

MT. DIABLO UNIFIED SCHOOL DISTRICT  
EMPLOYMENT AGREEMENT  
FOR SERVICES OF DISTRICT SUPERINTENDENT

This Employment Agreement for Services of District Superintendent ("Agreement") is effective August 12, 2019 and is made and entered into between the GOVERNING BOARD OF THE MT. DIABLO UNIFIED SCHOOL DISTRICT (the "Board"), on behalf of the MT. DIABLO UNIFIED SCHOOL DISTRICT (the "District"), and Dr. Robert A. Martinez, Ed.D., (the "Superintendent" or "Dr. Martinez").

WHEREAS, the Board desires to employ Dr. Martinez as Superintendent for the District and desires to enter into a written Agreement with him in order to strengthen the administrative stability of the schools in the District and to improve the quality of the District's educational program; and

WHEREAS, the Board and Dr. Martinez mutually understand that a written Agreement is necessary to set forth the parameters of the relationship, governance and communications between the Superintendent and the Board;

NOW, THEREFORE, the Board and the Superintendent, for consideration herein, agree as follows:

1. TERM. The Board hereby offers, and Dr. Martinez accepts, employment as the Superintendent of Schools for the District, for an approximate three (3) year term commencing on August 19, 2019 to June 30, 2022 ("Term"), subject to the terms and conditions set forth herein. Dr. Martinez may arrange to have two days in the District prior to August 19, 2019 in preparation for his employment by agreement with his current school district employer and for that employer to be reimbursed by the District at cost.

2. RENEWAL. Except as otherwise provided, this Agreement may be extended and renewed for an additional one (1) year term, or longer, upon a satisfactory Board evaluation of the Superintendent and under mutual agreed terms and conditions. Any extension or renewal of this Agreement must be in writing, signed by both parties, and approved by the Board. The Board may offer to extend this Agreement for a period of one (1) additional year, thereby reforming the term of the Agreement to four (4) school years, on the same terms and conditions set forth herein. Unless this Agreement is renewed as set forth above, it shall automatically expire on June 30, 2022.

3. EVALUATION. The Board will evaluate and assess the performance of the Superintendent each school year during the term of this Agreement to assess the performance of the Superintendent as reasonably related to the duties described in this Agreement and performance goals and objectives as determined by the Board. Within the first three (3) months of Superintendent's employment with the District, Superintendent and Board shall mutually develop an evaluation timeline, process, and tool that incorporate the duties of the Superintendent and the District's goals, objectives, and expectations, to be used by the Board in the evaluation of Superintendent's performance in the future. Superintendent will timely

place on the District Board's agenda each year, or as otherwise directed by the Board, a closed session for the purpose of his performance evaluation.

#### 4. DUTIES AND RESPONSIBILITIES.

4.1. Commencing on the first day of the Term of this Agreement, the Superintendent shall have responsibility for the overall administration of the District, under the direction of the Board. Superintendent will perform all duties and responsibilities of Superintendent of the District as provided in Section 35035 of the Education Code, all applicable state and federal laws and regulations and the directives, rules, regulations, applicable Board policies and Administrative Regulations, and any job description adopted by the Board, as amended from time to time.

4.2. Although the Board retains ultimate power and authority over decisions affecting the District, Board members and the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Superintendent. The Board retains the right to question, approve, or disapprove, as it deems appropriate, the recommendations and decisions of the Superintendent.

4.3. The Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions with the understanding that all personnel are subject to the approval of the Board; hire, terminate, assign, re-assign, and direct employees of the District; and organize, reorganize and arrange central office, administrative and supervisory staff, as he believes best serves the District.

4.4. The Superintendent shall give exclusive professional services to the District during the period of this Agreement and he shall attend all regular and special meetings of the Board, including closed sessions where no conflict of interest exists, unless otherwise excused by the Board. He shall faithfully and diligently perform the duties and responsibilities regularly performed by Superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state.

4.5. This Agreement shall not be assigned to any other person, except in cases of disability (as described in this Agreement), or have his duties reassigned without his consent.

4.6. The Superintendent shall render services in accordance with the District's standard work year for confidential administrators/managers and shall be entitled to the same holidays as are other non-represented managers of the District.

