

EMPLOYMENT AGREEMENT BETWEEN
MODESTO CITY SCHOOLS
AND
DR. SARA NOGUCHI

This Employment Agreement ("Agreement") is entered into by and between the Governing Board of Modesto City Schools (hereinafter referred to as "the Governing Board" or "the District") and Dr. Sara Noguchi (hereinafter referred to as "Superintendent"), collectively referred to as "the parties." The Governing Board and Superintendent mutually agree as follows:

1. TERM OF EMPLOYMENT

Pursuant to Section 35031 of the Education Code, the Governing Board hereby extends the employment agreement with Dr. Sara Noguchi as Superintendent of the Modesto City School District and the Modesto High School District through June 30, 2023, subject to the terms and conditions stated below.

2. WORK YEAR

Superintendent shall render twelve (12) months of full and regular service to the District during each annual period covered by this Agreement, except as hereinafter provided.

The Superintendent shall be required to render Two Hundred Twenty Two (222) days (which shall not include vacation days, Saturdays, Sundays, and holidays) of full and regular service to the District annually during the period covered by this Agreement. The salary rate shall be calculated as the annual salary divided by Two Hundred Forty-Seven (247) days. The Superintendent may elect to work five (5) additional days each year of this Agreement and be paid at her current daily rate with all necessary contributions being deducted. Any work days beyond these two hundred and twenty-seven (227) days shall be with the approval of the Board.

Notwithstanding the foregoing, Superintendent shall be on call to perform her duties 24 hours a day, 7 days a week as the only 24/7 employee of the District. Superintendent acknowledges that as a 24/7 employee, District affairs may call upon her to devote other than non-duty days as the Chief Executive Officer of the District. Accordingly, the Superintendent's compensation takes into account her status as a 24/7 employee.

3. SALARY

- a. The Superintendent's annual salary for the 2018-2019 school year shall be Two Hundred Fifty Thousand Dollars (\$250,000).

- b. For the 2019-20 school year, the Governing Board increased the Superintendent's annual salary by five percent (5%).
- c. Recognizing the concept of "step and column" salary increases, and with a commitment to maintain competitive salaries, commencing the 2020-21 school year, the annual salary of the Superintendent shall be increased pursuant to the following two factors if the Superintendent receives an excellent or above average evaluation for the prior school year from the Governing Board:
 - i. The median (middle) of the salaries of superintendents in unified school districts within California, having an Average Daily Attendance (ADA) between 25,000 to 35,000 students. The parties agree that the median salaries of superintendents shall be established, based upon the J-90 comparison report of superintendents' salaries for the previous year, as reported by School Services of California in November/December of the current year; and
 - ii. The current years' funded Cost of Living Adjustment (COLA) approved by the State of California in its annual Public Education budget, retroactive to July 1 of the current year. If the increase to the employer State Teachers' Retirement System (STRS) contribution rate for the year that the funded COLA is to be applied is greater than the funded COLA, then the funded COLA shall not be used to increase the annual salary of the Superintendent. If the increase to the employer's STRS contribution rate is less than the funded COLA, then the difference between the funded COLA and the increase to the employer's STRS contribution rate shall be used to increase the annual salary of the Superintendent.

Superintendent shall not receive stipends or longevity payments unless agreed upon in writing in a subsequent agreement.

The Governing Board may agree to provide the Superintendent with additional benefits or other compensation in the Governing Board's sole discretion.

The salary shall be payable in twelve (12) equal monthly payments. When only a portion of any year or month is served, the Superintendent's salary be prorated to reflect such service.

4. VACATION

The Superintendent shall be entitled to twenty (20) days of annual vacation with pay, exclusive of holidays defined in the Education Code.

As recognized under California law, vacation is a form of compensation and cannot be lost if vacation is not taken. The total number of available/accrued vacation days may not exceed thirty-five (35) days during the term of this Agreement. During the 2018-19 and 2019-20 school years respectively, Superintendent may elect to be paid for up to ten (10) days of excess accrued vacation at the Superintendent's then existing daily rate of pay.

In the event of termination of this Agreement, Superintendent shall be entitled to compensation for all unused vacation days at the current salary rate. The salary rate shall be calculated as the annual salary divided by Two Hundred Forty-Seven (247).

5. PHYSICAL EXAMINATIONS

A. Examination

The Superintendent shall undergo a physical examination by a District-appointed physician prior to each school year during the term of this Agreement. Prior to the examination, Superintendent agrees to execute a medical release authorizing the District-appointed physician to review all relevant medical records. The District-appointed physician shall review this Agreement, the District's job description for the position, and be provided background information related to the duties of the position.

