The districts' surveyed information included total compensation amounts paid to superintendents during each fiscal year, including salaries, performance pay, and benefits.

<sup>3</sup> Two of the 3 employment agreements lacked critical compensation information, as described in Finding 2 on page 5.

## Recommendations

The District should:

1. Work with District legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board.
2. Evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure "that the value to be received by the public is not to be far exceeded by the consideration being paid by the public" as stipulated in the Arizona Constitution, Art. IX, §7.

**District response:** As outlined in its **response**, the District does not agree with the finding and recommendations but will implement a modification to recommendation 1 and will implement recommendation 2.



# District was not transparent when it omitted superintendent’s “additional compensation” amounts and other critical information that would have enabled the public to monitor the District and superintendent’s performance in 2 of 3 employment agreements

In Arizona, “the core purpose of the public records law is to allow the public access to... government information so that the public may monitor the performance of government officials and their employees.”<sup>4</sup> Further, State public records laws seek to increase public access to government information and to make government agencies accountable to the public.<sup>5,6</sup> However, the District was not transparent and did not enable the public to monitor District and superintendent’s performance when it omitted critical information related to the “additional compensation” it would pay the superintendent in 2 of the superintendent’s 3 employment agreements, such as the amount of the “additional compensation” to be paid to the superintendent and the amounts used for the superintendent’s “per diem rate of pay” applied to calculations for unused vacation and personal leave payouts. Thus, former and current governing board members lacked critical information necessary to make informed decisions regarding the “additional compensation” to be paid to the superintendent, and public transparency and assurance that public monies were being used appropriately was limited.

## District omitted critical information related to superintendent’s “additional compensation” in 2 of 3 employment agreements

As discussed in Finding 1 (see pages 1 through 4), from July 2016 through December 2021, the District paid \$1,712,976 of public monies to and on behalf of the superintendent for “additional compensation,” but 2 of the superintendent’s 3 employment agreements lacked critical

**Figure 2**  
Two of superintendent’s 3 employment agreements lacked critical information related to “additional compensation”

	Agreement #1	Agreement #2	Agreement #3
Dollar amount of “additional compensation”	✓	⊘	⊘
Limit of “additional compensation”	✓	⊘	⊘
Number of service purchase agreements or years	✓	⊘	⊘
Number of retirement service years authorized to purchase per agreement year	✓	⊘	⊘
Amounts used for “per diem rate of pay”	✓	⊘	⊘

Source: Auditor General staff analysis of District-provided superintendent employment agreements.

<sup>4</sup> Arizona Attorney General Opinion I91-004 (January 4, 1991).

<sup>5</sup> A.R.S. §§39-101 through 39-161.

<sup>6</sup> Arizona Attorney General. (2018). Arizona Agency Handbook. Retrieved on January 18, 2022, from <https://www.azag.gov/outreach/publications/agency-handbook>.

information necessary for the governing board to have made informed decisions regarding the “additional compensation” to be paid to the superintendent (see Figure 2 on page 5). Specifically:

- The District specified the dollar amount of “additional compensation” to be paid to the superintendent only in 1 employment agreement. Specifically, the first employment agreement specified that the “additional compensation” was “not to exceed” \$1,800 per pay period [\$46,800 annually], net of “required withholdings.”<sup>7</sup> Before the governing board approved this employment agreement, the superintendent emailed the District’s attorney, including the former governing board president, writing “Sorry it’s so complicated, I can assure you however, the district’s cost will not exceed 1,800.00 per pay period for the three year contract. I would like to be sure the board is aware of the costs and provide as much documentation as possible but honor the wish to keep the actual amount out of the contract. I hope I have provided that information here.”
- The last 2 of these 3 agreements did not include amounts, or even limits on amounts, of “additional compensation,” the number of service purchase agreements for retirement service credits the District was compensating the superintendent for, and how many years of retirement service credit the superintendent was authorized to purchase for each fiscal year of the employment agreement.
- Finally, only the first of the 3 employment agreements disclosed information that would allow the governing board and the public to estimate per diem rates of pay used for determining amounts to be paid to the superintendent for unused vacation and personal leave. In fact, the District apparently acted consistently with the Arizona Department of Administration (ADOA) practices under Agreement #1 and used the superintendent’s base salary to calculate a per diem rate of pay for the unused leave payout of \$19,534 in fiscal year 2017. However, in Agreements #2 and #3, the per diem rate of pay was changed, and relevant amounts were not disclosed, thus limiting public transparency and the governing board’s ability to make informed decisions regarding “additional compensation” for unused leave to be paid to the superintendent. Specifically, as previously mentioned in Finding 1 (see page 2), Agreements #2 and #3 defined the “per diem rate of pay” to be the superintendent’s base salary, plus the following 9 extra compensation elements: the superintendent’s ASRS-related compensation, FICA payments, performance-based pay, and amounts the District paid for the superintendent’s tax-deferred annuity, transportation allowance, telephone allowance, professional memberships, “community involvement,” and attendance at professional meetings and conferences. The largest amount used in this “per diem rate of pay” was the ASRS-related compensation; however, this amount was not disclosed.

As a result, from December 2018 through December 2021, the District paid the superintendent annual amounts ranging from \$72,112 to \$128,256 for unused leave (see Table 3). These amounts were not publicly disclosed or otherwise able to be estimated, thus limiting public transparency and assurance that public monies were being used appropriately. These amounts not only far exceeded the superintendent’s fiscal year 2017 unused leave payout of \$19,534 from the District, but also that of reported amounts of all other nonseparating superintendents at peer districts and even at the State’s 3 largest school districts, which ranged from a low of \$0 to a high of \$18,904 during fiscal years 2019 through 2021.

**Table 3**  
**Superintendent’s unused leave compensation amounts not disclosed in employment agreements December 2018 through December 2021**

Fiscal year	Amounts not disclosed
2018/19	\$ 91,650
2019/20	80,738
2020/21	128,256
Partial 2021/22 <sup>1</sup>	72,112
<b>Total</b>	<b>\$372,756</b>

<sup>1</sup> As described in footnote 1 in the Report Highlights, our analysis of the District’s payments for the superintendent’s “additional compensation” ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent employment agreements.

<sup>7</sup> As shown in Figure 3 on page 8, the District miscalculated “required withholdings,” and paid the superintendent an extra \$37,478 in fiscal year 2017 and an extra \$38,119 in fiscal year 2018, or a total of about 80 percent more than the specified “not to exceed” limit.

## Although voting governing board members were aware they were agreeing for the District to pay for the superintendent's purchase of retirement credits, none knew the District was paying for 11 years, and most did not know the costs of those credits

Although the voting governing board members expressed to us they were aware they were agreeing to pay the superintendent to purchase retirement credits, none of them expressed an understanding of how many service purchase agreements were included or that the District was paying for 11 years of retirement service credits in the superintendent's 3 employment agreements. Similarly, only 1 governing board member indicated an understanding of the costs involved, stating she was not surprised by the superintendent's annual compensation amounts ranging from about \$340,000 to \$800,000. Nonetheless, when we described to the governing board members the amount the District had been paying the superintendent in "additional compensation" payments, they all represented to us that the amounts were either fair or justified, and some said, "You get what you pay for," or "...worth every penny..." One board member stated "...whatever we have to pay to keep [the superintendent], we pay," although none of the superintendent's 3 employment agreements required more than 3 years of employment. Still, in fiscal year 2019, 4 of the District's 7 schools received a D or F letter grade, District students performed below their peer group on State assessments, and the District's average teacher salary was about 15 percent below the State average.

### Recommendation

The District should:

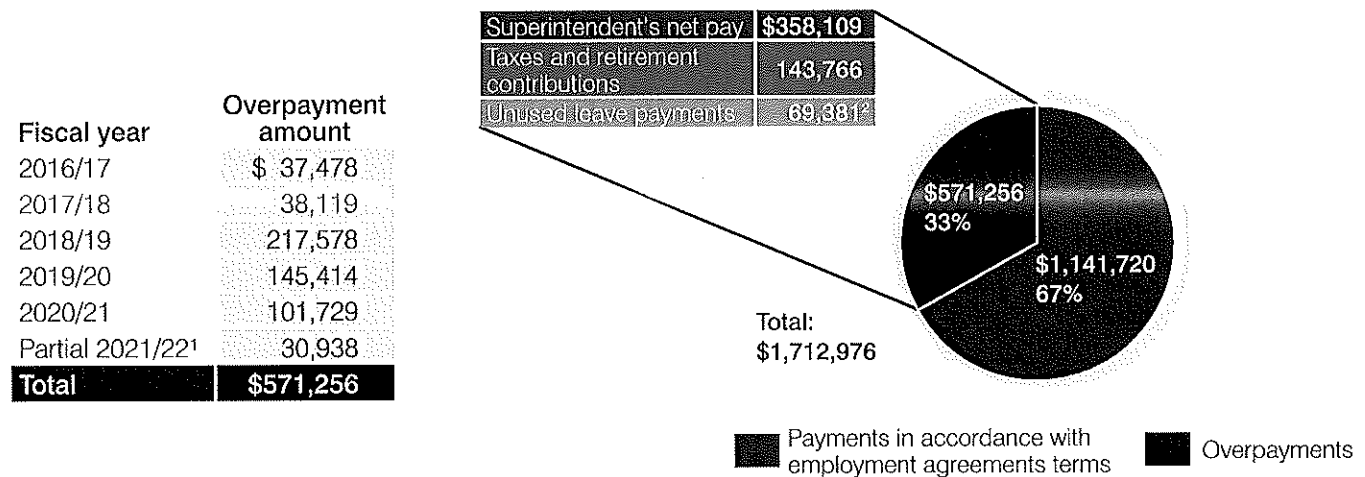
3. Ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately.

**District response:** As outlined in its **response**, the District does not agree with the finding and recommendation but will implement the recommendation.

## District miscalculated superintendent’s “required withholdings,” overpaying an estimated \$571,256 “additional compensation,” or 33 percent of total paid

From July 2016 through December 2021, the District miscalculated “required withholdings” for the superintendent’s “additional compensation” when it failed to correctly apply pretax status and certain compensation limits for ASRS-related payments. As a result, of the \$1,712,976 “additional compensation” the District paid to and on behalf of the superintendent, it overpaid an estimated \$571,256, or 33 percent, of the total paid (see Figure 3). The estimated overpayments ranged from a low of \$37,478 in fiscal year 2017 to a high of \$217,578 in fiscal year 2019.<sup>8</sup>

**Figure 3**  
District errors resulted in estimated overpayments of \$571,256, or 33 percent, of total “additional compensation” paid to or on behalf of superintendent July 2016 through December 2021



<sup>1</sup> As described in footnote 1 in the Report Highlights, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

<sup>2</sup> Unused leave payments are presented in total, including associated taxes and retirement contributions and net amounts paid to the superintendent.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent employment agreements.

<sup>8</sup> Calculations of employee withholdings are based on total compensation. As a result, for some withholdings, we estimated the portion of the withholding attributable to the "additional compensation."

All 3 of the superintendent's employment agreements state, "The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit..." In other words, the District agreed to pay the superintendent not only for purchases of retirement service credits with the ASRS, but also for required State and federal taxes and any other required withholdings on those purchases of retirement service credits.

All 5 of the superintendent's 2016 through 2018 ASRS service purchase agreements for the purchase of 11 years of retirement service credit for other public service at another state's school districts called for payments to be made through payroll deductions, which the District complied with. This payment practice is approved by the IRS as a pretax salary reduction that reduces the participating member's taxable income by the amount of the payroll deduction authorized under the agreement.

