

VOLUNTARY SEPARATION & RELEASE AGREEMENT

This Voluntary Separation & Release Agreement ("Agreement") is made and entered into effective May 28, 2020 ("Effective Date"), by and between the Board of Trustees of the Mt. Diablo Unified School District ("District") and Dr. Robert Martinez, Ed.D., ("Dr. Martinez" or "Superintendent") (hereafter collectively referred to as "the Parties").

RECITALS

1. Dr. Martinez is currently employed by the District as Superintendent under an Employment Agreement for Services of District Superintendent ("EA") effective August 12, 2019.
2. The District and Dr. Martinez have determined that it is in their mutual best interest to terminate Dr. Martinez's EA pursuant to Section 7.4 of the EA under the terms and conditions set forth therein, and as further set forth in this Agreement.

TERMS AND CONDITIONS

In accordance with the foregoing recitals and pursuant to Section 7.4 of the EA, and in consideration for the mutual promises and for other good consideration set forth herein, the Parties hereby agree as follows:

1. Resignation. Dr. Martinez hereby submits his voluntary and irrevocable resignation from the District, to be effective at the end of business on June 30, 2020, (the "Resignation Date"), which is hereby deemed accepted by the District and the Board. No further documentation or action on the part of Dr. Martinez and/or the District is required to make this resignation effective and satisfy the notice requirements of Section 7.4 of the EA.
2. Consideration. The Parties mutually agree that pursuant to Government Code section 53260 et seq., the District shall pay Dr. Martinez the twelve (12) month base salary set forth in Section 5.1 of the EA of two hundred seventy seven thousand dollars (\$277,000), subject to any applicable withholdings. The District shall issue this payment to Dr. Martinez in twelve (12) equal monthly installments beginning July 31, 2020, and on or before the last day of each month thereafter, ending June 30, 2021. In exchange for the mutual releases and waivers set forth herein, the District shall also pay Dr. Martinez' membership in the Association of California School Administrators (ACSA), and the California Association of Latino Superintendents and Administrators from July, 2020 through June 2021, up to a combined total not to exceed four thousand dollars (\$4,000.00). The District shall also continue the health benefit provided pursuant to Section 5.5 of the EA on the same terms and conditions contained in the EA for a period of the lesser of six (6) months or when Dr. Martinez is receiving other health benefit coverage from another employer.
3. Vacation Use. Effective May 29, 2020 and through June 26, 2020, Dr. Martinez may use his accrued unused vacation, estimated at twenty-one (21) vacation days as of May 28, 2020, for the remainder of the 2019-2020 fiscal year. The District shall pay Dr. Martinez for any accrued and unused vacation leave remaining as of the June 30, 2020 consistent with California law.

