



MT. DIABLO UNIFIED SCHOOL DISTRICT

Employment Agreement for the Position of Chief Business Officer

This Agreement is made and entered into this **26th** day of **June** 2024, 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,” collectively referred to as “the Parties.”

WHEREAS, the District’s Governing Board of Education (“Board”) desires to employ the Adrian Vargas as the Chief Business Office of the District and the Chief Business Officer desires to accept employment as the Chief Business Officer of the District upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing terms and conditions set forth herein, the Parties hereto 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, 2024, and ending on June 30, 2027.
2. **Senior Management:** The Chief Business Officer position is a Senior Management position of the classified service pursuant to Education Code § 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 §§ 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 thirty-five thousand four hundred forty dollars (\$235,440). 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 § 35032. An increase pursuant to § 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 § 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 nineteen (219) 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 § 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 shall receive a District contribution toward medical, dental, and vision insurance for his coverage and his family members as are available to other twelve-month management employees. After the completion of the requisite years of service as is required of other classified employees, the Chief Business Officer may retire from the District and participate in an applicable retirement benefit system, which includes the entitlement to receive paid family benefits equal to that being paid to other twelve-month classified employees for five (5) years or until age 65, whichever is sooner.
- 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 § 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 §§ 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 § 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 § 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.
9. **General Terms**
 - a. Delivery of Notices. All notices permitted or required under this Agreement shall either be personally delivered or mailed, and emailed to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Chief Business Officer:	address on file with the District's Human Resources Department.
District:	With an email copy to: Superintendent

Chief of Human Resources 1936 Carlotta Drive Superintendent Concord, CA 94519	
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Such notice shall be deemed received when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepared and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- b. Conflict of Laws. This Agreement shall be governed by the laws of the State of California.
- c. Integration and Modification. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. Neither of the parties has relied upon any oral or written representation or written information given to the party by any representative of the other party. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless set forth in writing and signed by both parties.
- d. Severability. If one or more of the provisions of this Agreement are hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, then the parties hereto agree that the invalidity or unenforceability of any of the provisions shall not in any way affect the validity or enforceability of any other provisions of this Agreement.
- e. Construction of Agreement. This Agreement will be liberally construed to effectuate the intention of the parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the parties have participated equally or have had equal opportunity to participate in the drafting hereof.
- f. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- g. Headings. The headings of sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of

the provisions of this Agreement.

- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
- i. Indemnity. In accordance with the provisions of Government Code §§ 825 and 995, the District shall defend CBO from any and all demands, claims, suits, actions, and legal proceedings brought against CBO in CBO's individual capacity, or official capacity as an agent and employee of the District, provided that the incident giving rise to any such demand, claim, suit, action, or legal proceeding arose while CBO was acting within the scope of employment.

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

MT. DIABLO UNIFIED SCHOOL DISTRICT

Erin McFerrin, President

Date

Adam Clark, Superintendent

Date

CHIEF BUSINESS OFFICER



Adrian Vargas

6/21/24

Date