However, District calculations for the superintendent's "deductions of required state and federal taxes" associated with this ASRS-related "additional compensation," did not account for the superintendent's pretax status of ASRS service credit payments or retirement contributions. Accordingly, because the superintendent's ASRS service credit payments and retirement contributions did not increase the superintendent's federal and State income tax liabilities, no deductions were required, and the District should not have paid these taxes. Likewise, when calculating amounts for "deductions for . . . any other required withholdings," the District did not always correctly account for certain compensation caps and thresholds, which limited the amount the superintendent must contribute to fund ASRS pension benefits and social security and Medicare (aka FICA) taxes.

As a result, after deducting ASRS service credit payments and "required withholdings," the District paid an estimated \$501,875 not required by the employment agreement terms. As shown in Figure 3 on page 8, of this overpayment amount, we estimated that \$358,109 was incorrectly paid directly to the superintendent and \$143,766 was incorrectly paid on behalf of the superintendent for federal and State taxes, FICA taxes, and ASRS contributions. Additionally, because the District included the \$501,875 described above when calculating the superintendent's "per diem rate of pay" for unused leave payouts from December 2018 through December 2021, the District paid the superintendent an additional estimated \$69,381 not required by employment agreement terms (see Figure 3).

After we informed the District of this "required withholdings" calculation issue, it contracted with an accounting firm to recalculate some of the superintendent's "additional compensation," and that firm's calculations were consistent with our analysis. Because the District did not contract with the firm to review the entire 5-1/2 years that "additional compensation" was paid to the superintendent or to address factors other than pretax status of ASRS contributions such as certain compensation caps or payments for unused leave that we addressed, the firm's amount differed from ours. Specifically, in September 2021, the firm found that because of the District's failure to correctly account for the pretax status of ASRS service credit payments and contributions over a 4.7 year period, the District paid the superintendent \$388,917 more than the superintendent's employment agreements required.

## Recommendations

The District should:

4. Work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements.
5. Work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District.

**District response:** As outlined in its **response**, the District does not agree with the finding and recommendations but will implement modifications to the recommendations.



# SUMMARY OF RECOMMENDATIONS

## Auditor General makes 5 recommendations to the District

The District should:

1. Work with District legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board (see Finding 1, pages 1 through 4, for more information).
2. Evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure "that the value to be received by the public is not to be far exceeded by the consideration being paid by the public" as stipulated in the Arizona Constitution, Art. IX, §7 (see Finding 1, pages 1 through 4, for more information).
3. Ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately (see Finding 2, pages 5 through 7, for more information).
4. Work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements (see Finding 3, pages 8 through 9, for more information).
5. Work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District (see Finding 3, pages 8 through 9, for more information).

## Summary of “additional compensation” provisions in superintendent’s fiscal years 2017 through 2023 employment agreements

Each of the superintendent's employment agreements described below technically covered 3 fiscal years, but Agreements #1 and #2 effectively covered only 2 fiscal years because the last year of each of those agreements was void when the District entered into the subsequent employment agreement with the superintendent, which included the prior agreement's final year. In November 2021, when Agreement #3 was effective, the District made the final payment for the superintendent's purchase of 11 years of retirement service credit with the ASRS. Our analysis went through December 2021, covering the first fiscal year and next 6 months of Agreement #3, which remains in effect as of this report date.

**Fiscal years 2017–2019 employment agreement (Agreement #1)**—Agreement #1 had a base salary of \$165,000 and called for the District to provide the superintendent with “additional compensation” to allow the superintendent to purchase 1 year of retirement service credit for each fiscal year of the agreement (3 years) and specified the compensation was limited to \$1,800 per pay period [\$46,800 annually], net of required withholdings.

The agreement also allowed for the superintendent to be paid at the superintendent's current per diem rate for up to 30 unused vacation days. Although the per diem rate was not defined in the employment agreement, the District apparently acted consistently with the Arizona Department of Administration practices and used the superintendent's base salary to calculate the unused vacation leave payout.

**Fiscal years 2019–2021 employment agreement (Agreement #2)**—Agreement #2 had a base salary of \$175,000 and did not specify or limit compensation amounts for the superintendent's retirement service credit purchases to 1 year for each year of employment and did not describe or place a limit on the compensation dollar amount. Instead, the agreement called for the District to provide the superintendent with an unstated amount of “additional compensation” to complete the purchase of remaining retirement credit on the “2016-2019 purchase service agreement.” The District also agreed to provide the superintendent with “additional compensation” for “purchase service agreements beginning 2018-2021,” but no dollar amount, number of agreements, or time limit was stated. This “additional compensation” was to be net of required withholdings, and the District agreed to pay the superintendent's share of FICA (social security and Medicare taxes) payments.

This agreement also allowed the superintendent to be paid at the superintendent's current per diem rate for up to 30 unused vacation days, but this time, the per diem rate was defined in the employment agreement. Specifically, in addition to the superintendent's base salary, the District included the following 9 extra compensation elements: the superintendent's ASRS-related compensation, FICA payments, performance-based pay, and amounts the District paid for the superintendent's tax deferred annuity, transportation allowance, telephone allowance, professional memberships, “community involvement,” and attendance at professional meetings and conferences.

**Fiscal years 2021–2023 employment agreement (Agreement #3)**—Agreement #3 had a base salary of \$189,000 and again did not specify or limit compensation amounts for the superintendent's retirement service credit purchases to 1 year for each year of employment and did not describe or place a limit on the compensation dollar amount. Instead, the agreement called for the District to provide the superintendent with an unstated amount of “additional compensation” to complete the purchase of remaining retirement credit on “the” purchase service agreement. The District also agreed to provide the superintendent with “additional compensation” to complete the

purchase of remaining retirement credit for "a purchase service agreement ending in 2021-22." This "additional compensation" was to be net of required withholdings, and the District agreed to pay the superintendent's share of FICA payments "on both of the service purchase agreements." Although the superintendent's employment agreement reads as if there were only 2 service purchase agreements, the District was paying for 4 service purchase agreements.

This agreement also defined the per diem rate to be the superintendent's base salary plus the 9 other extra compensation elements described earlier, but also added that the superintendent could be paid for up to 50 days of both unused vacation days and unused personal leave days.





# AUDITOR GENERAL'S COMMENTS ON DISTRICT RESPONSE

We appreciate the District's response and the Governing Board (Board) president's letter, including the District's agreement to implement either all the recommendations or a modification of them. However, these 2 documents include certain inaccurate or misleading statements that necessitate the following comments and clarifications:

1. The Board president's "Response to Finding Number 1" asserts on page 2 of her letter that the Auditor General's office "believes that the value paid [to the superintendent] exceeded benefits received and therefore there has been a gift of funds."

We disagree with the Board president's assertion that we "believe" or, in other words, made a legal determination, that "there has been a gift of funds." Rather, our report includes factual District superintendent compensation amounts compared to other Arizona school districts' reported superintendents' compensation amounts. These facts show the District paid its superintendent about 100 percent more than the superintendents at the State's 3 largest districts. We did not assert there had been a gift of public monies but recommended the District work with its legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made, and if so, what needs to be done to resolve the issue.

2. The Board president's "Response to Finding 1" also asserts on page 2 of her letter that "Board members indicated that the payment for the retirement credit was initiated in an exchange for the Superintendent's promise to remain with the District."

The District did not provide us with any documentation to support that its \$1,712,976 payment of "additional compensation" for the superintendent was in exchange for a "promise." Neither did the District provide us with documentation to show the public's value of this "promise" in relation to the \$1,712,976 paid with public monies.

3. The Board president's "Response to Finding Number 2" on page 3 of her letter asserts the "Auditor General's finding that failing to include the amount paid for the retirement credit within the body of the employment contract violated Arizona's Public Records Law is unsupported by the requirements of those statutes."

We disagree with the Board president's assertion that we made a legal determination the Arizona Public Records Law was "violated." Rather, our report states the District was not transparent and did not enable the public to monitor the District and superintendent's performance when it omitted critical information related to the superintendent's "additional compensation" amounts in 2 of the 3 employment agreements. Specifically, we identified the District only included an "additional compensation" amount in the first employment agreement of \$1,800 per pay period (or \$93,600 for the 2 years that agreement was in effect). Despite including these amounts in the first employment agreement and for an unknown reason, the District did not follow the same transparent approach with the Superintendent's subsequent 2 employment agreements, which included a significantly greater amount in "additional compensation." As a result, the District omitted from the second and third employment agreements \$1,619,376 of the superintendent's \$1,712,976 "additional compensation" amounts over 5-1/2 years.

4. The District asserts on page 2 of its response that “The Governing Board agreed to pay the superintendent a retirement credit and agreed that the amount to be paid would be sufficient to cover all tax liability associated. . . . The Arizona State Retirement System expressly authorizes the use of post-tax pay to purchase retirement credit.”

The District’s assertion that the superintendent’s retirement credits were purchased using post-tax pay is wrong. Although the Arizona State Retirement System (ASRS) authorizes the use of post-tax pay to purchase retirement credits, as described on page 9 in our report, the superintendent did not elect to use this method for the superintendent’s 5 service purchase agreements with ASRS. Rather, per the superintendent’s election, the District deducted and sent to the ASRS the superintendent’s retirement credit payments through pre-tax deductions. This is an important distinction because the District failed to correctly apply pre-tax status when it calculated the “additional compensation,” which led to overpayments to and on behalf of the superintendent. As a result of this and other errors, the District overpaid an estimated \$571,256 beyond what the Board agreed to pay.

# DISTRICT RESPONSE



# BUCKEYE

ELEMENTARY SCHOOL DISTRICT #33

A community passionate about student success

April 5, 2022

Via E-mail and U.S. Mail

Lindsay A. Perry, CPA CFE  
Auditor General  
2910 N. 44<sup>th</sup> Street  
Phoenix, AZ 85018

Re: Buckeye Elementary School District No. 33 Response to Report No. 22-202

Dear Ms. Perry:

The purpose of this letter is to provide a written response to the second report issued as part of the Auditor General's performance audit of Buckeye Elementary School District No. 33 (District).

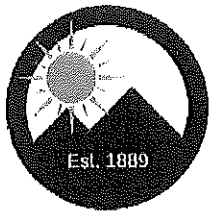
## I. Response to Finding Number 1

The Governing Board of the District has authority under state law to employ a superintendent for up to three years. A.R.S. § 15-503(A). The Board has specific statutory authority to set salary and benefits for the ensuing year. A.R.S. § 15-502(A). Pursuant to this express statutory authority, the District entered into a series of employment agreements with Superintendent Kristi Wilson, who was hired as the superintendent in 2013.

Beginning in April 2016, Dr. Wilson asked and the Board agreed to add a benefit of employment to allow her to purchase back retirement credit from other states.<sup>1</sup> The Board has specific statutory authority to approve this as a benefit of employment for its chief executive officer. *Id.* The Governing Board members knowingly agreed to this provision of the Superintendent's contract and all three agreements were approved by the Board at public

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<sup>1</sup> Page 1 of the second report states the District paid monies directly to ASRS for the superintendent's retirement credit. In fact, the superintendent is the only one authorized to pay funds to buy back prior years of service; the District forwarded funds to ASRS on the superintendent's behalf and using the superintendent's compensation.



# BUCKEYE

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meetings.<sup>2</sup> The Superintendent completed payments for the retirement credits in November 2021.

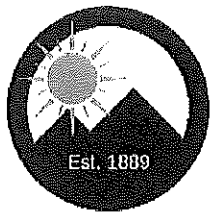
The Governing Board does not accept that finding of the Auditor General's office that its authorized payments to the Superintendent pursuant to the contracts negotiated between the parties constitute a gift of public funds in violation of Article 9, Section 7 of the Arizona Constitution. A school district's payments to its superintendent have an express public purpose as that individual is responsible for the efficient administration of all matters related to the education of the District's 5878 students and 727 staff members.