B. Costs

The Superintendent shall submit all costs to the District's insurance carrier. All non-insured costs shall be borne by the District.

C. Report

The District-appointed physician shall submit a confidential written report to the Governing Board and the Superintendent addressing only the Superintendent's fitness to perform the job. The District-appointed physician's report shall specifically indicate whether or not the Superintendent has any physical impairment that substantially limits the Superintendent's ability to perform the essential functions of the position with or without reasonable accommodation. No confidential medical information shall be submitted to the Governing Board, the District, any third party, or any of the District's officers, agents or employees unless it is determined that the Superintendent is unable to perform the essential functions of the position and such medical information is directly related to such determination or the development of reasonable accommodations.

D. Reasonable Accommodation

If the Superintendent is determined by the District to be a disabled employee under state or federal law, the District shall request that the District-appointed physician's report indicate what reasonable accommodations, if any, may be available to allow the Superintendent to perform the essential functions of the position. Following input from the Superintendent and the District-appointed physician, the Governing Board shall make the final determination of what constitutes a reasonable accommodation.

E. Inability to Perform Essential Functions

If the District determines the Superintendent is disabled and, following the interactive process with the Superintendent, that the Superintendent is unable to perform the essential functions of the position with or without reasonable accommodation, this Agreement may be terminated by the Governing Board upon written notice to the Superintendent in accordance with Paragraph 14, Section C of this Agreement.

6. DUTIES AND RESPONSIBILITIES

Superintendent shall serve as chief executive officer and secretary of the Governing Board and the school districts pursuant to Sections 35035 and 35040 of the Education Code. The Superintendent shall have the primary responsibility for the execution of Board policy, whereas the Board shall retain the primary responsibility for formulating and adopting policy. The Board, individually and collectively, will refer promptly all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation. In addition to directing all criticisms, complaints and suggestions concerning the District or any of its personnel directly to the Superintendent as set forth above, the Board agrees that it shall work with the Superintendent in a spirit of cooperation and teamwork, and shall provide the Superintendent with periodic opportunities to discuss the Board/Superintendent relationship.

The Superintendent shall be expected to attend all regular, special and closed session meetings as directed by the Board. The Superintendent may serve as an ex officio member on any and all District committees and subcommittees. In addition, all duties and duties which may lawfully be delegated to Superintendent are to be performed and executed by her in accordance with applicable policies and regulations adopted by the Governing Board. District policies shall include a complete position description as prescribed by the Governing Board after discussion with Superintendent.

In addition to directing all complaints/criticisms/suggestions concerning the District or any of its personnel directly to the Superintendent as set forth above, the Board agrees that it shall work with the Superintendent in a spirit

of cooperation and teamwork, and shall provide him/her with periodic opportunities to discuss Board/Superintendent relationships. Whenever it is deemed desirable by either a majority of the Governing Board, or by the Superintendent, an outside advisor will be mutually selected by the Board and the Superintendent, and shall be paid for by District, to facilitate discussion of the relationships of the Board and the Superintendent, in advancement of the best interests of District.

7. EVALUATION

The Board and the Superintendent shall annually develop and agree upon performance goals and objectives that shall serve as the basis for an annual evaluation. Such goals and objectives shall be established no later than August 1 of each school year.

In March of each school year of this Agreement, unless otherwise mutually rescheduled, the Governing Board shall devote a portion of at least one Board meeting, in closed session, annually to discuss and evaluate the performance of the Superintendent. This evaluation shall be based on the position description and the mutually agreed-upon and specified District goals and objectives in accordance with the procedures outlined in District policies.

An evaluation shall be deemed "satisfactory" if a majority of the Governing Board members have rated the Superintendent's performance as satisfactory and/or superior in their individual evaluations prepared by such Governing Board members. The Governing Board's failure to provide the Superintendent an annual evaluation in March of each school year, unless otherwise mutually rescheduled, shall not be deemed an evaluation and shall not be deemed a breach of the Agreement.

The Board commits to retain a facilitator to assist the Board and Superintendent with the evaluation of Superintendent's performance for the 2020-21 school year through the 2022-23 school year.

8. OUTSIDE PROFESSIONAL ACTIVITIES

With prior approval of the Governing Board, Superintendent may undertake consultative work, speaking engagements, writing, lecturing, teaching or other professional duties and obligations. Said outside professional activities may be performed for consideration, provided they do not interfere with or conflict with Superintendent's performance of her duties under this Agreement.

