

Mt. Diablo Unified School District

Employment Agreement for the Position of Chief Business Officer

This agreement is made and entered into this 28th day of June 2023, by and between the Governing Board of the Mt. Diablo Unified School District of Contra Costa County, State of California, a public school district, hereinafter called "District" and Adrian Vargas, hereinafter called "Chief Business Officer," hereinafter collectively referred to as "the parties."

WITNESSETH

In consideration for the promises stated the parties agree as follows:

1. **Employment Term:** The District hereby employs the Chief Business Officer to act and to serve as Chief Business Officer over the District, to include Business Services, and shall be responsible for the business and fiscal operations of the District as provided by law and delegated to the Chief Business Officer by the District and by the District Superintendent. The Chief Business Officer hereby accepts such employment and agrees to perform the duties of said office during the term of this Agreement. The term of this Agreement and of said employment is for the period commencing July 1, 2023, and ending on June 30, 2024.
2. **Senior Management:** The Chief Business Officer position is a Senior Management position of the classified service pursuant to Education Code section 45100.5. The Chief Business Officer shall not have any property interest in the position that would entitle the Chief Business Officer to permanent status in a Senior Management position; his employment rights are as provided in Education Code sections 45104.5 and 35031.
3. **Compensation:** For and in consideration of the services rendered by the Chief Business Officer hereunder, he shall receive the following compensation:
 - a. **Salary and Work Year:** The annual base salary of the Chief Business Officer shall be two hundred and sixteen thousand dollars (\$216,000). Said salary, less deductions, shall be paid to him once every month not later than the last business day of the month. The Governing Board reserves the right to increase the Chief Business Officer's salary at any time pursuant to Education Code Section 35032. An increase pursuant to Section 35032 shall not be considered as a new Agreement or as an extension of the term of employment under this Agreement. The annual salary for each year of this Agreement shall be adjusted automatically to an equal or greater percentage provided on the classified management salary schedule. In order to comply with Government Code section 3511.2, any automatic adjustment under this Agreement cannot exceed the Cost Of Living Adjustment (COLA). If the Chief Business Officer is to receive an increase in compensation that exceeds COLA, the parties agree that the Governing Board must have the matter considered and approved in open session at a regularly scheduled Governing Board meeting before such an increase may occur. The base salary for the Chief Business Officer shall be increased by any settlement agreement paid to the Diablo Management Association.

The CBO work year shall be two hundred and twenty-four (224) days. To determine the CBO's daily rate, the CBO's annual base salary shall be divided by his work days. The CBO may

choose to work five (5) additional days each year of this agreement and be paid at his current daily rate with all necessary contributions being deducted. Any work days worked beyond these five (5) additional days shall be approved by the Superintendent.

- b. **Expense Reimbursement:** All actual and necessary expenses incurred by the Chief Business Officer in the conduct of his duties on behalf of the District or expended in response to direction of the Governing Board shall be reimbursed as approved by the Governing Board or as stated in District policy.

Consistent with Education Code section 44033 and notwithstanding any contrary Board Policy or Administrative Regulation, the Chief Business Officer is required to possess and maintain an automobile for the performance of his regularly assigned duties at his own expense. Mileage shall be reimbursed at the District-approved mileage rate for District business.

The District encourages the CBO to participate in professional and community organizations and activities. The District shall pay the CBO's membership dues and other required expenses with membership in the California Association of Latino Superintendents and Administrators ("CALSA") and the California Association of School Business Officials (CASBO). Any additional memberships that the CBO deems beneficial to the District will require approval by the Board.

- c. **Fringe Benefits:** The Chief Business Officer **waives** his right to the District contribution toward medical, dental, and vision insurance for his coverage and his family members as are available to other twelve-month management employees.
 - d. **Sick Leave:** Sick leave is allowed and cannot exceed twelve (12) duty days per year, which may be accumulated without limit in accordance with the Education Code provisions applicable to classified employees.
- 4. **Professional Activities:** The Chief Business Officer shall be permitted and encouraged to participate in professional organizations and activities, provided that such participation does not, in the opinion of the Superintendent, interfere with satisfactory performance of his obligations to the District. Upon prior written request and approval by the Superintendent, the Chief Business Officer may undertake outside professional activities for compensation, including consulting, speaking, and writing. The performance of his duties to the District, however, shall take precedence over such outside activities, and the Superintendent may disapprove a leave to engage in such activities during the normal work week of Monday through Friday. The Chief Business Officer shall take a non-work day for any approved professional activities performed during the normal workday. In no event will the Governing Board be responsible for any expenses attendant to the performance of such outside activities.
 - 5. **Evaluation:** The Chief Business Officer shall be evaluated annually by the Superintendent prior to the end of each fiscal year.
 - 6. **Duties:** In accordance with the policies adopted by the Governing Board and the rules and regulations of the State Board of Education and the Education Code, the Chief Business Officer shall perform the duties of Chief Business Officer as prescribed by law and as directed by the Superintendent. He shall report directly to the Superintendent and shall collaborate with the various Chiefs(s) in the Superintendent's absence. Prior to taking action on criticisms, complaints and suggestions relating to the Chief Business Officer's duties, the Superintendent will discuss such

with the Chief Business Officer or delegate the matter to him for appropriate study, recommendations, or administrative action.