The Auditor General's office believes that the value paid exceeded benefits received and therefore there has been a gift of funds. It is the elected Governing Board that is tasked with evaluating whether the benefits the District received are proportional to the costs. The report points to the District's letter grades for its schools, which have not been updated since 2019. The District's letter grades are influenced by many factors outside the Superintendent's control. Additional, isolating on this criterion ignores many of the other indicators of benefits received under the Superintendent's leadership. The District has gained 1061 students (FY2013 to FY2022). The District operates in a fiscally responsible manner and is scheduled to carry over \$4,900,000 in excess of funds expended into fiscal year 2022-2023. During the Superintendent's tenure, the District has opened 2 new schools, added 8 new classrooms to a school, established a foundation and 1 new preschool and a Family Resource Center. In at least one academic year, the Superintendent also performed the duties of an Assistant Superintendent who left mid-year.

As noted in the second report, all of the Governing Board members interviewed indicated that the District received sufficient value for services rendered. Board members indicated that the payment for the retirement credit was initiated in an exchange for the Superintendent's promise to remain with the District. Buckeye Elementary is one of the fastest growing school districts in the state, located in a city that is one of the fastest growing in the nation. The Board placed value on retaining continuity of leadership during its continued accelerated growth period. Dr. Wilson's credentials are of the highest order and have been recognized at the state and national level. Most recently, she has been elected as the national

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<sup>2</sup> The Governing Board also expressly authorized that the Superintendent would be paid for up to fifty (50) unused leave days at her per diem rate. The contract document defined the Superintendent's per diem rate to include in the calculation the costs associated with payment of the retirement credit. The District asserts this is also a bargained for exchange between the parties and was expressly authorized. The District has revised the definition of the superintendent's "per diem" rate in her employment contract to begin on July 1, 2022.



# BUCKEYE

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president of the association of administrators in which she leads 14,000 superintendents nationwide.

In December 2021, the Auditor General's office published its financial risk analysis of Arizona school districts, identifying six Arizona schools that are at financial risk of not being able to operate within available cash resources and budget constraints. Buckeye Elementary was not on that list. Under the Auditor General's analysis of value provided as per the second report, theoretically those school districts have not received value for the services provided by their chief administrative officers and should not be paying them salaries.

The Auditor General has specifically found that the District spent a similar amount per pupil in total on administration when compared to its peer districts' average (the District spent \$1,030 per pupil; peer districts spent \$1,047 per pupil). See Performance Audit Report 21-208 issued December 21, 2021 (page 1). In a report published earlier this week, the Auditor General's office confirmed that the Districts' administrative spending is "comparable" to peer districts and specifically noted, "Every year, school districts must decide where to allocate their resources." See School District Spending Analysis – Fiscal Year 2021 issue March 1, 2022. The fact that the District poured more of the administrative costs into its chief executive officer than into other areas of administration is within the Governing Board's discretion with respect to its fiscal management of the District. The District's overall administrative spending is within targets monitored by the Auditor General's office. It is difficult to understand the Auditor General's second guessing of the Board's allocation of resources when the resources have been spent in line with peer districts with respect to administrative costs.

## **II. Response to Finding Number 2**

The Auditor General's finding that failing to include the amount paid for the retirement credit within the body of the employment contract violated Arizona's Public Records Law is unsupported by the requirements of those statutes. The District is obligated to allow the public to view District records during business hours. A.R.S. § 39-121; the laws do not require that all amounts paid via an employment contract be delineated numerically within the body of the contract. For instance, teacher's employment contracts contain benefits and supplemental pays that are not delineated numerically such as awards of classroom site funds and health insurance benefits. The District's payroll records, including all amounts paid to the Superintendent, are open for inspection and available to the public. The Superintendent's compensation was available for disclosure upon request by any party; this meets the requirements of Arizona's Public Records Laws.



# BUCKEYE

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While the District does not believe that it violated any sunshine laws with respect to the superintendent's contracts issued in 2018 and 2020, it has adopted the recommendations of the Auditor General's office with respect to the current form of the superintendent's employment contract.

### III. Response to Finding Number 3

The contract provisions in the Superintendent's contract authorized a supplemental pay to provide the Superintendent with funds for her to purchase retirement credit from another state. The contracts specify that the payments would include all costs associated with tax withholdings so that the Superintendent would receive the net amount needed for the purchases. The funds were paid to allow the Superintendent to buy service credit, not to directly add to her retirement accounts through any available pre-tax mechanism.


The Arizona State Retirement System (ASRS) expressly authorizes a public employee to use post-tax dollars to purchase retirement credit. ASRS notes payment options to include with an after tax payment: <https://www.azasrs.gov/content/service-purchase>.

The District treated the retirement credit payments as supplemental pay. Treasury Regulations Section 21.3402(g)-1 defines supplemental wages as all wages paid by an employer that are not regular wages. Examples of supplemental wages are tips, bonuses, back pay, commissions, etc. Under federal tax law, employers must withhold for supplemental pays as directed in I.R.S. Circular E.

The District is willing to work with tax advisors and its auditors to review how the retirement credits were purchased and if any remediation is required.

### IV. Conclusion

For the foregoing reasons, the District respectfully requests that the Auditor General's second report reflect the District's position taken herein.

Sincerely,  
  
Jane Hunt  
Governing Board President

**Finding 1:** Over 5-1/2 years, District paid superintendent \$1,712,976 “additional compensation” of \$3,274,505 total compensation, which was about 100 percent more than State’s 3 largest districts spent, on average, on superintendent compensation and may have been a gift of public monies in violation of Arizona Constitution

District Response: The District does not agree with the finding. The Governing Board did not gift public monies in approving a contractual benefit of employment for the superintendent. This is especially true given that the District’s administrative expenses are lower than peer districts. See Performance Audit Report 21-208 issued December 21, 2021 (page 1). A.R.S §§ 15-502(A) and 15-503(A) provide direct statutory authority for the Governing Board to hire a superintendent and to fix the salaries and benefits as necessary for the ensuing school year. The Board acted within its statutory authority and discretion to allocate administrative expenses to its chief operating officer.

**Recommendation 1:** The District should work with District legal counsel and the Arizona Attorney General’s Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.

**Recommendation 2:** The District should evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure “that the value to be received by the public is not to be far exceeded by the consideration being paid by the public” as stipulated in the Arizona Constitution, Art. IX, §7.

District Response: The District does not agree with the recommendation but will implement the recommendation.

**Finding 2:** District was not transparent when it omitted superintendent’s “additional compensation” amounts and other critical information that would have enabled the public to monitor the District and superintendent’s performance in 2 of 3 employment agreements

District Response: The District does not agree with the finding. The District was transparent with respect to monies paid as remuneration to the superintendent at all times in compliance with A.R.S. § 39-121 et. seq. Arizona’s public records law require that the public have access to payroll records; it does not require that each component of an employee’s total compensation be itemized in an employment contract. Employment contracts issued by school districts uniformly list approved benefits without specified dollar figures attached (e.g, classroom site funds, performance based pay, health insurance etc).

**Recommendation 3:** The District should ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public



transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately.

District Response: The District does not agree with the recommendation but will implement the recommendation.

**Finding 3:** District miscalculated superintendent's "required withholdings," overpaying an estimated \$571,256 "additional compensation," or 33 percent of total paid

District Response: The District does not agree with the finding. The Governing Board agreed to pay the superintendent a retirement credit and agreed that the amount to be paid would be sufficient to cover all tax liability associated. The District issued payments as supplemental pay and correctly applied withholdings as required by the federal tax law. The Arizona State Retirement System expressly authorizes the use of post-tax pay to purchase retirement credit.

**Recommendation 4:** The District should work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.

**Recommendation 5:** The District should work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.



# EXHIBIT B

BUCKEYE ELEMENTARY SCHOOL DISTRICT 33  
25555 W Durango Street, Buckeye, AZ 85326

**SUPERINTENDENT  
EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into by and between the Governing Board of Buckeye Elementary School District #33 (hereinafter referred to as "Board" or "the District") and Dr. Kristi Sandvik (hereinafter referred to as "Superintendent"), who represents that she has all credentials required by the laws of the State of Arizona and by the Board in order to qualify for the position of Superintendent in the Buckeye Elementary School District No #33.

**1. TERM OF EMPLOYMENT**

1.1. Term. The Board hereby employs and Superintendent hereby accepts employment as Superintendent of Schools for a term commencing July 1, 2016 and ending June 30, 2019. Superintendent shall be employed to work for a period of twelve (12) months during each contract year (260 duty days).

1.2. Non-renewal. Should the Board decide not to renew Superintendent's employment, the Board shall provide written notice to Superintendent on or before April 15, 2019, of its intent not to offer Superintendent a new contract. Superintendent has no legitimate expectancy of employment beyond the date indicated in paragraph 1.1.

**2. DUTIES AND PERFORMANCE EVALUATION**

2.1. Duties. Superintendent's duties and responsibilities of Superintendent shall be those duties incident to the office as set forth in the job description as identified in Board Policy CBA, those obligations imposed by the laws of the State of Arizona, and such other duties as from time to time may be assigned to Superintendent by the Board. Superintendent shall fulfill all aspects of this Agreement, any exception thereto being by mutual consent of the Board and Superintendent.

2.2. Evaluation. Superintendent will completely perform the duties of her assignment and will be subject to a performance evaluation adopted pursuant to A.R.S. 15-503(C). Superintendent's performance will be periodically evaluated by the Board at least annually, which will make a determination as to the competency and quality of Superintendent's performance. This evaluation will occur no later than December during each term of the Agreement unless otherwise agreed by the parties.

2.3. Affidavit. Superintendent shall submit the Affidavit referenced in A.R.S. 15-512(D). Throughout the term of this Contract, Superintendent shall report all circumstances or events, which would affect the continuing validity of the Affidavit.

**3. COMPENSATION**

3.1. Annual Salary. Superintendent's annual base salary for this Contract shall be \$165,000. The salary for the 2016 -2017 and 2017-2018 shall be adjusted by any increase provided to the base salaries for certificated staff that year. On or after April 2017, Superintendent and the Board may agree to

extend or renegotiate this Contract, including Superintendent's annual base salary pursuant to A.R.S. 15-503(B); should no such re-negotiation occur, Superintendent's annual base salary during Term three of this Contract shall be her 2018-19 annual salary increased by the same percentage increase, if any, received by other certificated administrators. Superintendent's annual base salary shall be payable in bi-weekly installments, at the same time and in the same manner as other professional salaries employees of the District, with the exception of payments made pursuant to paragraph 3.2 below.

3.2. Performance Based Pay. In accordance with A.R.S. § 15-341 (40), the parties agree that during the term of this contract, the Board may choose to award up to 20% of each current contract year of the base salary as "performance based pay" as outlined in Exhibit A. This performance based pay, if earned, is in addition to the Superintendent's annual base salary in Section 3.1 above and may be awarded by the Board in its sole discretion and without any renegotiation based upon satisfaction completion of goals that are mutually developed between the Board and Superintendent. The performance based pay award may be paid out in full or fractional basis depending on the level of achievement attained in meeting the established goals. Such performance based pay shall not become a part of the Superintendent's base salary. The District's Governing Board shall assess Superintendent's performance annually. Such assessment shall occur in conjunction with Superintendent's evaluation, at which time the Board shall consider whether to recommend the award of any performance based pay.

3.3. Mistake in Salary. Should Superintendent believe there is a mistake in Superintendent's salary, Superintendent shall have thirty (30) working days to notify the Board of the mistake.

