

# **EMPLOYMENT AGREEMENT**

## **General Counsel**

This Agreement between the Mt. Diablo Unified School District, Contra Costa County, California (“District”) and Donald A. Velez, Jr. (“Velez” or “General Counsel”) is entered into subject to the following terms and conditions:

### **1. Term of Agreement**

The term of this Agreement shall be from September 30, 2015, through midnight June 30, 2018. The Board and General Counsel may at any time agree to a renewal of this Agreement for an additional one year term. If the Governing Board determines not to reelect the General Counsel, it shall so notify him in writing no later than May 16, 2018. Only one such timely notice of non-re-election pursuant to Education Code section 35031 is required.

### **2. Powers and Duties**

Velez agrees to perform the duties of General Counsel in the manner and as prescribed by the laws of the State of California and under the policies and procedures of the Governing Board. Velez agrees to perform all duties and functions which are lawfully delegated to him in his capacity as General Counsel. In performing these duties, the General Counsel shall report directly to the Board and receive primary direction from the Superintendent in support of the District’s legal services requirements.

The Board of Education designates the position of General Counsel to be “Senior Classified Management” pursuant to California Education Code section 45100.5. Velez specifically recognizes and accepts such designation while performing as General Counsel; provided, however, that such designation does not alter any of the other terms and conditions of this Agreement.

### **3. Salary**

The General Counsel’s initial annual salary shall be Two Hundred and Ten Thousand Dollars (\$210,000) payable in twelve equal monthly installments annually from the initial effective date of this Agreement to end of term of the Agreement. General Counsel’s salary shall be increased in each subsequent fiscal year by the lesser of 2% or the Cost of Living Adjustment for the San Francisco Area as published by the United States Department of Labor. The parties may also agree in writing to an alternative salary for each fiscal year. For this salary, General Counsel will provide all legal services and department supervision required by the District.

### **4. Fringe Benefits**

General Counsel may enroll himself and his eligible dependents in his choice of the District sponsored medical, dental and vision programs and will be provided reimbursement of said cost commensurate with other non-represented management employees. Upon termination of this Agreement, he may elect to remain in his choice of District sponsored health insurance programs at his expense and upon terms available to similarly situated former managers. The General Counsel shall receive benefits, contributions and eligibility for retirement programs normally granted other management employees. The District shall make the ordinarily required contributions and

deductions for CalPERS, Unemployment Insurance, Workers' Compensation, and other normal payroll costs. In addition, General Counsel shall be covered by a term life insurance policy while providing service as General Counsel in the amount of Two Hundred Fifty-thousand dollars (\$250,000). The District shall be named as a beneficiary of the policy in the sum of Twenty-five Thousand Dollars (\$25,000). General Counsel shall designate any other beneficiary for the remaining value of the policy. During the term of the Agreement, the District shall also procure and maintain for General Counsel insurance policies covering long term disability coverage for not less than 60% of his salary.

**5. Work Year, Vacation and Sick Leave**

General Counsel's regularly scheduled work year shall consist of twelve (12) months with work days scheduled in agreement with the Superintendent. General Counsel shall earn twenty-four (24) days of vacation per year, which shall accrue on the first day of employment and on or after July 1 of each subsequent fiscal year. General Counsel may not accrue and be credited with a total of more than thirty-five (35) days of vacation without prior approval of the Superintendent. General Counsel shall have available sick leave benefits applicable to twelve-month classified managers as an incident to their employment relationship to the Board. Whenever the General Counsel's employment terminates, the District shall pay his for his accrued but unused vacation at his then current daily rate. General Counsel is free to use non-District time to undertake representation of other clients, consulting work, research, speaking engagements, writing and lecturing so long as such activities do not interfere or conflict with his performance of responsibilities under this contract. General Counsel agrees not to represent or advise any public school district in Contra Costa County, California, or the County Office in Contra Costa County, California, without consent obtained in advance from the Governing Board.

The General Counsel will be entitled to all leaves of absence, paid or unpaid, and to paid holidays as are provided to other non-represented management employees. The General Counsel shall be entitled to earn, accumulate and utilize sick leave pursuant to the California Education Code. Upon request, District will cooperate in reporting Velez's accumulated unused sick leave to CalPERS for retirement purposes.

**6. Expenses**

The District shall reimburse the General Counsel for all actual and necessary travel and other business related expenses incurred and paid by the General Counsel in the conduct of his duties on behalf of the District. General Counsel will submit an itemized claim for such expenses and such items claimed must be a proper use of District funds. Meal expenses shall not exceed the limits set in Board Policy.

**7. Professional Activities**

The District encourages the General Counsel to participate in professional organizations, mandatory continuing legal education, and other professional activities, provided that such participation is consistent with his overall responsibilities to the District and, provided further, that such participation does not interfere with the satisfactory performance of his duties and obligations to the District. District shall reimburse Velez for payment of his dues/memberships in the State Bar of California, the California Council of School Attorneys, and the National Council of School Attorneys, and for mandatory continuing legal education. The District shall procure and maintain

any required legal malpractice insurance and name General Counsel as an attorney covered by such insurance for matters performed within the scope of his duties for the District.

**8. Performance Evaluation**

Prior to the end of each school year, the Board, Superintendent and General Counsel shall meet to establish performance objectives for the next school year. Prior to May 1 of the next school year, the Board and Superintendent shall evaluate the performance of the General Counsel. The evaluation shall be in writing, shall include at least one personal conference, and shall relate objectively to the duties, goals and expectations for the position. The evaluation shall not, however, be a condition precedent for any of the notices or other action required or permitted under this Agreement or required by law.