#### 5. SALARY & BENEFITS.

5.1. Salary. The annual base salary of the Superintendent shall be Two Hundred and Seventy-Seven Thousand Dollars (\$277,000) payable in twelve (12) equal monthly installments. The Superintendent's salary for the first fiscal year (2019-2020 School Year) will be prorated based on the number of days worked in the fiscal year. Additionally, pursuant to District policy, Superintendent shall be entitled to receive an advance doctoral degree stipend (Ed.D. or Ph.D.)

in the total amount of Two Thousand Dollars (\$2,000) per year, payable in twelve (12) equal monthly installments during the Term of this Agreement and as it may be amended from time to time. This stipend for the first fiscal year (2019-2020 School Year) will be prorated based on the number of days worked in the fiscal year.

5.2 Salary Modifications. Based on merit, job performance, and any other criteria determined by the Board, the Board reserves the right to increase the Superintendent's salary for any year of any portion of a year of this Agreement with the mutual consent of the Superintendent and Board. Any change in salary must be in writing, signed by both parties, and approved by the Board. A change in salary will not constitute the creation of a new contract nor extend the termination date of this Agreement.

5.3 Benefits Generally. Except as otherwise provided for in this Agreement, the District shall provide Superintendent the same benefits and leaves applicable to twelve (12) month management employees as are incident to their employment relationship with the Board, as they may be amended from time to time. Transfer of sick leave from a prior school employer will occur in accordance with the applicable statutes and regulations.

5.4. State Retirement System. The Superintendent shall be enrolled in the State Retirement System (STRS or PERS) and shall be entitled to retirement contributions and benefits that are offered to certificated managers who retire from the District.

5.5 Health Benefits. The Superintendent, and spouse and/or dependents, if any, shall be entitled to all health and welfare benefits applicable to twelve (12) month management employees as are incident to their employment relationship with the Board, including paid coverage to the extent provided under the District's health, vision, and dental insurance plans, as they may be amended from time to time.

5.6. Transportation and Travel. The District shall reimburse the Superintendent for actual and necessary travel expenses incurred within the scope of the Superintendent's employment, so long as such expenses are permitted by District policy or incurred with prior approval of the Board. For reimbursement, the Superintendent shall submit an expense claim in writing supported by appropriate written documentation. Superintendent shall not be provided an automobile allowance. In lieu of requiring the Superintendent to keep track of mileage and tolls for work-related travel in his personal vehicle within Contra Costa County, Superintendent shall receive a \$300 per month travel allowance. If mileage exceeds \$300 in cost in any month, the Superintendent may be reimbursed at the IRS rate under the process stated above. Superintendent shall be reimbursed for mileage and tolls for travel outside of Contra Costa County incurred in performing his duties as any other certificated or classified employee of the District and will be reimbursed at the IRS approved rate under the process stated above.

5.7 Dues, Meetings and Professional Development. The District shall pay the Superintendent's membership dues for his participation as a member of the Association of California School Administrators (ACSA), National Association of School Superintendents (NASS), the Association for Supervision and Curriculum Development (ASCD), American Association of School Administrators (AASA), and the California Association of Latino

Superintendents and Administrators (CALSA); and subscriptions to appropriate periodicals and journals to maintain and improve his professional competence. Superintendent's expenses for attendance at appropriate professional conferences, academies, seminars, meetings at local, state and national levels, continuing education programs, and professional development services, including mutually agreed upon job related executive coaching services, shall be approved and reimbursed in accordance with the current District policy.

5.8 Vacation. The Superintendent shall be required to render twelve (12) months of full and regular service to the District during each annual period covered by the Agreement, except that he shall be entitled to twenty-four (24) working days of vacation per school year, exclusive of holidays as defined by the Education Code and applicable District policy. Accrued vacation may not exceed forty-eight (48) days at any time and vacation no longer accrues until some of the previously accrued vacation is taken. Once some vacation is taken after the limit is reached, vacation again begins to accrue at the usual rate. Upon termination or expiration of this Agreement, the Superintendent shall be entitled to compensation for all unused and accrued vacation days at his then current daily rate.