9. HEALTH, WELFARE AND LEAVE BENEFITS; TAX DEFERRED PLANS PROVIDED OTHER CERTIFICATED MANAGEMENT EMPLOYEES

The Superintendent shall receive all health and welfare benefits, including twelve (12) days of sick leave, provided to certificated administrators/management employees of the District.

The Governing Board agrees to provide Superintendent with the ability to participate in an either or both an IRS Section 457, IRS Section 403(b) plan and an IRS Section 125 plan to the extent that such tax deferred compensation plans are offered or made available to other certificated management employees.

10. PROFESSIONAL DUES

The District shall pay the professional dues of the Superintendent for membership to the Association of California School Administrators and two additional professional or service (ex. Rotary or Lions) organizations, provided such memberships are pre-approved by the Governing Board.

11. BUSINESS EXPENSES

Superintendent shall be paid a monthly stipend in the amount of three hundred fifty dollars (\$350) for necessary expenses incurred incidental to District business which may include, but not be limited to, costs incurred in participating in community events, including donations to community events which are reasonably related to the District's mission and goals as a public school district, appropriate recognition of significant events in the lives of District employees and community representatives, working lunches with Board members and employees, and other costs, including meals and registration costs and other miscellaneous costs incurred in connection with community events. The Superintendent shall not be reimbursed for any expenses above this amount unless such other expenses are specifically provided for in other sections of this Agreement. The Superintendent shall not be required to provide receipts or other documentation for the business expenses incurred under this Section.

12. CONFERENCE EXPENSES

During the term of this Agreement, at the direction of the Governing Board or otherwise subject to its approval, the Superintendent shall attend educational or other conferences that the Governing Board deems appropriate. The actual and necessary travel, food, lodging, incidental expense, and registration costs of such attendance outside of the District shall be reimbursable, subject to any verification and claim procedures, and reimbursable expenditure limitations as are from time-to-time established by Board policy.

13. TERMINATION OF TERM OF EMPLOYMENT AND CONTRACT OF EMPLOYMENT

This Agreement may be terminated prior to its expiration date on any of the following grounds:

A. Mutual Consent

By mutual agreement, this Agreement may be terminated at any time.

B. Credential

This Agreement may be terminated for Superintendent's failure to maintain a valid California Administrative Credential.

C. Disability of the Superintendent

In the event that the Superintendent becomes disabled due to illness, injury or other incapacity, the Superintendent shall be entitled to paid sick leave in accordance with the District policy and state law. Should the Superintendent exhaust her entitlement to sick leave and differential pay leave, and provided that no reasonable accommodation for the disability may be required under the law, the District may terminate the Superintendent by giving her written notice.

D. Death of Superintendent

This Agreement is automatically terminated upon the death of the Superintendent.

E. Termination for Cause

If the Governing Board determines that the Superintendent has materially breached the terms of this Agreement or has neglected to perform her duties under it, the Governing Board may terminate for cause. For purposes of this Agreement, "cause" shall exist if Superintendent: (1) willfully refuses to act in accordance with a specific provision of this Agreement or directive or order of a majority of the Governing Board; (2) exhibits misconduct or dishonesty in regard to her employment; (3) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; or, (4) is unable to perform the essential functions of her position. The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties hereunder. If cause exists, the Governing Board shall submit all charges in writing for the Superintendent's review. The Superintendent may request a conference with the Governing Board, and the opportunity to submit a written response to the charges. The Governing Board's decision shall be final.

F. Unilateral Termination by the Governing Board

The Governing Board may by majority vote unilaterally terminate this Agreement for any reason, without cause or a hearing, at any time the Governing Board determines in its sole discretion that such action is in the best interest of the District. From July 1, 2020, through June 30, 2021, the Board must obtain a super-majority (at least five (5) votes) to unilaterally terminate the Superintendent from employment. If the Governing Board exercises this right, the Superintendent agrees to relinquish any further claims against the District and the Governing Board, including any claims under this Agreement. In the event of such termination, the Governing Board will pay the Superintendent an amount equal to the monthly salary of the Superintendent multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than nine (9) months, the maximum amount paid by the Governing Board shall be an amount equal to the monthly salary of the Superintendent multiplied by nine (9). District-paid health care benefits will also be provided during this same period of time. Payment, in the discretion of the Governing Board, may be made in a lump sum or in monthly increments. The parties agree that damages to the Superintendent which may result from the Governing Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the parties agree that the damage payment made pursuant to this early termination clause constitutes reasonable liquidated damages for the Superintendent, fully compensates the Superintendent for all tort, contract and other damages, and does not result in a penalty. The parties agree that the District's completion of its obligations under this provision constitutes the Superintendent's sole remedy to the fullest extent provided by law. The parties agree that this provision is intended to meet the requirements governing cash settlements as set forth in Government Code sections 53260, et. seq.