#### 4. BENEFITS

4.1. Leave and Vacation. Superintendent shall be entitled to twenty-five (25) vacation days each fiscal year of this contract. At the option of the Superintendent, she may be paid at her current per diem rate for up to thirty (30) earned and vested but unused vacation days that she has earned prior to and after the effective date of this Agreement. The Superintendent may request payment of these earned and vested and accrued vacation days at any time during the fiscal year. Superintendent shall be entitled to fifteen (15) personal days annual as paid leave. The personal days will not roll over to the next fiscal year if not used. Superintendent shall be paid at her current per diem rate for her one-half (fifty percent 50%) of any unused but accumulated personal leave days upon separation from employment.

4.2. Holidays. Superintendent shall be entitled to the same Federal and State holidays as all other 12 month certificated administrators in the District.

4.3. Short Term Disability Insurance. The District shall provide Superintendent, at the District expense, a short term disability insurance policy to provide short-term disability income protection to Superintendent in the event of a qualifying disability. The Policy shall provide coverage, commencing not more than thirty (30) days after inception of the disability, for a minimum of seventy five percent (75%) of Superintendent's salary during the period of disability and continuing until the Arizona State Disability Program begins to pay benefits to Superintendent or until the applicable limits of the Policy are exhausted.

4.4. Term Life Insurance Benefit. The District, in accordance with applicable State and Federal laws, shall pay the premiums for Superintendent for a Term Life Insurance Policy with a death benefit in the amount of \$350,000.00. Superintendent or Superintendent's Trust, if applicable, shall be the Policy owner and shall have control over the Policy value and the right to name the beneficiary of the Policy.

The District will report the contributions on Superintendent's W-2 form at the end of the calendar year. If Superintendent desires an increased amount of coverage, she shall pay the premium difference.

4.5. Tax Deferred Annuity. The District shall pay the sum of \$15,000 each year to a tax deferred plan or annuity, whether a 403(b) plan or a 457(b) plan maintained by the District or another tax deferred plan or annuity, that is designated by the Superintendent before the beginning of the applicable year. If the payment is to a 403(b) plan or a 457(b) plan maintained by the District, the payment will be deemed to be an employer contribution to the maximum extent, if any, permitted thereunder for the year in which the payment is made, and the balance of the payment will be deemed to be an employee elective deferral pursuant to a salary reduction agreement. The Superintendent acknowledges that the District may be required to withhold from the annual base salary an employee's FICA and Medicare taxes respecting the payment made by the District pursuant to this section. The Superintendent acknowledges and agrees that neither the District nor any representative of the District has given or will give to the Superintendent any legal or tax advice and that the Superintendent is responsible for the tax consequences of the foregoing payments, including the election as to where the payment is to be made each year.

4.6 Retirement Credit. The District agrees to provide the Superintendent additional compensation to allow Superintendent to purchase pursuant to A.R.S. § 38-743 one year of retirement credit through the Arizona State Retirement System (ASRS) for each fiscal year of this Contract (three years total). The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit, not to exceed \$1800 per pay period. The credit shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

4.7. Transportation. Superintendent, as part of her working conditions, is expected to have a personal automobile available for use for school business. The District will provide Superintendent with a business travel and transportation allowance in the amount of \$975.00 monthly during fiscal year of this Agreement. This amount shall be in lieu of requiring Superintendent to submit reimbursement requests for mileage and automobile expenses incurred in the furtherance of Superintendent's duties. Superintendent shall be responsible for all expenses relating to the good working order and operation of her automobile, including acquisition or lease cost, maintenance, gas, oil and liability insurance coverage in an amount not less than \$500,000.00 per occurrence. A current Certificate of Insurance shall be on file with the District throughout the full term of this Agreement. Such insurance shall be non-cancelable except upon 30 days' written notice from the Carrier to Superintendent; Superintendent shall immediately obtain comparable insurance and provide an updated Certificate of Insurance to the District. The allowance shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

4.8. Telephone Allowance. Superintendent, as part of her working conditions, is expected to have a personal cell phone available for use for school business. The District shall provide Superintendent with a monthly cellular phone allowance of \$200.00

4.9. Health Insurance Benefits. The District shall provide Superintendent with access to the same health, dental and vision benefits provided at District expense as other eligible District employees under the District's group health insurance plan in effect during the term of this Agreement. If Superintendent elects not to accept said insurance coverage, she may elect to have an equivalent amount paid by the

District to a qualified tax sheltered annuity, deferred compensation, additional professional travel or any IRS approved business expense.

4.10. General. Superintendent shall be entitled to all benefits applicable to 12-month certificated administrators, including but not limited to general leave benefits, as are incident to their employment, unless this Agreement provides for different or additional benefits.

4.11. De Minimus Food and Beverages. To the extent appropriate for the occasion, as a *de minimus* fringe benefit to Superintendent, the District may provide incidental food and beverages at Board meetings, mandatory staff meetings, including in-services and staff development activities/trainings, in order to foster good working relations and encourage and reward staff participation.

## 5. INDEMNIFICATION

5.1 The District will purchase an Errors and Omissions and Liability insurance policy to protect Superintendent for legal actions brought against Superintendent in her official capacity as agent and employee of the District, provided the incident arose within the scope of her employment. The District will not be held responsible for punitive or criminal damages arising within the scope of her employment.

5.2 The District or its attorney will be entitled to represent Superintendent in connection with said legal action and shall have the right to settle or otherwise terminate or determine the legal action on such terms and conditions as it shall determine in its sole discretion.

5.3 In actions where the Board and Superintendent are co-defendants, and a good-faith disagreement exists as to the manner in which a claim should be defended, Superintendent may retain independent legal counsel for her defense, the cost of which shall be paid or reimbursed by the Board or its insurance carrier, provided, however, that the foregoing shall not be construed to require the Board to pay the legal expenses of Superintendent in any actions or proceedings in which the Board and Superintendent have adverse interests.

~~6.~~ PROFESSIONAL MEMBERSHIPS; COMMUNITY INVOLVEMENT. The Governing Board shall pay 100% of the Superintendent's membership charges to the American Association of School Administrators, Arizona School Administrator's, and the Association for the Supervision and Curriculum Development. In addition, the sum of Five Thousand Dollars, (\$5,000) will be provided to the salary as a salary addendum for the purposes of providing other memberships in organizations and professional expenses associated with the position that support the mission of the school district and as permitted by law.

7. PROFESSIONAL MEETINGS AND CONFERENCES. Superintendent shall attend appropriate professional meetings at the local, state and national level, the expenses of said attendance to be incurred by the District. A fund of \$5,000.00 shall be established in the budget during each term of this Agreement to cover such activities. The Board may, in its sole discretion, authorize Superintendent to expend additional amounts for professional meetings and conferences. At the end of each fiscal year, all unused funds shall divert to the District budget. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review.

8. CONSULTING. Superintendent will be allowed 5 consulting days per year to be absent from the District for the purposes of consulting with state or national education related organizations. These days

will not be charged to vacation or personal time and will benefit the District by presentation of the positive outcomes of the District's successes and achievements. Honoria, if earned, will be retained by the Superintendent.

9. REIMBURSEMENT FOR TRAVEL AND BUSINESS EXPENSES. The District shall reimburse Superintendent for reasonable and necessary travel and business expenses directly incurred by Superintendent in the continuing performance of her duties under this Agreement that are not otherwise paid for or reimbursed pursuant to her Automobile Expense Allowance or other provisions of this Agreement. Superintendent shall comply with all procedures and documentation requirements in accordance with Board Policies and State law related to reimbursement of said expenses. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review. Superintendent shall provide a record log of all expenditures to the Board on a regular basis and at least every 6 months.

#### 10. TERMINATION OF AGREEMENT

10.1. Discharge for Cause. Throughout the term of this Agreement, Superintendent shall be subject to discharge for good and just cause, with notice of termination specifying such cause to be given to Superintendent in writing. In the event of a discharge for cause, Superintendent shall have same provisions of notice, hearing, and appeal as provided to certificated staff pursuant to A.R.S. § 15-341 (A) (22), including A.R.S. §§ 15-539 through 15-543. The filing of a timely request for a hearing suspends the dismissal pending completion of the hearing. The Board may, in its discretion, suspend Superintendent from her duties, with pay and all other employment benefits, upon serving Superintendent with notice of its intent to discharge her for cause.

10.2. Incapacity of Superintendent. Should Superintendent be unable to perform any or all of her duties by reason of illness, accident or other causes beyond her control, and such disability exists for a cumulative period of more than six (6) months during any twelve (12) month period during the term of this Agreement, and if the Board determines at its sole discretion that such disability is of such a nature that it materially impairs Superintendent's ability to perform her duties hereunder, and that there are no reasonable accommodations which may allow Superintendent to perform the duties of the position, and all Superintendent's vacation, sick leave, and Family Medical Leave Act have been expended, and the parties recognizing and affirming that Superintendent is a key employee, then the Board may, at its option, terminate this Agreement upon sixty (60) days prior written notice to Superintendent. In no event shall such termination hinder or impair Superintendent's ability to collect any disability benefits to which she would otherwise be entitled for the disability in question.

10.3. Mutual Agreement. This Agreement shall terminate upon written agreement between Superintendent and the Board.

10.4. Death of Superintendent. This Agreement shall automatically and without further action by the Board or Superintendent's estate terminate upon the death of Superintendent. Notwithstanding the foregoing, the District shall pay to Superintendent's heirs or estate the amounts to which Superintendent would otherwise be entitled for any earned and unused sick or vacation time remaining at the time of death, as well as all compensation earned and unpaid at the time of death.

10.5. Conflict of Interest. This Agreement may be terminated in accordance with A.R.S. §38-511, the terms of which are incorporated herein by reference.



10.6. Immediate Dismissal Without Hearing. Notwithstanding the language of Paragraph 10.1 above, pursuant to A.R.S. § 15-550, if District Superintendent is arrested for or charged with any nonappealable offense listed in A.R.S. § 41-1758.03(B), District Superintendent shall immediately report the arrest or charge to the Board President as her immediate supervisor. Failure to do so shall result in immediate dismissal.

10.7 Unilateral Termination. The Board, may, at its option and upon a minimum of sixty (60) days prior written notice to Superintendent, unilaterally terminate this Agreement with or without cause. Because the Superintendent's damages would be extremely difficult to calculate, the Board and Superintendent agree that upon any such unilateral termination, the District shall pay to Superintendent a sum equal to the present value of all unpaid annual salary which the Superintendent would have earned from the actual date of termination to the expiration date of this Agreement, as well as the present day value of her contractual benefits including health insurance, earned vacation and leave days, up to 20% of each current contract year of the base salary as "performance based pay" (subject to Board discretion), ASRS employer contributions, and payments into a tax sheltered annuity.

Superintendent understands and agrees that her acceptance of monies paid pursuant to this paragraph shall constitute her sole legal remedy relative to all compensation and benefits to which she might otherwise have been entitled under this Agreement. As a condition precedent to receiving the severance payment set for the herein, Superintendent shall execute a Severance Agreement acceptable to the Board, which shall include Superintendent's: (i) full release of the Board, District, its agents and employees from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of Superintendent's employment or termination of employment with District; and (ii) agreement not to initiate or cause to be initiated any lawsuit, claim, grievance proceeding or investigation of any kind, under any contract, law or regulation, pertaining to her employment with District up to the date of the signing of the Agreement. Upon signing the Agreement the Board, the District, and its agents will release Superintendent from all claims arising out of Superintendent's employment with the District.

## 11. MISCELLANEOUS PROVISIONS

11.1. Governing Law. This Agreement is made and entered into in Arizona, and shall be governed by the laws of the State of Arizona. The venue for any litigation arising out of this Agreement and the employment relationship shall be Maricopa County, Arizona.