5.9 Outside Professional Activities. With approval of the Governing Board, the Superintendent may undertake outside professional activities, including consulting, teaching, speaking, and writing. The Superintendent's outside professional activities shall not occur during regular work hours and shall not interfere in any way with the performance of the Superintendent's duties. The Superintendent shall not use District staff, equipment or property in performing these outside activities without prior approval of the Board.

5.10 Term Life Insurance. District shall provide the Superintendent with, and maintain during the term of this Agreement, a term life insurance policy with a company licensed to issue life insurance in California in the face amount of Two Hundred Thousand Dollars (\$200,000), subject to medical qualification as required by the company issuing the policy. The District shall continue to maintain this policy during the term of this Agreement, and the District shall be named a beneficiary of the policy in the sum of Twenty-Five Thousand Dollars (\$25,000) and Superintendent shall designate the beneficiary or beneficiaries for the remaining value of such insurance policy.

6. NOTICE OF LEAVE & ABSENCE. The Superintendent shall provide the Board with reasonable advance notice of any travel, including any planned vacation, before any such travel is taken. When the Superintendent expects to be absent for five (5) or more consecutive days, he shall give notice in advance to the Board President.

7. TERMINATION. This Agreement may be terminated by the following:

7.1. Death of the Superintendent. In the event of death of the Superintendent, this Agreement shall terminate immediately and the Board may appoint an interim administrator to fulfill the duties and responsibilities of the Superintendent under this Agreement.

7.2. Disability. This Agreement shall terminate in the event of disability, as defined below, of the Superintendent, after expiration of sick leave entitlement as provided by this Agreement, statute, and policies. Disability shall mean that the Superintendent is unable to serve in the position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a licensed physician selected by the Board certifying to the inability of the Superintendent to further serve in this position of employment.

7.3. If the Agreement is terminated pursuant to 7.2 of this Section, the Superintendent shall be entitled to the salary he would have received for one year or the remaining term of this Agreement, whichever is less, subject to the limitations set forth in California Government Code Section 53260 et seq.

7.4. By the Board without Cause. The Board may elect to terminate this Agreement for convenience, without cause, upon thirty (30) days written notice to the Superintendent of such termination. If the Agreement is terminated pursuant to this Section, the Superintendent shall be entitled to up to 12 months annual base salary as defined in section 5.1 of this Agreement, subject to the limitations set forth in California Government Code Section 53260 et seq.

7.5. By the Board for Cause.

7.5.1 The Board may elect to terminate this Agreement for cause upon thirty (30) days written notice to the Superintendent. Cause shall constitute conduct, which the Board decides is seriously prejudicial to the District, including, but not limited to, the grounds enumerated in Section 44932 of the California Education Code and specifically including the following: (a) the Superintendent's conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in the sole opinion of the Board cause embarrassment to the District; (b) the Superintendent engages in the commission acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (d) the Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Superintendent's material breach of any material term of this Agreement or his willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within fifteen (15) days after written notice of such noncompliance has been given to the Superintendent by the Board; and (f) the Superintendent's persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, or any other cause listed in the California Education Code.

7.5.2 Cause shall also constitute unsatisfactory performance as determined and evaluated by the Board, and as provided in writing to the Superintendent.

7.5.3 Dismissal for cause shall be effective upon action taken by the Board, and all salary provided for in this Agreement shall cease upon said action by the Board. Salary earned or accrued prior to said action shall be paid to the Superintendent within fifteen (15) days of said action, and shall include any accrued, but unused vacation hours.

7.5.4 Timely notice of discharge for cause shall be given in writing and the Superintendent shall be entitled to appear before the Board to discuss such charges. If the Superintendent chooses to be accompanied by legal counsel at such meeting, he shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

7.6. Termination for Abuse of Office. Notwithstanding any other provision of this Agreement, and as mandated by Government Code section 53243 et seq., if the Superintendent is convicted of a crime constituting "abuse of office," the Superintendent shall reimburse the District to the fullest extent mandated by Government Code section 53243 et seq. (i.e. for paid leave, criminal defense expenditures, or any cash settlement).