G. Seeking Other Employment

Should the Superintendent seek other employment during the term of this contract, or any extension thereof, Superintendent shall notify the Board of her intention to seek other employment no later than the date she submits a written application for other employment, or accepts an appointment for an oral interview, whichever occurs first. Failure to provide the Board with such notice shall constitute a material breach of this Agreement. If at any time the Superintendent fails to perform her duties and obligations to District to the satisfaction of the majority of the Board during Superintendent's search for other employment, such failure shall constitute a material breach of this Agreement, and the Board may, upon majority vote exercise any remedy provided for by law, including but not limited to modification or termination for cause of this Agreement. In consideration for this Agreement, Superintendent hereby agrees to withdraw any pending written applications, appointments for oral interviews and shall not consider any other

employment considered or entertained prior to the time of execution of this Agreement.

H. Unilateral Termination by the Superintendent

Superintendent may, at her option, unilaterally terminate this Agreement by giving sixty (60) days' written notice that she will not fulfill the obligations of this Agreement and that she wishes to be relieved of this Agreement for the remainder of the period of the Agreement.

I. Nonrenewal

The Governing Board may elect not to renew this Agreement for any reason and shall provide Superintendent with written notice of this fact no later than forty-five (45) days prior to the expiration of this Agreement. Superintendent shall inform the Governing Board of this notice requirement, in writing, no later than March 1st of the final year of this Agreement. Superintendent agrees that failure to provide the Governing Board with such written notice shall conclusively constitute a material breach of this Agreement. Notwithstanding any contrary term contained in this Agreement, the Governing Board may, upon majority vote, immediately terminate this Agreement based on Superintendent's failure to provide the written notification and Superintendent shall not be entitled to any further payment or benefits under this Agreement.

14. ABUSE OF OFFICE

Pursuant to Government Code section 53243.2, any funds received by the Superintendent from the District as a buyout, resulting from the Board's decision to terminate the Superintendent without cause, shall be fully reimbursed to the District if the Superintendent is convicted of a crime involving the abuse of her powers of office. If the District funds the criminal defense of the Superintendent against charges involving the abuse of her office or position, and the Superintendent is then convicted of those charges, the Superintendent shall fully reimburse the District for all District funds paid for the Superintendent's criminal defense.

15. PROFESSIONAL LIABILITY

As to acts arising out of or in the course of the Superintendent's employment, and to the extent required by law, the Governing Board agrees to defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought against Superintendent in her official capacity as agent and employee of the Governing Board or in her individual capacity, except that in no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings.

16. DELIVERY OF NOTICES

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

SUPERINTENDENT:

Dr. Sara Noguchi
Superintendent
426 Locust St
Modesto, CA 95351

DISTRICT:

Board President
Modesto City Schools
426 Locust Street
Modesto, CA 95351

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.

17. SAFETY

In the event of public controversy or threats, if the Board or Superintendent deems it necessary, the Board will at the District's expense provide appropriate security measures for the safety of the Superintendent and Superintendent's family.

18. DISTRICT TECHNOLOGY

The Governing Board shall pay the Superintendent an annual technology stipend of One Thousand Five Hundred Dollars (\$1,500), which shall be payable in monthly installments, to offset the cost of the Superintendent's cell phone and home office for the purpose of facilitating Superintendent's performance of District business outside the normal workday.

The Superintendent agrees to sign all technology use agreements or other forms that are required of other District employees. Notwithstanding any District policy to the contrary, the Superintendent agrees all communications related to the District's business are available to the District irrespective of the form of communication, device or account used.

19. GENERAL PROVISIONS

A. Governing Law

This Agreement, and the rights and obligations of the parties, shall be governed by and construed in accordance with the laws of the State of California.

B. Entire Agreement

This Agreement contains the entire agreement and understanding between the parties. It supersedes and replaces any prior agreement between the parties.

There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

C. Amendment

This Agreement may be amended at any time during the term of the Agreement. However, such amendment shall be in writing and is only effective with the mutual consent of the Superintendent and ratification by the Governing Board.

D. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

GOVERNING BOARD OF MODESTO
CITY ELEMENTARY SCHOOL DISTRICT
AND MODESTO HIGH SCHOOL DISTRICT
(MODESTO CITY SCHOOLS)

Date: _____

By _____
Cindy Marks
President of the Governing Board

Date: _____

By _____
Dr. Sara Noguchi
Superintendent