11.2. Severability. In the event any covenant, term, condition or provision of this Agreement shall be deemed by a court of competent jurisdiction to be illegal, void or against public policy, such provision shall be severed from this Agreement and the remaining terms, conditions and provisions hereof shall remain in full force and effect to the extent permitted by law.

11.3. Construction. This Agreement has been negotiated by and between the Board and Superintendent both parties are responsible for the drafting of this Agreement. Both parties have reviewed this Agreement with appropriate counsel, or have waived their right to do so, and the parties hereby mutually and irrevocably agree that this Agreement shall be construed neither for nor against either party, but in accordance with the plain language and intent hereof. Headings are used herein for convenience only, and shall play no part in the construction of any provision of this Agreement.

11.4. Attorney's Fees. Each party is responsible for its own attorneys' fees in the event of any dispute between the District and Superintendent arising under or in relation to this Agreement.

11.5. Waiver. The waiver by either party of any covenant, term, condition or provision of this Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent contravention or breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing, signed by both parties, and properly approved by the Board.

11.6. Notices. Any notice required to be given hereunder shall be hand-delivered or sent by United States certified mail, return receipt requested, and addressed to (a) in the case of Superintendent, the District Office, or upon her written request, to her home address as on file in the District office, and (b) in the case of the Board, the individual Board Members' respective home addresses.

11.7. Time. Time is of the essence of this Agreement and every term and condition hereof.

11.8. Non-Assignability. This Agreement is an Agreement for services and may not be assigned by either party, nor shall Superintendent's duties hereunder be performed by any other person without the prior written consent and proper approval of the Board, which consent and approval the Board may elect to grant or deny in its sole, absolute and unfettered discretion.

11.9. Integration and Amendment. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be valid or binding upon either party unless such amendment or modification is in writing, duly executed by the parties and properly approved by the Board.

11.10. Non-Discrimination. Superintendent shall not discriminate against any District employee, applicant for employment, student, parent, contractor, or other member of the public because of that person's gender, race, religion, color, national origin, age, disability, genetic information, veteran's status, or political affiliation in conformance with federal and state laws, federal and state regulations, and federal and state executive orders.

11.11. Accuracy of Representations. Superintendent warrants the truth of all representations and statements made to the District in connection with this Contract as well as those contained in Superintendent's employment application and any other document or oral statement submitted to the District concerning her qualifications and her fitness to serve as Superintendent. Superintendent recognizes that it is a requirement of employment to report to the Board president any circumstances or events that would affect the continuing accuracy or validity of those representations. Determination by the Governing Board that any such representation is not true or is inaccurate may, at District's option, be deemed a material breach of this Contract and constitutes grounds for termination of employment in addition to any other action authorized by law or District policy.

11.12. Acceptance. Superintendent shall have thirty (30) days from the date of the offer of written Contract to accept the Contract or the offer is revoked. Superintendent accepts the Contract by signing the Contract and returning it to the Governing Board.

This Agreement was approved at a properly noticed meeting of the Governing Board held on April 4, 2016, during which the Governing Board authorized the Governing Board President to sign this Agreement on behalf of the Governing Board.

IN WITNESS THEREOF, the parties have caused this agreement to be executed in the respective names and in the case of the Board President, on the day and year first written above.

Superintendent:

Kristi Sandvik April 4, 2016  
Dr. Kristi Sandvik

Buckeye Elementary School District #33:

Marcus Eads April 4, 2016  
By: Marcus Eads, Governing Board President

# EXHIBIT C

BUCKEYE ELEMENTARY SCHOOL DISTRICT 33  
25555 W Durango Street, Buckeye, AZ 85326

**SUPERINTENDENT  
EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into by and between the Governing Board of Buckeye Elementary School District #33 (hereinafter referred to as "Board" or "the District") and Dr. Kristi Sandvik (hereinafter referred to as "Superintendent"), who represents that she has all credentials required by the laws of the State of Arizona and by the Board in order to qualify for the position of Superintendent in the Buckeye Elementary School District No #33.

**1. TERM OF EMPLOYMENT**

1.1. Term. The Board hereby employs and Superintendent hereby accepts employment as Superintendent of Schools for a term commencing July 1, 2018 and ending June 30, 2021. Superintendent shall be employed to work for a period of twelve (12) months during each contract year (250 duty days).

1.2. Non-renewal. Should the Board decide not to renew Superintendent's employment, the Board shall provide written notice to Superintendent on or before April 15, 2020, of its intent not to offer Superintendent a new contract. Superintendent has no legitimate expectancy of employment beyond the date indicated in paragraph 1.1.

**2. DUTIES AND PERFORMANCE EVALUATION**

2.1. Duties. Superintendent's duties and responsibilities of Superintendent shall be those duties incident to the office as set forth in the job description as identified in Board Policy CBA, those obligations imposed by the laws of the State of Arizona, and such other duties as from time to time may be assigned to Superintendent by the Board. Superintendent shall fulfill all aspects of this Agreement, any exception thereto being by mutual consent of the Board and Superintendent.

2.2. Evaluation. Superintendent will completely perform the duties of her assignment and will be subject to a performance evaluation adopted pursuant to A.R.S. 15-503(C). Superintendent's performance will be periodically evaluated by the Board at least annually, which will make a determination as to the competency and quality of Superintendent's performance. This evaluation will occur no later than December during each term of the Agreement unless otherwise agreed by the parties.

2.3. Affidavit. Superintendent shall submit the Affidavit referenced in A.R.S. 15-512(D). Throughout the term of this Contract, Superintendent shall report all circumstances or events, which would affect the continuing validity of the Affidavit.

**3. COMPENSATION**

3.1. Annual Salary. Superintendent's annual base salary for this Contract shall be \$175,000. On or after April 15, 2020, Superintendent and the Board may agree to extend or renegotiate this Contract, including Superintendent's annual base salary pursuant to A.R.S. 15-503(B); should no such re-negotiation occur, Superintendent's annual base salary during Term three of this Contract shall be her 2021 annual salary increased by the same percentage increase, if any, received by other certificated administrators.

Superintendent's annual base salary shall be payable in bi-weekly installments, at the same time and in the same manner as other professional salaries employees of the District, with the exception of payments made pursuant to paragraph 3.2 below.

3.2. Performance Based Pay. In accordance with A.R.S. § 15-341 (40), the parties agree that during the term of this contract, the Board may choose to award up to 20% of each current contract year of the base salary as "performance based pay" as outlined in Exhibit A. This performance based pay, if earned, is in addition to the Superintendent's annual base salary in Section 3.1 above and may be awarded by the Board in its sole discretion and without any renegotiation based upon satisfaction completion of goals that are mutually developed between the Board and Superintendent. The performance based pay award may be paid out in full or fractional basis depending on the level of achievement attained in meeting the established goals. Such performance based pay shall not become a part of the Superintendent's base salary. The District's Governing Board shall assess Superintendent's performance annually. Such assessment shall occur in conjunction with Superintendent's evaluation, at which time the Board shall consider whether to recommend the award of any performance based pay.

3.3. Mistake in Salary. Should Superintendent believe there is a mistake in Superintendent's salary, Superintendent shall have thirty (30) working days to notify the Board of the mistake.

#### 4. BENEFITS

4.1. Leave and Vacation. Superintendent shall be entitled to twenty-five (25) vacation days each fiscal year of this contract. At the option of the Superintendent, she may be paid at her current per diem rate for up to thirty (30) earned and vested but unused vacation days that she has earned prior to and after the effective date of this Agreement. The Superintendent may request payment of these earned and vested and accrued vacation days at any time during the fiscal year. Superintendent shall be entitled to fifteen (15) personal days annual as paid leave. The personal days will not roll over to the next fiscal year if not used. Superintendent is entitled to undifferentiated leave, as is other administrators, she may carry over 12 days as opposed to 10 days. Superintendent shall be paid at her current per diem rate for her one-half (fifty percent {50%}) of any unused but accumulated leave days upon separation from employment.

4.2. Per Diem. When the term "per diem rate of pay" is used in this contract, it is defined as the sum calculated by dividing Superintendent's compensation during a particular fiscal year by the number of paid days in that year. Superintendent's compensation equals the sum of the Superintendent's base salary set forth in paragraph 3 as well as the payments paid to Superintendent, or for her benefit, pursuant to subparagraphs 3.2, 4.5, 4.6, 4.7, 4.8, 4.9, and 6 and 7. The term paid days means all calendar days during the fiscal ~~during the fiscal~~ year other than Saturday and Sundays and District holidays.

4.3. Holidays. Superintendent shall be entitled to the same Federal and State holidays as all other 12 month certificated administrators in the District.

4.3. Short Term Disability Insurance. The District shall provide Superintendent, at the District expense, a short term disability insurance policy to provide short-term disability income protection to Superintendent in the event of a qualifying disability. The Policy shall provide coverage, commencing not more than thirty (30) days after inception of the disability, for a minimum of seventy five percent (75%) of Superintendent's salary during the period of disability and continuing until the Arizona State Disability Program begins to pay benefits to Superintendent or until the applicable limits of the Policy are exhausted.

4.4. Term Life Insurance Benefit. The District, in accordance with applicable State and Federal laws, shall pay the premiums for Superintendent for a Whole Life Insurance Policy with a death benefit in the amount of \$350,000.00. Superintendent or Superintendent's Trust, if applicable, shall be the Policy owner and shall have control over the Policy value and the right to name the beneficiary of the Policy. The District will report the contributions on Superintendent's W-2 form at the end of the calendar year. If Superintendent desires an increased amount of coverage, she shall pay the premium difference.

4.5. Tax Deferred Annuity. The District shall pay the sum of \$15,000 each year to a tax deferred plan or annuity, whether a 403(b) plan or a 457(b) plan maintained by the District or another tax deferred plan or annuity, that is designated by the Superintendent before the beginning of the applicable year. If the payment is to a 403(b) plan or a 457(b) plan maintained by the District, the payment will be deemed to be an employer contribution to the maximum extent, if any, permitted thereunder for the year in which the payment is made, and the balance of the payment will be deemed to be an employee elective deferral pursuant to a salary reduction agreement. The Superintendent acknowledges that the District may be required to withhold from the annual base salary an employee's FICA and Medicare taxes respecting the payment made by the District pursuant to this section. The Superintendent acknowledges and agrees that neither the District nor any representative of the District has given or will give to the Superintendent any legal or tax advice and that the Superintendent is responsible for the tax consequences of the foregoing payments, including the election as to where the payment is to be made each year.

4.6 Retirement Credit. The District agrees to provide the Superintendent additional compensation to allow Superintendent to complete the purchase pursuant to A.R.S. § 38-743 for the remaining retirement credit through the Arizona State Retirement System (ASRS) on the 2016-2019 purchase service agreement. The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit. The credit shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

The District agrees to provide the Superintendent additional compensation-to allow Superintendent to complete a purchase pursuant to A.R.S. § 38-743 for additional retirement credit through the Arizona State Retirement System (ASRS) on purchase service agreements beginning 2018-2021. The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit. The credit shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

4.7 Fica payments. With respect to the FICA payments required to be paid with respect to salary or other compensation provided to Superintendent pursuant to this Contract, the District agrees to pay both the employer's and employee's required FICA payments (instead of only the employer's required contributions) on both of the service purchase agreements.