4. Transition Through June 30, 2020. Effective Monday, June 1, 2020, Dr. Martinez shall work remotely and remain available to the Board and senior staff to assist with the leadership transition through June 30, 2020, unless he elects to take vacation during this period. Upon execution of this Agreement and approval by the Board, the Board action taken on May 28, 2020 to terminate Superintendent's EA without cause shall be deemed rescinded and the separation from employment shall be pursuant to the terms set forth in this Agreement.
5. STRS Benefits. Dr. Martinez agrees and understands the District makes no representations or assurances with respect to Dr. Martinez' STRS benefit eligibility or, if eligible, the amount of any benefit entitlement arising from his service to the District. The District also makes no representations or assurances as to the effect of this Agreement on Dr. Martinez' eligibility for and/or receipt of STRS credits or benefits retroactively or prospectively.
6. Tax Consequences. Dr. Martinez agrees and understands the District makes no representations regarding the federal or state tax consequences of any payments under this Agreement. By executing this Agreement, Dr. Martinez understands and agrees he has not relied upon any advice from the District, or any of its representatives, or any of the Releases whatsoever concerning the taxability of the payments made hereunder under federal, state or local income tax statutes or regulations. Dr. Martinez agrees and understands he is solely liable for all tax obligations, if any, arising from payment of the sums specified herein. Dr. Martinez agrees he will defend, indemnify, and hold harmless the District from any and all liability for federal, state, or local income tax, including but not limited to any liability that may arise from any duty to make withholding payments, based upon the payments made to him pursuant to this Agreement, including any related penalties, fees, or interest.
7. Employment Inquiries. Dr. Martinez will direct all employment inquiries or reference checks to the District by any prospective employers to the President of the District's Board of Trustees. Dr. Martinez agrees the District will disclose only Dr. Martinez' dates of employment, final salary, position held, and that the parties came to a mutual agreement to separate effective June 30, 2020.
8. Public Information. That Parties agree that the terms and conditions of this Agreement constitutes public information. The District's Board of Trustees has determined that it desires a new Superintendent, while affirming that this is a non-causal release of the current Superintendent. The Superintendent shall not make any defamatory comments, remarks and references concerning the District, the Board of Trustees or the Superintendent's Cabinet. The Board of Trustees, as individuals or as a group, shall not and will use its best efforts to ensure that the Superintendent's Cabinet, or Administrative Team, shall not make any defamatory comments, remarks and references concerning the Superintendent.
9. District Property. Dr. Martinez agrees to return any District property in his possession on or before June 30, 2020. The Parties agree that neither will hold any property of the other.
10. Mutual Release. Dr. Martinez and the District hereby mutually release each other, including but not limited to the District's past and present Board members (trustees), officials, employees,

successors, predecessors, assigns, agents, attorneys, consultants, affiliates, and representatives (collectively "the persons hereby released"), from any and all known and unknown matters, claims, obligations, actions, judgments, damages, liabilities, demands, complaints, and causes of action of whatever kind or nature, whether known or unknown, which each now has or holds, or at any time has had or held against the other through and including the date of execution of the Agreement.

It is expressly understood by Dr. Martinez that among the rights and claims being waived by his in this release are those including but not limited to, arising under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.), the California Fair Employment and Housing Act (Cal. Govt. Code § 12900, et seq.), the Civil Rights Acts of 1866 and 1991, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act ("ADEA"), any claims under California state law for age discrimination, and the Americans with Disabilities Act ("ADA"). Dr. Martinez waives all claims for individual remedies or to recover monetary damages, including front pay, back pay, compensatory damages, punitive damages, injunctive relief whether brought by Dr. Martinez or on his behalf.

The parties acknowledge that this Agreement shall extend to and include all unknown, unsuspected, unanticipated, or undisclosed claims, actions or causes of action, except as to any non-waivable claims, and to enforce rights under this Agreement and that this release contemplates the extinguishment of all such claims and causes of action. In entering into this Agreement, the parties expressly waive the benefits of and release any rights they would otherwise have under Section 1542 of the Civil Code of California, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or his, would have materially affected his or her settlement with the debtor or released party.

11. District Obligation to Defend and Indemnify. Nothing in this Agreement shall affect the District's statutory obligations to Dr. Martinez arising under California Government Code sections 825 and 995, for any post-employment defense and indemnity of any third-party claims arising out of the course and scope of Dr. Martinez' employment with the District.
12. Special Provisions for Age Discrimination. In addition to any other waiver and release set forth herein, and by execution of this document, Dr. Martinez expressly waives any and all rights to claims arising under the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, and:
 - a. Dr. Martinez acknowledges that his waiver of rights or claims arising under the ADEA is in writing, written in a manner calculated to be understood, and is understood by his.
 - b. Dr. Martinez expressly understands that this waiver refers to rights or claims arising under the ADEA of 1967;