7.7. Termination under Law. The Superintendent shall be terminated in accordance with Education Code section 41326 upon appointment of a State Administrator by the State Superintendent of Public Instruction. Notwithstanding any other provision of this Agreement, in such case the Superintendent's final compensation shall be determined in accordance with subdivision (j) of Section 41326.

7.8. Termination by Resignation. The Superintendent shall have the right at any time to provide notice of his intention to terminate this Agreement and to perform no further duties thereunder, provided that Superintendent shall give notice to the Board at least sixty (60) days prior to the effective date of such termination, unless, by mutual written agreement between the Board and the Superintendent, an earlier termination is deemed to be in the best interest of Superintendent and District. The Superintendent shall be entitled to receive no additional compensation or benefits, other than as required by law, on the effective date of such termination by resignation.

8. PHYSICAL EXAMINATION. The Superintendent shall have a complete medical examination by a District-approved physician annually, or upon request of the Board providing reasonable reasons for such a request. The results of this examination shall be given directly to the Superintendent; however, the examining physician shall advise the Board in writing of the Superintendent's continued fitness to perform the duties of Superintendent. The Superintendent agrees to execute all appropriate medical releases to allow the District's medical provider(s) to

review prior medical records of the Superintendent necessary to conduct the physical examination and/or fitness for duty evaluation provided for under this section. The costs of any required medical examination shall be paid by the District to the extent not already covered by District-provided health insurance. District will maintain the privacy of all health information, as required by applicable federal and state laws.

9. APPLICABLE LAWS. This Agreement is subject to all applicable laws and regulations of the State of California, to the rules and regulations of the State Board of Education and to the rules, regulations and policies of the District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein. To the extent applicable to school districts, this Agreement is subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement under the circumstances stated therein.

10. MEDIATION. Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

11. ENTIRE AGREEMENT. It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

12. SAVINGS CLAUSE. If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in full force and effect.

13. NOTICES. Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressees at the address stated below, or at the most recent address found in the District records.

Dr. Robert A. Martinez, Superintendent  
1155 W 10<sup>th</sup> St.  
Benicia, CA 94510

President of the Board of Trustees

Mt. Diablo Unified School District  
James W. Dent Education Center  
1936 Carlotta Drive  
Concord, CA 94519-1397

If at any time during the term of this Agreement the Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow himself to be considered, for such a position, the Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate for interview. If the Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement within the meaning of section 7.5.1(e), and the Board may then terminate this Agreement for cause and in accordance with section 7.5 herein.

14. INDEMNIFICATION OF SUPERINTENDENT. In accordance with the provisions of California Government Code Sections 825 and 995, the Board shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against the Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Superintendent was acting within the scope and course of his employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Agreement and any extensions thereof and after his employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings. If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent Superintendent, then Superintendent may engage separate legal counsel for which the District shall indemnify Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Superintendent under any other insurance or professional association membership.

15. WAIVERS. No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

16. INDEPENDENT REPRESENTATION. The Superintendent and the Board each recognize that in entering into this Agreement, the parties have relied upon the advice of their own attorneys or other representatives, and that the terms of this Agreement have been completely read and explained to them by their attorneys or representatives, and that those terms

are fully understood and voluntarily accepted. The Superintendent acknowledges and agrees that legal counsel for the Board represents the Board's interests exclusively and that no attorney-client relationship exists between Superintendent and legal counsel to the Board.

IN WITNESS WHEREOF, the parties hereto, affix their signatures to this Agreement in Concord, California, as of the date first set forth above.

GOVERNING BOARD OF MT. DIABLO UNIFIED SCHOOL DISTRICT

By \_\_\_\_\_ By \_\_\_\_\_  
Joanne Durkee, President Cherise Khaund, Member

By \_\_\_\_\_ By \_\_\_\_\_  
Linda Mayo, Vice President Brian Lawrence, Member

By \_\_\_\_\_  
Debra Mason, Member

Approved as to Form:

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I accept this offer of employment and agree to comply with the conditions of this Agreement and to fulfill all of the duties of employment of the Superintendent of the Mt. Diablo Unified School District.

SUPERINTENDENT

By \_\_\_\_\_  
Robert A. Martinez, Ed.D.