4.8. Transportation. Superintendent, as part of her working conditions, is expected to have a personal automobile available for use for school business. The District will provide Superintendent with a business travel and transportation allowance in the amount of \$975.00 monthly during fiscal year of this Agreement. This amount shall be in lieu of requiring Superintendent to submit reimbursement requests for mileage and automobile expenses incurred in the furtherance of Superintendent's duties. Superintendent shall be responsible for all expenses relating to the good working order and operation of

her automobile, including acquisition or lease cost, maintenance, gas, oil and liability insurance coverage in an amount not less than \$500,000.00 per occurrence. A current Certificate of Insurance shall be on file with the District throughout the full term of this Agreement. Such insurance shall be non-cancelable except upon 30 days' written notice from the Carrier to Superintendent; Superintendent shall immediately obtain comparable insurance and provide an updated Certificate of Insurance to the District. The allowance shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

4.9. Telephone Allowance. Superintendent, as part of her working conditions, is expected to have a personal cell phone available for use for school business. The District shall provide Superintendent with a monthly cellular phone allowance of \$200.00

4.10. Health Insurance Benefits. The District shall provide Superintendent with access to the same health, dental and vision benefits provided at District expense as other eligible District employees under the District's group health insurance plan in effect during the term of this Agreement. If Superintendent elects not to accept said insurance coverage, she may elect to have an equivalent amount paid by the District to a qualified tax sheltered annuity, deferred compensation, additional professional travel or any IRS approved business expense.

4.11. General. Superintendent shall be entitled to all benefits applicable to 12-month certificated administrators, including but not limited to general leave benefits, as are incident to their employment, unless this Agreement provides for different or additional benefits.

4.12. De Minimus Food and Beverages. To the extent appropriate for the occasion, as a *de minimus* fringe benefit to Superintendent, the District may provide incidental food and beverages at Board meetings, mandatory staff meetings, including in-services and staff development activities/trainings, in order to foster good working relations and encourage and reward staff participation.

## 5. INDEMNIFICATION

5.1 The District will purchase an Errors and Omissions and Liability insurance policy to protect Superintendent for legal actions brought against Superintendent in her official capacity as agent and employee of the District, provided the incident arose within the scope of her employment. The District will not be held responsible for punitive or criminal damages arising within the scope of her employment.

5.2 The District or its attorney will be entitled to represent Superintendent in connection with said legal action and shall have the right to settle or otherwise terminate or determine the legal action on such terms and conditions as it shall determine in its sole discretion.

5.3 In actions where the Board and Superintendent are co-defendants, and a good-faith disagreement exists as to the manner in which a claim should be defended, Superintendent may retain independent legal counsel for her defense, the cost of which shall be paid or reimbursed by the Board or its insurance carrier, provided, however, that the foregoing shall not be construed to require the Board to pay the legal expenses of Superintendent in any actions or proceedings in which the Board and Superintendent have adverse interests.

6. **PROFESSIONAL MEMBERSHIPS; COMMUNITY INVOLVEMENT.** The Governing Board shall pay 100% of the Superintendent's membership charges to the American Association of School Administrators, Arizona School Administrator's, and the Association for the Supervision and Curriculum Development. In



addition, the sum of Five Thousand Dollars, (\$5,000) will be provided to the salary as a salary addendum \$5,000 for the purposes of providing other memberships in organizations and professional expenses associated with the position that support the mission of the school district and as permitted by law.

7. **PROFESSIONAL MEETINGS AND CONFERENCES.** Superintendent shall attend appropriate professional meetings at the local, state and national level, the expenses of said attendance to be incurred by the District. A fund of \$5,000.00 shall be established in the budget during each term of this Agreement to cover such activities. The Board may, in its sole discretion, authorize Superintendent to expend additional amounts for professional meetings and conferences. At the end of each fiscal year, all unused funds shall divert to the District budget. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review.

8. **CONSULTING.** Superintendent will be allowed 7 consulting days per year to be absent from the District for the purposes of consulting with state or national education related organizations. These days will not be charged to vacation or personal time and will benefit the District by presentation of the positive outcomes of the District's successes and achievements. Honoraria, if earned, will be retained by the Superintendent.

9. **REIMBURSEMENT FOR TRAVEL AND BUSINESS EXPENSES.** The District shall reimburse Superintendent for reasonable and necessary travel and business expenses directly incurred by Superintendent in the continuing performance of her duties under this Agreement that are not otherwise paid for or reimbursed pursuant to her Automobile Expense Allowance or other provisions of this Agreement. Superintendent shall comply with all procedures and documentation requirements in accordance with Board Policies and State law related to reimbursement of said expenses. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review. Superintendent shall provide a record log of all expenditures to the Board on a regular basis and at least every 6 months.

#### 10. **TERMINATION OF AGREEMENT**

10.1. **Discharge for Cause.** Throughout the term of this Agreement, Superintendent shall be subject to discharge for good and just cause, with notice of termination specifying such cause to be given to Superintendent in writing. In the event of a discharge for cause, Superintendent shall have same provisions of notice, hearing, and appeal as provided to certificated staff pursuant to A.R.S. § 15-341 (A) (22), including A.R.S. §§ 15-539 through 15-543. The filing of a timely request for a hearing suspends the dismissal pending completion of the hearing. The Board may, in its discretion, suspend Superintendent from her duties, with pay and all other employment benefits, upon serving Superintendent with notice of its intent to discharge her for cause.

10.2. **Incapacity of Superintendent.** Should Superintendent be unable to perform any or all of her duties by reason of illness, accident or other causes beyond her control, and such disability exists for a cumulative period of more than six (6) months during any twelve (12) month period during the term of this Agreement, and if the Board determines at its sole discretion that such disability is of such a nature that it materially impairs Superintendent's ability to perform her duties hereunder, and that there are no reasonable accommodations which may allow Superintendent to perform the duties of the position, and all Superintendent's vacation, sick leave, and Family Medical Leave Act have been expended, and the parties recognizing and affirming that Superintendent is a key employee, then the Board may, at its option, terminate this Agreement upon sixty (60) days prior written notice to Superintendent. In no event shall

such termination hinder or impair Superintendent's ability to collect any disability benefits to which she would otherwise be entitled for the disability in question.

10.3. Mutual Agreement. This Agreement shall terminate upon written agreement between Superintendent and the Board.

10.4. Death of Superintendent. This Agreement shall automatically and without further action by the Board or Superintendent's estate terminate upon the death of Superintendent. Notwithstanding the foregoing, the District shall pay to Superintendent's heirs or estate the amounts to which Superintendent would otherwise be entitled for any earned and unused sick or vacation time remaining at the time of death, as well as all compensation earned and unpaid at the time of death.

10.5. Conflict of Interest. This Agreement may be terminated in accordance with A.R.S. §38-511, the terms of which are incorporated herein by reference.

10.6. Immediate Dismissal Without Hearing. Notwithstanding the language of Paragraph 10.1 above, pursuant to A.R.S. § 15-550, if District Superintendent is arrested for or charged with any nonappealable offense listed in A.R.S. § 41-1758.03(B), District Superintendent shall immediately report the arrest or charge to the Board President as her immediate supervisor. Failure to do so shall result in immediate dismissal.

10.7. Unilateral Termination. The Board, may, at its option and upon a minimum of sixty (60) days prior written notice to Superintendent, unilaterally terminate this Agreement with or without cause. Because the Superintendent's damages would be extremely difficult to calculate, the Board and Superintendent agree that upon any such unilateral termination, the District shall pay to Superintendent a sum equal to the present value of all unpaid annual salary which the Superintendent would have earned from the actual date of termination to the expiration date of this Agreement, as well as the present day value of her contractual benefits including health insurance, earned vacation and leave days, up to 20% of each current contract year of the base salary as "performance based pay" (subject to Board discretion), ASRS employer contributions, and payments into a tax sheltered annuity.

Superintendent understands and agrees that her acceptance of monies paid pursuant to this paragraph shall constitute her sole legal remedy relative to all compensation and benefits to which she might otherwise have been entitled under this Agreement. As a condition precedent to receiving the severance payment set for the herein, Superintendent shall execute a Severance Agreement acceptable to the Board, which shall include Superintendent's: (i) full release of the Board, District, its agents and employees from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of Superintendent's employment or termination of employment with District; and (ii) agreement not to initiate or cause to be initiated any lawsuit, claim, grievance proceeding or investigation of any kind, under any contract, law or regulation, pertaining to her employment with District up to the date of the signing of the Agreement. Upon signing the Agreement the Board, the District, and its agents will release Superintendent from all claims arising out of Superintendent's employment with the District.

## 11. MISCELLANEOUS PROVISIONS

11.1. Governing Law. This Agreement is made and entered into in Arizona, and shall be governed by the laws of the State of Arizona. The venue for any litigation arising out of this Agreement and the employment relationship shall be Maricopa County, Arizona.

**11.2. Severability.** In the event any covenant, term, condition or provision of this Agreement shall be deemed by a court of competent jurisdiction to be illegal, void or against public policy, such provision shall be severed from this Agreement and the remaining terms, conditions and provisions hereof shall remain in full force and effect to the extent permitted by law.

**11.3. Construction.** This Agreement has been negotiated by and between the Board and Superintendent both parties are responsible for the drafting of this Agreement. Both parties have reviewed this Agreement with appropriate counsel, or have waived their right to do so, and the parties hereby mutually and irrevocably agree that this Agreement shall be construed neither for nor against either party, but in accordance with the plain language and intent hereof. Headings are used herein for convenience only, and shall play no part in the construction of any provision of this Agreement.

**11.4. Attorney's Fees.** Each party is responsible for its own attorneys' fees in the event of any dispute between the District and Superintendent arising under or in relation to this Agreement.

**11.5. Waiver.** The waiver by either party of any covenant, term, condition or provision of this Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent contravention or breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing, signed by both parties, and properly approved by the Board.

**11.6. Notices.** Any notice required to be given hereunder shall be hand-delivered or sent by United States certified mail, return receipt requested, and addressed to (a) in the case of Superintendent, the District Office, or upon her written request, to her home address as on file in the District office, and (b) in the case of the Board, the individual Board Members' respective home addresses.

**11.7. Time.** Time is of the essence of this Agreement and every term and condition hereof.

**11.8. Non-Assignability.** This Agreement is an Agreement for services and may not be assigned by either party, nor shall Superintendent's duties hereunder be performed by any other person without the prior written consent and proper approval of the Board, which consent and approval the Board may elect to grant or deny in its sole, absolute and unfettered discretion.

**11.9. Integration and Amendment.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be valid or binding upon either party unless such amendment or modification is in writing, duly executed by the parties and properly approved by the Board.

**11.10. Non-Discrimination.** Superintendent shall not discriminate against any District employee, applicant for employment, student, parent, contractor, or other member of the public because of that person's gender, race, religion, color, national origin, age, disability, genetic information, veteran's status, or political affiliation in conformance with federal and state laws, federal and state regulations, and federal and state executive orders.

**11.11. Accuracy of Representations.** Superintendent warrants the truth of all representations and statements made to the District in connection with this Contract as well as those contained in

Superintendent's employment application and any other document or oral statement submitted to the District concerning her qualifications and her fitness to serve as Superintendent. Superintendent recognizes that it is a requirement of employment to report to the Board president any circumstances or events that would affect the continuing accuracy or validity of those representations. Determination by the Governing Board that any such representation is not true or is inaccurate may, at District's option, be deemed a material breach of this Contract and constitutes grounds for termination of employment in addition to any other action authorized by law or District policy.

**11.12. Acceptance.** Superintendent shall have thirty (30) days from the date of the offer of written Contract to accept the Contract or the offer is revoked. Superintendent accepts the Contract by signing the Contract and returning it to the Governing Board.

This Agreement was approved at a properly noticed meeting of the Governing Board held on \_\_\_\_\_, 2016, during which the Governing Board authorized the Governing Board President to sign this Agreement on behalf of the Governing Board.