**9. Governing Law**

This Agreement is subject to all applicable laws of the State of California and the lawful rules and regulations of the Governing Board of the Mt. Diablo Unified School District as well as those of the California State Board of Education. Such laws, rules and regulations are to be considered as a part of the terms of this Agreement.

**10. Termination of Agreement**

- A. This Agreement may be terminated at any time by mutual consent of the General Counsel and the Governing Board, by the retirement or resignation of the General Counsel and/or the expiration of the term of this Agreement subject to the forty-five (45) day notice requirement of Education Code section 35031.
- B. If, during the term of this Agreement, the District determines unilaterally to terminate the Agreement without cause prior to its expiration, the District may do so by providing the General Counsel with forty-five (45) days written notice.
- C. The employment of General Counsel may be terminated for cause. General Counsel shall be given written notice of any matter allegedly constituting grounds for termination for cause, which would consist of: 1) malfeasance in office; 2) abandonment of office; 3) gross misconduct or dishonesty; and/or 4) conviction of a felony. Termination for cause under this Agreement excludes causes other than those listed in this paragraph. Prior to being terminated for cause, General Counsel shall be afforded procedural due process that minimally includes, but is not limited to: written notice of charges against him and provision of documents and/or statement supporting such charges; right to hearing with an opportunity to respond to the charges before the full Governing Board; the right to representation by counsel; the right to present witnesses and evidence, and to cross-examine witnesses presented against him; the right to a decision based on matters presented at such a hearing; and a written statement of the grounds for termination for cause. In the event General Counsel's employment is terminated for cause, no further payment shall be due to General Counsel after the date of termination.

## **11. Settlement Parameters**

In consideration of General Counsel vacating his private employment in order to accept this employment, the District agrees that if, pursuant to paragraph 10(B) above, the District unilaterally notifies General Counsel of termination of this Agreement without cause prior to the stated expiration date, the following settlement terms shall apply:

- A. The District shall place General Counsel on paid leave of absence at the monthly salary in effect at the time of the notice of termination multiplied for a period of the number of months remaining on his employment contract, but not to exceed twelve (12) months. At the end of this period, this Agreement will terminate and General Counsel agrees that this and the benefits under paragraph 11(B) below will be full and complete compensation provided through the employment relationship with the District.
- B. In addition, in the event of such termination, the District will maintain in effect the usual health and welfare fringe benefits at the then current reimbursement rates provided to General Counsel, or normally provided to active non-represented management employees of the District, whichever is greater, for the period during which he is placed on leave of absence, and in any event, only until the General Counsel finds other full-time employment with paid health benefits, whichever occurs first. The parties agree that no duty is hereby imposed upon the General Counsel to seek full-time employment following termination. Notwithstanding anything in the Agreement, the General Counsel shall retain any rights he has to continue health and welfare fringe benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or any other applicable federal or state law.

## **12. Reimbursements by Employee to District**

- A. If this Agreement is terminated, any cash settlement related to the termination that General Counsel may receive from the District shall be fully reimbursed to the District if General Counsel is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4.
- B. If any express or implied provision of this Agreement, the policies of the District, or any policy or practice of the Authority provide paid leave salary to Employee pending an investigation, said paid leave salary shall be fully reimbursed by the General Counsel to the District if General Counsel is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4.
- C. If any express or implied provision of this Agreement, the policies of the District, or any policy or practice of the District provide for payment of funds for the legal criminal defense of General Counsel, said funds paid for his legal criminal defense shall be fully reimbursed by the General Counsel to the District if General Counsel is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4.

**13. Complete Agreement**

This Agreement is the full and complete agreement between the parties hereto. Any amendments, modifications or variations from the terms of this Agreement shall be in writing and shall be effective only upon approval of such amendment, modification or variation by the Governing Board and the General Counsel.

**14. Savings**

If any provisions of this Agreement are held to be contrary to law by final legislative act or a court of competent jurisdiction inclusive of appeals, if any, such provisions will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect. In the event any such provision is invalidated as described above, the parties shall, upon request, meet not later than fifteen (15) days after such request to discuss the impact of such a holding and to negotiate possible alternative provisions.

WHEREFORE, the parties to this Agreement enter into said Agreement as of September \_\_\_\_, 2015, as approved by the Governing Board of the Mt. Diablo Unified School District.

Dated:

Dated:

GOVERNING BOARD OF THE MT.  
DIABLO UNIFIED SCHOOL DISTRICT

GENERAL COUNSEL

\_\_\_\_\_  
Cheryl Hansen, Board President

\_\_\_\_\_  
Donald A. Velez, Jr.

\_\_\_\_\_  
Debra Mason, Board Vice President

\_\_\_\_\_  
Brian Lawrence, Trustee

\_\_\_\_\_  
Linda Mayo, Trustee

\_\_\_\_\_  
Barbara Oaks, Trustee

APPROVED AS TO FORM AND LEGALITY	Approved in a public meeting of the Governing Board of the Mt. Diablo Unified School District
Date: _____	Date: _____
   _____ Lawrence M. Schoenke, Interim General Counsel Mt. Diablo Unified School District	   _____ Nellie Meyer, Ed.D., Superintendent Mt. Diablo Unified School District