- c. Dr. Martinez expressly understands that by executing this document, he does not waive any ADEA rights or claims that may arise after the effective date of this Agreement;
 - d. Dr. Martinez acknowledges that the waiver of his rights to claims arising under the ADEA is in exchange for the consideration outlined above, which is above and beyond that to which he is otherwise entitled to receive from the District;
 - e. Dr. Martinez acknowledges that, by this document, the District expressly advised him to consult with an attorney of his choosing prior to executing this document and that he has, in fact, had an opportunity to consult with an attorney; and
 - f. Dr. Martinez has been advised by the District that he is given a reasonable period of time within which to consider this document (up to 21 days, although he can execute it sooner) and may revoke this Agreement for a period of 7 days after execution by him, and this Agreement will not become effective or enforceable until this period has expired.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained herein. All prior understandings, terms, or conditions, written, oral, express, or implied, including but expressly not limited to the EA, are superseded by this Agreement.
14. Confidentiality of Agreement. Except as required by law, and as stated herein, the Parties shall keep the terms of this Agreement confidential and not disclose or publish its to any third party except as may be required by court order, lawful subpoena, the California Public Records Act, the Brown Act, or any other law requiring disclosure, or as may be necessary to secure a court order for the enforcement or interpretation of this Agreement.
15. Amendments. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both Parties.
16. Binding Effect. This Agreement is for the mutual benefit of and will be binding on all Parties and their respective successors, heirs, and assigns.
17. Attorneys' Fees and Costs. Each party will bear his/its own attorneys' fees and costs, if any, arising out of or related to the development of this Agreement.
18. Other Documents and Cooperation. The Parties agree to cooperate fully in the execution of any additional documents that may be necessary to finalize and implement this Agreement.
19. Execution by Facsimile or in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, will be deemed a fully executed agreement. A facsimile or scanned version of any party's signature will be deemed an original signature. Each counterpart will be deemed an original and the same document for all purposes.

20. Notices. Any notice(s) 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:

To Dr. Martinez:

Dr. Robert A. Martinez
1155 W 10th St.
Benicia, CA 94510

To the District:

c/o President Board of Trustees
Mt. Diablo Unified School District
James W. Dent Education Center
1936 Carlotta Drive
Concord, CA 94519-1397

21. Severability. If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement will remain in full force and effect.
22. Interpretation. This Agreement was jointly drafted and will, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
23. No Admission of Fault. This Agreement is entered into by the Parties for the purpose of compromising and settling any and all potential disputes. It does not constitute, nor will it be construed as, an admission of fault and/or liability by any party for any purpose.
24. District Defined. The term "District" includes the Mount Diablo Unified School District, its agents, officers, employees, attorneys, successors, predecessors, insurers, and the members of the Board of Trustees.
25. Voluntary Agreement. Dr. Martinez represents that he has read this Agreement and its attachments, if any, in full and understands and voluntarily agrees to all its provisions without any compulsion or duress whatsoever. Dr. Martinez further declares that, prior to signing this Agreement, he apprised himself of relevant data, through sources of his own selection, including consultation with his own attorney, in deciding whether to execute this Agreement. Dr. Martinez further represents that he has, as of the Date of Execution of this Agreement, the legal capacity to understand, agree to, and sign this Agreement, and that he has not assigned any rights or claims related hereto to any third party.

Next Page

26. Board Approval. The Parties recognize that, to be enforceable, this Agreement must be approved or ratified by the Board of Trustees at a lawfully convened meeting. Any disclosures pursuant to the Brown Act and/or the California Public Records Act will not constitute a violation of this Agreement, nor will such constitute a violation of law or constitute a tort such as, but not limited to, invasion of privacy or defamation.

IN WITNESS HEREOF, the Parties have executed this Agreement on the date set forth below ("Date of Execution").

SUPERINTENDENT:

Dated: June 2, 2020 By: Robert F. Martinez
Robert Martinez, Ed.D.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT:

Dated: 06/10/2020 By: B T Lawrence
SignNow eSignature ID: 36ae9d3b52...
06/10/2020 16:44 UTC
President, Board of Trustees

Date of Board Approval: _____

283-7/4708854.2