IN WITNESS THEREOF, the parties have caused this agreement to be executed in the respective names and in the case of the Board President, on the day and year first written above.

**Superintendent:**

Kristi Sandvik May 17, 2018  
Dr. Kristi Sandvik

**Buckeye Elementary School District #33:**

Marcus Eads May 17, 2018  
By: Marcus Eads, Governing Board President

**EXHIBIT A**  
**SUPERINTENDENT EMPLOYMENT AGREEMENT**  
**PERFORMANCE BASED PAY PLAN**


**WHEREAS**, the Governing Board ("the Board") of the Buckeye Elementary School District No. 33 has determined that it is in the District's best interest to establish its own performance based pay plan for Superintendent Kristi Sandvik for the term of her Employment Agreement effective beginning on July 1, 2018 and ending on June 30, 2021;

**NOW THEREFORE** be it resolved by the Board that in accordance with A.R.S. § 15-340(40), the Board hereby its own performance based pay plan for Superintendent, as set forth below.

1. **Performance Based Pay.** The parties agree that during the term of this contract, the Board may choose to award up to twenty (20%) of the Superintendent's annual base salary as "performance based pay" in each contract year. This performance based pay may be awarded by the Board in its sole discretion and without any renegotiation based upon satisfaction completion of goals that are mutually developed between the Board and Superintendent.
2. **Performance Based Goals.** The Board and the Superintendent shall develop the performance based goals no later than October 1<sup>st</sup> of each contract year and shall inform the Superintendent of the goals selected.
3. **Award of Performance Based Pay.** The District's Governing Board shall issue a decision regarding whether the Superintendent has earned performance based pay based on the goals set. If a majority of the Board members present and conducting the assessment agree that Superintendent has earned performance based pay, then they shall vote to issue some or all of her performance based pay. The performance based pay award may be paid out in full or fractional basis depending on the level of achievement attained in meeting the established goals. Such performance based pay shall not become a part of the Superintendent's annual base salary.

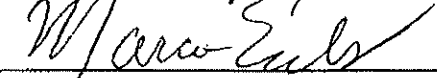
**IN WITNESS THEREOF**, the parties have caused this agreement to be executed in the respective names and in the case of the Board President, on the day and year first written above.

**Superintendent:**

  
\_\_\_\_\_  
Dr. Kristi Sandvik

4/2 2018

**Buckeye Elementary School District #33:**

  
\_\_\_\_\_  
By: Marcus Eads, Governing Board President

4/2 2018

# EXHIBIT D

BUCKEYE ELEMENTARY SCHOOL DISTRICT 33  
25555 W Durango Street, Buckeye, AZ 85326

**SUPERINTENDENT  
EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into by and between the Governing Board of Buckeye Elementary School District #33 (hereinafter referred to as "Board" or "the District") and Dr. Kristi Sandvik (hereinafter referred to as "Superintendent"), who represents that she has all credentials required by the laws of the State of Arizona and by the Board in order to qualify for the position of Superintendent in the Buckeye Elementary School District No #33.

**1. TERM OF EMPLOYMENT**

1.1. Term. The Board hereby employs and Superintendent hereby accepts employment as Superintendent of Schools for a term commencing July 1, 2020 and ending June 30, 2023. Superintendent shall be employed to work for a period of twelve (12) months during each contract year (250 duty days).

1.2. Non-renewal. Should the Board decide not to renew Superintendent's employment, the Board shall provide written notice to Superintendent on or before April 15, 2023 of its intent not to offer Superintendent a new contract. Superintendent has no legitimate expectancy of employment beyond the date indicated in paragraph 1.1.

**2. DUTIES AND PERFORMANCE EVALUATION**

2.1. Duties. Superintendent's duties and responsibilities of Superintendent shall be those duties incident to the office as set forth in the job description as identified in Board Policy CBA, those obligations imposed by the laws of the State of Arizona, and such other duties as from time to time may be assigned to Superintendent by the Board. Superintendent shall fulfill all aspects of this Agreement, any exception thereto being by mutual consent of the Board and Superintendent.

2.2. Evaluation. Superintendent will completely perform the duties of her assignment and will be subject to a performance evaluation adopted pursuant to A.R.S. 15-503(C). Superintendent's performance will be periodically evaluated by the Board at least annually, which will make a determination as to the competency and quality of Superintendent's performance. This evaluation will occur no later than December during each term of the Agreement unless otherwise agreed by the parties.

2.3. Affidavit. Superintendent shall submit the Affidavit referenced in A.R.S. 15-512(D). Throughout the term of this Contract, Superintendent shall report all circumstances or events, which would affect the continuing validity of the Affidavit.

**3. COMPENSATION**

3.1. Annual Salary. Superintendent's annual base salary for this Contract shall be \$189,000. The salary for the 2020-2021 and 2021-2022 shall be adjusted by the same percentage increase if any received by certificated administrators during each consecutive year during the term of this contract. On or after April 2021 Superintendent and the Board may agree to extend or renegotiate this Contract, including Superintendent's annual base salary pursuant to A.R.S. 15-503(B); should no such re-negotiation occur,

Superintendent's annual base salary during Term three of this Contract shall be her 2022-2023 annual salary increased by the same percentage increase, if any, received by other certificated administrators. Superintendent's annual base salary shall be payable in bi-weekly installments, at the same time and in the same manner as other professional salaries employees of the District, with the exception of payments made pursuant to paragraph 3.2 below.

3.2. Performance Based Pay. In accordance with A.R.S. § 15-341 (40), the parties agree that during the term of this contract, the Board may choose to award up to 20% of each current contract year of the base salary as "performance based pay" as outlined in Exhibit A. This performance based pay, if earned, is in addition to the Superintendent's annual base salary in Section 3.1 above and may be awarded by the Board in its sole discretion and without any renegotiation based upon satisfaction completion of goals that are mutually developed between the Board and Superintendent. The performance based pay award may be paid out in full or fractional basis depending on the level of achievement attained in meeting the established goals. Such performance based pay shall not become a part of the Superintendent's base salary. The District's Governing Board shall assess Superintendent's performance annually. Such assessment shall occur in conjunction with Superintendent's evaluation, at which time the Board shall consider whether to recommend the award of any performance based pay.

3.3. Mistake in Salary. Should Superintendent believe there is a mistake in Superintendent's salary, Superintendent shall have thirty (30) working days to notify the Board of the mistake.

#### 4. BENEFITS

4.1. Leave and Vacation. Superintendent shall be entitled to thirty-five (35) vacation days each fiscal year of this contract. At the option of the Superintendent, she may be paid at her current per diem rate for unused vacation days that she has earned prior to and after the effective date of this Agreement. The Superintendent may request payment of these earned and vested and accrued vacation days at any time during the fiscal year. Superintendent shall be entitled to fifteen (15) personal days annual as paid leave. The personal days will roll over to the next fiscal year if not used. Superintendent shall be paid at her current per diem rate for her one-half (fifty percent (50%)) of any unused but accumulated leave days upon separation from employment.

4.2. Per Diem. When the term "per diem rate of pay" is used in this contract, it is defined as the sum calculated by dividing Superintendent's compensation during a particular fiscal year by the number of paid days in that year. Superintendent's compensation equals the sum of the Superintendent's base salary set forth in paragraph 3 as well as the payments paid to Superintendent, or for her benefit, pursuant to subparagraphs 3.2, 4.5, 4.6, 4.7, 4.8, and 6.7. S/B 6 and 7.

4.3. Holidays. Superintendent shall be entitled to the same Federal and State holidays as all other 12 month certificated administrators in the District.

4.3. Short Term Disability Insurance. The District shall provide Superintendent, at the District expense, a short term disability insurance policy to provide short-term disability income protection to Superintendent in the event of a qualifying disability. The Policy shall provide coverage, commencing not more than thirty (30) days after inception of the disability, for a minimum of seventy five percent (75%) of Superintendent's salary during the period of disability and continuing until the Arizona State Disability Program begins to pay benefits to Superintendent or until the applicable limits of the Policy are exhausted.



4.4. Term Life Insurance Benefit. The District, in accordance with applicable State and Federal laws, shall pay the premiums for Superintendent for a Whole Life Insurance Policy with a death benefit in the amount of \$350,000.00. Superintendent or Superintendent's Trust, if applicable, shall be the Policy owner and shall have control over the Policy value and the right to name the beneficiary of the Policy. The District will report the contributions on Superintendent's W-2 form at the end of the calendar year. If Superintendent desires an increased amount of coverage, she shall pay the premium difference.

4.5. Tax Deferred Annuity. The District shall pay the sum of \$15,000 each year to a tax deferred plan or annuity, whether a 403(b) plan or a 457(b) plan maintained by the District or another tax deferred plan or annuity, that is designated by the Superintendent before the beginning of the applicable year. If the payment is to a 403(b) plan or a 457(b) plan maintained by the District, the payment will be deemed to be an employer contribution to the maximum extent, if any, permitted thereunder for the year in which the payment is made, and the balance of the payment will be deemed to be an employee elective deferral pursuant to a salary reduction agreement. The Superintendent acknowledges that the District may be required to withhold from the annual base salary an employee's FICA and Medicare taxes respecting the payment made by the District pursuant to this section. The Superintendent acknowledges and agrees that neither the District nor any representative of the District has given or will give to the Superintendent any legal or tax advice and that the Superintendent is responsible for the tax consequences of the foregoing payments, including the election as to where the payment is to be made each year.

4.6 Retirement Credit. The District agrees to provide the Superintendent additional compensation to allow Superintendent to complete the purchase pursuant to A.R.S. § 38-743 for the remaining retirement credit through the Arizona State Retirement System (ASRS) on the purchase service agreement. The agreements will be completed at the end of 2021- 2022. The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit. The credit shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

The District agrees to provide the Superintendent additional compensation-to allow Superintendent to complete a purchase pursuant to A.R.S. § 38-743 for additional retirement credit through the Arizona State Retirement System (ASRS) on a purchase service agreement ending in 2021-2022. The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit. The credit shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

With respect to the FICA payments required to be paid with respect to salary or other compensation provided to Superintendent pursuant to this Contract, the District agrees to pay both the employer's and employee's required FICA payments (instead of only the employer's required contributions) on both of the service purchase agreements.

4.7. Transportation. Superintendent, as part of her working conditions, is expected to have a personal automobile available for use for school business. The District will provide the Superintendent with a business travel and transportation allowance in the amount of \$975.00 monthly during fiscal year of this Agreement. This amount shall be in lieu of requiring Superintendent to submit reimbursement requests for mileage and automobile expenses incurred in the furtherance of Superintendent's duties.

Superintendent shall be responsible for all expenses relating to the good working order and operation of her automobile, including acquisition or lease cost, maintenance, gas, oil and liability insurance coverage in an amount not less than \$500,000.00 per occurrence. A current Certificate of Insurance shall be on file with the District throughout the full term of this Agreement. Such insurance shall be non-cancelable except upon 30 days' written notice from the Carrier to Superintendent; Superintendent shall immediately obtain comparable insurance and provide an updated Certificate of Insurance to the District. The allowance shall be paid in equal monthly installments during the term of this Agreement on the same schedule Superintendent receives her base salary from the District.

4.8. Telephone Allowance. Superintendent, as part of her working conditions, is expected to have a personal cell phone available for use for school business. The District shall provide Superintendent with a monthly cellular phone allowance of \$200.00

4.9. Health Insurance Benefits. The District shall pay the full premium cost of Employee, Spouse, and Child medical, dental, and vision care insurance for Superintendent and her family ( spouse and child) from coverage options selected by Superintendent that are available in the District's group health insurance plan in effect during the term of this Agreement. If Superintendent elects not to accept said insurance coverage, she may elect to have an equivalent amount paid by the District to a qualified tax sheltered annuity, deferred compensation, additional professional travel or any IRS approved business expense.