7. **Termination/Agreement Extension:**

- a. **Agreement Extension:** After completion of this Agreement, the Governing Board may elect to extend the Agreement.
- b. **Mutual Consent:** This Agreement may be amended or terminated at any time by written, mutual consent of the Governing Board and the Chief Business Officer, which will be effective no sooner than thirty (30) days following such written, mutual consent.
- c. **Non-Renewal:** If the Governing Board decides not to re-elect or re-employ the Chief Business Officer at the expiration of this Agreement, the Governing Board shall notify the Chief Business Officer in writing at least thirty (30) days before this Agreement or any extension or renewal of this Agreement expires.
- d. **Termination:** This Agreement may be terminated prior to the expiration of the Agreement term as follows:
 1. **For Cause:** The Governing Board may terminate the Agreement for cause, including but not limited to material breach of contract or any grounds constituting good cause. Notice of termination for cause shall be given in writing, and the Chief Business Officer shall be entitled to appear before the Governing Board to discuss such causes. The Chief Business Officer shall be afforded the right to be represented by counsel at his own expense, the right to present witnesses and evidence on his behalf and to cross examine witnesses presented against him, and the right to a decision based on the matters at the hearing and stating the ground for any action. Such meeting shall be conducted in closed session unless specifically prohibited by state law. The Chief Business Officer shall not be entitled to severance pay in the event of termination for cause.
 2. **Unilateral Termination by the Governing Board:** The Governing Board may terminate the Agreement without cause upon ninety (90) days' written notice provided that the District shall pay the Chief Business Officer as severance the base salary he would have earned under this Agreement to the date of termination, not to exceed twelve (12) month's base salary. Base salary is the annual salary amount specified in section 3.a above. This severance amount shall include the ninety day notice period. Pursuant to Government Code section 53261, in the event of termination of this Agreement for any reason, no non-cash benefit may be conferred in settlement except for employer-paid health benefits, which may be provided for a period not to exceed the period by which any cash settlement is measured. In any event, employer-paid health benefits shall be discontinued if and when the Chief Business Officer obtains employment before the measuring period has expired. The Parties stipulate that any damages to the Chief Business Officer that may result from the Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the severance amount pursuant to this provision constitute reasonable liquidated damages and fully compensate the Chief Business Officer for all tort, contract and other damages of any nature whatsoever, whether in law or equity, and do not result in a penalty. The Parties stipulate that the District's completion of its obligations under this provision constitutes the Chief Business Officer's sole remedy to the fullest extent provided by law. Finally,

the Parties agree that this provision meets the requirements governing maximum cash settlements as set forth in Government Code sections 53260, et seq.

3. Unilateral Termination by Chief Business Officer/Notice of Application of Employment: The Chief Business Officer may unilaterally terminate the Agreement provided that, unless otherwise waived by the Governing Board the Chief Business Officer shall give at least ninety (90) days' advance written notice. Should the Chief Business Officer become interested in a position elsewhere during the term of this Agreement, he shall advise the Superintendent of this interest before he is interviewed as a finalist for such position.

4. Reimbursement By Chief Business Officer to the District: If this Agreement is terminated, any cash settlement related to the termination that Chief Business Officer may receive from the Governing Board shall be fully reimbursed to the Governing Board if Chief Business Officer is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4

5. If any express or implied provision of this Agreement, the Bylaws of the Governing Board, or any policy or practice of the Governing Board provide paid leave salary to Chief Business Officer pending an investigation, said paid leave salary shall be fully reimbursed by the Chief Business Officer to the Governing Board if Chief Business Officer is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4.

6. If any express or implied provision of this Agreement, the Bylaws of the Governing Board, or any policy or practice of the Governing Board provide for payment of funds for the legal criminal defense of Chief Business Officer, said funds paid for his legal criminal defense shall be fully reimbursed by the Chief Business Officer to the Governing Board if Chief Business Officer is convicted of a crime involving an abuse of his office or position as defined by Government Code Section 53243.4.

8. **Other Laws/Provisions**: This Agreement constitutes the entire employment Agreement between the Governing Board and the Chief Business Officer. There is no oral understanding between the parties, terms or conditions, and neither party has relied upon any representation, expressed or implied, not contained in this Agreement. This Agreement may be modified only in writing and signed by the parties hereto. If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, all other provisions will continue in full force and effect. This Agreement is subject to all applicable laws of the State of California and the rules and regulations of the State Board of Education. The rules, regulations, and policies of the District shall apply to this Agreement and to the extent they may be contrary to or inconsistent with this Agreement, District policies shall prevail. The laws, rules, regulations, and policies referred to herein are to be considered as part of this Agreement as though fully set forth herein.

IN WITNESS THEREOF the parties hereto have executed this Agreement the day, month, and year first above written.

Date: June 28, 2023

Keisha Nzewi

President, Governing Board

Date: June 28, 2023

Adrian Vargas
Chief Business Officer

Approved by the Governing Board

Date: June 28, 2023

Dr. Adam Clark
Secretary, Governing Board