4.10. General. Superintendent shall be entitled to all benefits applicable to 12-month certificated administrators, including but not limited to general leave benefits, as are incident to their employment, unless this Agreement provides for different or additional benefits.

4.11. De Minimus Food and Beverages. To the extent appropriate for the occasion, as a *de minimus* fringe benefit to Superintendent, the District may provide incidental food and beverages at Board meetings, mandatory staff meetings, including in-services and staff development activities/trainings, in order to foster good working relations and encourage and reward staff participation.

## 5. INDEMNIFICATION

5.1 The District will purchase an Errors and Omissions and Liability insurance policy to protect Superintendent for legal actions brought against Superintendent in her official capacity as agent and employee of the District, provided the incident arose within the scope of her employment. The District will not be held responsible for punitive or criminal damages arising within the scope of her employment.

5.2 The District or its attorney will be entitled to represent Superintendent in connection with said legal action and shall have the right to settle or otherwise terminate or determine the legal action on such terms and conditions as it shall determine in its sole discretion.

5.3 In actions where the Board and Superintendent are co-defendants, and a good-faith disagreement exists as to the manner in which a claim should be defended, Superintendent may retain independent legal counsel for her defense, the cost of which shall be paid or reimbursed by the Board or its insurance carrier, provided, however, that the foregoing shall not be construed to require the Board to pay the legal expenses of Superintendent in any actions or proceedings in which the Board and Superintendent have adverse interests.

6. **PROFESSIONAL MEMBERSHIPS; COMMUNITY INVOLVEMENT.** The Governing Board shall pay 100% of the Superintendent's membership charges to the American Association of School Administrators, Arizona School Administrator's and the Association for the Supervision and Curriculum Development. In addition, the sum of Five Thousand Dollars, (\$5,000) will be provided to the salary as a salary addendum for the purposes of providing other memberships in organizations and professional expenses associated with the position that support the mission of the school district and as permitted by law. Any remaining dollars sent to the district from the American Association of School Administrators during the time by which Superintendent serves as an officer for the organization will be paid to the superintendent as a form of compensation. Superintendent will have the choice to utilize the compensation for travel for state and national professional development, professional memberships, professional coaching or expenses associated with supporting the mission of the school district. Superintendent will also set aside \$1,000 of any remaining compensation for a scholarship for students.

7. **PROFESSIONAL MEETINGS AND CONFERENCES.** Superintendent shall attend appropriate professional meetings at the local, state and national level, the expenses of said attendance to be incurred by the District. A fund of \$5,000.00 shall be established in the budget during each term of this Agreement to cover such activities. The Board may, in its sole discretion, authorize the Superintendent to expend additional amounts for professional meetings and conferences. At the end of each fiscal year, all unused funds shall divert to the District budget. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review.

8. **CONSULTING.** Superintendent will be allowed 10 consulting days per year to be absent from the District for the purposes of consulting with state or national education related organizations. These days will not be charged to vacation or personal time and will benefit the District by presentation of the positive outcomes of the District's successes and achievements. Honoria, if earned, will be retained by the Superintendent.

9. **REIMBURSEMENT FOR TRAVEL AND BUSINESS EXPENSES.** The District shall reimburse Superintendent for reasonable and necessary travel and business expenses directly incurred by Superintendent in the continuing performance of her duties under this Agreement that are not otherwise paid for or reimbursed pursuant to her Automobile Expense Allowance or other provisions of this Agreement. Superintendent shall comply with all procedures and documentation requirements in accordance with Board Policies and State law related to reimbursement of said expenses. Superintendent shall ensure that the District maintains a record log of all expenditures for Board review. Superintendent shall provide a record log of all expenditures to the Board on a regular basis and at least every 6 months.

10. **TERMINATION OF AGREEMENT**

10.1. **Discharge for Cause.** Throughout the term of this Agreement, Superintendent shall be subject to discharge for good and just cause, with notice of termination specifying such cause to be given to Superintendent in writing. In the event of a discharge for cause, Superintendent shall have same provisions of notice, hearing, and appeal as provided to certificated staff pursuant to A.R.S. § 15-341 (A) (22), including A.R.S. §§ 15-539 through 15-543. The filing of a timely request for a hearing suspends the dismissal pending completion of the hearing. The Board may, in its discretion, suspend Superintendent from her duties, with pay and all other employment benefits, upon serving Superintendent with notice of its intent to discharge her for cause.

10.2. Incapacity of Superintendent. Should Superintendent be unable to perform any or all of her duties by reason of illness, accident or other causes beyond her control, and such disability exists for a cumulative period of more than six (6) months during any twelve (12) month period during the term of this Agreement, and if the Board determines at its sole discretion that such disability is of such a nature that it materially impairs Superintendent's ability to perform her duties hereunder, and that there are no reasonable accommodations which may allow Superintendent to perform the duties of the position, and all Superintendent's vacation, sick leave, and Family Medical Leave Act have been expended, and the parties recognizing and affirming that Superintendent is a key employee, then the Board may, at its option, terminate this Agreement upon sixty (60) days prior written notice to Superintendent. In no event shall such termination hinder or impair Superintendent's ability to collect any disability benefits to which she would otherwise be entitled for the disability in question.

10.3. Mutual Agreement. This Agreement shall terminate upon written agreement between Superintendent and the Board.

10.4. Death of Superintendent. This Agreement shall automatically and without further action by the Board or Superintendent's estate terminate upon the death of Superintendent. Notwithstanding the foregoing, the District shall pay to Superintendent's heirs or estate the amounts to which Superintendent would otherwise be entitled for any earned and unused sick or vacation time remaining at the time of death, as well as all compensation earned and unpaid at the time of death.

10.5. Conflict of Interest. This Agreement may be terminated in accordance with A.R.S. §38-511, the terms of which are incorporated herein by reference.

10.6. Immediate Dismissal Without Hearing. Notwithstanding the language of Paragraph 10.1 above, pursuant to A.R.S. § 15-550, if District Superintendent is arrested for or charged with any nonappealable offense listed in A.R.S. § 41-1758.03(B), District Superintendent shall immediately report the arrest or charge to the Board President as her immediate supervisor. Failure to do so shall result in immediate dismissal.

10.7 Unilateral Termination. The Board, may, at its option and upon a minimum of sixty (60) days prior written notice to Superintendent, unilaterally terminate this Agreement with or without cause. Because the Superintendent's damages would be extremely difficult to calculate, the Board and Superintendent agree that upon any such unilateral termination, the District shall pay to Superintendent a sum equal to the present value of all unpaid annual salary which the Superintendent would have earned from the actual date of termination to the expiration date of this Agreement, as well as the present day value of her contractual benefits including health insurance, earned vacation and leave days, up to 20% of each current contract year of the base salary as "performance based pay" (subject to Board discretion), ASRS employer contributions, and payments into a tax sheltered annuity.

Superintendent understands and agrees that her acceptance of monies paid pursuant to this paragraph shall constitute her sole legal remedy relative to all compensation and benefits to which she might otherwise have been entitled under this Agreement. As a condition precedent to receiving the severance payment set for the herein, Superintendent shall execute a Severance Agreement acceptable to the Board, which shall include Superintendent's: (i) full release of the Board, District, its agents and employees from any and all claims, including but not limited to, demands, damages, causes of action or liability arising out of Superintendent's employment or termination of employment with District; and (ii) agreement not to initiate or cause to be initiated any lawsuit, claim, grievance proceeding or investigation of any kind,

under any contract, law or regulation, pertaining to her employment with District up to the date of the signing of the Agreement. Upon signing the Agreement the Board, the District, and its agents will release Superintendent from all claims arising out of Superintendent's employment with the District.

## 11. MISCELLANEOUS PROVISIONS

**11.1. Governing Law.** This Agreement is made and entered into in Arizona, and shall be governed by the laws of the State of Arizona. The venue for any litigation arising out of this Agreement and the employment relationship shall be Maricopa County, Arizona.

**11.2. Severability.** In the event any covenant, term, condition or provision of this Agreement shall be deemed by a court of competent jurisdiction to be illegal, void or against public policy, such provision shall be severed from this Agreement and the remaining terms, conditions and provisions hereof shall remain in full force and effect to the extent permitted by law.

**11.3. Construction.** This Agreement has been negotiated by and between the Board and Superintendent both parties are responsible for the drafting of this Agreement. Both parties have reviewed this Agreement with appropriate counsel, or have waived their right to do so, and the parties hereby mutually and irrevocably agree that this Agreement shall be construed neither for nor against either party, but in accordance with the plain language and intent hereof. Headings are used herein for convenience only, and shall play no part in the construction of any provision of this Agreement.

**11.4. Attorney's Fees.** Each party is responsible for its own attorneys' fees in the event of any dispute between the District and Superintendent arising under or in relation to this Agreement.

**11.5. Waiver.** The waiver by either party of any covenant, term, condition or provision of this Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent contravention or breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing, signed by both parties, and properly approved by the Board.

**11.6. Notices.** Any notice required to be given hereunder shall be hand-delivered or sent by United States certified mail, return receipt requested, and addressed to (a) in the case of Superintendent, the District Office, or upon her written request, to her home address as on file in the District office, and (b) in the case of the Board, the individual Board Members' respective home addresses.

**11.7. Time.** Time is of the essence of this Agreement and every term and condition hereof.

**11.8. Non-Assignability.** This Agreement is an Agreement for services and may not be assigned by either party, nor shall Superintendent's duties hereunder be performed by any other person without the prior written consent and proper approval of the Board, which consent and approval the Board may elect to grant or deny in its sole, absolute and unfettered discretion.

**11.9. Integration and Amendment.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties with respect to the subject matter hereof. No modification or amendment hereto shall be valid or binding upon either party unless such amendment or modification is in writing, duly executed by the parties and properly approved by the Board.

**11.10. Non-Discrimination.** Superintendent shall not discriminate against any District employee, applicant for employment, student, parent, contractor, or other member of the public because of that person's gender, race, religion, color, national origin, age, disability, genetic information, veteran's status, or political affiliation in conformance with federal and state laws, federal and state regulations, and federal and state executive orders.

**11.11. Accuracy of Representations.** Superintendent warrants the truth of all representations and statements made to the District in connection with this Contract as well as those contained in Superintendent's employment application and any other document or oral statement submitted to the District concerning her qualifications and her fitness to serve as Superintendent. Superintendent recognizes that it is a requirement of employment to report to the Board president any circumstances or events that would affect the continuing accuracy or validity of those representations. Determination by the Governing Board that any such representation is not true or is inaccurate may, at District's option, be deemed a material breach of this Contract and constitutes grounds for termination of employment in addition to any other action authorized by law or District policy.

**11.12. Acceptance.** Superintendent shall have thirty (30) days from the date of the offer of written Contract to accept the Contract or the offer is revoked. Superintendent accepts the Contract by signing the Contract and returning it to the Governing Board.

This Agreement was approved at a properly noticed meeting of the Governing Board held on May 4 2020, during which the Governing Board authorized the Governing Board President to sign this Agreement on behalf of the Governing Board.

IN WITNESS THEREOF, the parties have caused this agreement to be executed in the respective names and in the case of the Board President, on the day and year first written above.

**Superintendent:**

Kristi Sandvik \_\_\_\_\_, May 4, 2020  
Dr. Kristi Sandvik

**Buckeye Elementary School District #33:**

Jane Hunt \_\_\_\_\_, May 4, 2020  
By: Jane Hunt, Governing Board President