

SAN MATEO-FOSTER CITY SCHOOL DISTRICT
EMPLOYMENT AGREEMENT FOR DISTRICT SUPERINTENDENT

THIS AGREEMENT is entered into on May 20, 2021, between the Governing Board (hereinafter "the Board") of and on behalf of the San Mateo-Foster City School District of California (hereinafter "the District") and Diego Rodriguez Ochoa (hereinafter "the Superintendent").

1. TERM

The term of this Employment Agreement is from July 1, 2021 through June 30, 2024.

2. QUALIFICATIONS AND EMPLOYMENT STATUS

The Superintendent warrants and represents that he currently possesses an administrative credential issued by the State of California, and that such credential has not been suspended or revoked. Any suspension or revocation of such administrative credential shall constitute cause for termination of this Agreement.

The Superintendent shall not become a permanent employee of the District. His employment rights and status shall be determined solely by this Agreement and California law that does not conflict with the terms hereof.

3. POWERS AND DUTIES

The Superintendent shall serve as the chief executive officer of the District. In that capacity, the Superintendent shall perform all services, acts, and functions necessary or advisable to manage and conduct the business and operations of the District, subject at all times to state and federal laws and the policies, rules, and direction of the Board. The Superintendent is the leader of the Administrative Team and agrees to work effectively as a member of the team. Together, the Administrative Team plans, directs, and coordinates the operations of the District.

The Superintendent shall perform the duties prescribed by the laws of the State of California, Board policy, the job description and Education code section 35035. The Superintendent shall act as Secretary to the Board as described in Education Code section 35025. The Superintendent, as the chief executive officer, shall: (1) review all policies adopted by the Board and make appropriate recommendations to the Board; (2) periodically evaluate or cause to be evaluated all District employees; (3) advise the Board of sources of funds that might be available to implement present or contemplated District programs; (4) assume responsibility for those duties specified in Education Code section 35250; (5) endeavor to maintain and improve his professional competence by all available means, including subscription to and reading of appropriate professional journals; (6) establish and maintain positive community, staff and Board relations; (7) serve as liaison to the Board with respect to all matters of employer-employee relations and make recommendations to the Board concerning those matters; (8) recommend District goals and objectives to the Board; and (9) provide timely information to Board members about important issues affecting or that may affect the District.

The Superintendent is directly responsible to the Board. The Superintendent facilitates communication and information among the administrators, the Board, staff, parents and community, and sets a positive tone for the District. The Superintendent has the authority to direct and supervise the activities of all District employees, programs, and functions to ensure the effective administration of the entire District.

The Superintendent shall have primary responsibility in making recommendations to the Board regarding all personnel matters, including employment, assignment, transfer and dismissal of employees, consistent with Board Policies.

4. BOARD-SUPERINTENDENT RELATIONS

The Superintendent will work with the Board in developing and maintaining a spirit of cooperation and teamwork in which the Board will accept responsibility for formulating and adopting policy and for taking action on matters which, by law, require Board action. Administrative responsibility and commensurate authority for administering the school system will be delegated by the Board to the Superintendent.

The Board recognizes that it is a collective body and each Board member recognizes that a Board member's authority is derived from the collective deliberation and actions of the Board as a whole in a duly-constituted meeting. Except as permitted by Board bylaw, policies, protocols or other authority, individual Board members will not give direction to the Superintendent or any staff member regarding the management of the District or the solution of specific problems. The Board, individually and collectively, will refer promptly to the Superintendent any criticism, complaint or suggestion brought to the attention of the Board or any member thereof, pursuant to Board bylaws and protocols. The Superintendent will take appropriate action and/or respond, and notify the Board President.

The Board shall provide the Superintendent with periodic opportunities to discuss Board-Superintendent relationships as they relate to the Board's governance and the effectiveness of the Superintendent's leadership. As a part of this process, when it is deemed necessary by either the Board or the Superintendent, the District may retain an outside advisor to facilitate this process.

The Board shall hold the Superintendent accountable to manage the District consistent with the approved policies and goals, which establish what the Board expects the District and the schools within the District to accomplish.

5. EVALUATION

Each year of the agreement, the Board and Superintendent shall establish by mutual agreement the Superintendent's performance objectives and benchmarks for the next school year. Said performance and objectives as outlined in the timetable listed below shall be reduced to writing no later than September 15th, and shall be based on the duties and responsibilities set forth in this Agreement:

September 15	Superintendent and Board establish performance goals and evaluation criteria.
May 1 - July 31	Board meets to prepare evaluation, then entire Board or Board subcommittee meets with Superintendent to deliver evaluation. At Superintendent's or Board's request, Superintendent and Board will meet in closed session to discuss the evaluation process or the evaluation itself.
July 31	Evaluation with Superintendent's response, if any, placed in Superintendent's personnel file and a copy of that same document provided to the Superintendent.

At least once during the year, at mid-year, the Board and Superintendent shall meet in closed session for a review of the Superintendent's performance and effectiveness, and progress towards achievement of the objectives jointly established for that school year. Modifications to those performance objectives may occur from time to time as the parties may agree and shall be reduced to writing by the Superintendent. A summary of the midyear discussion(s) may also be reduced to writing by the Board.

Evaluations shall be based upon the achievement of the mutually agreed upon performance goals for the year in question, the Superintendent's effectiveness at discharging his duties as defined in the employment agreement and Board Policies, and job description, if any. If the Board deems it appropriate, it will provide written recommendations for strengthened performance to the Superintendent.

In the event the Board determines that the performance of the Superintendent is unsatisfactory in any respect, the Board may, if it deems appropriate, describe in writing the unsatisfactory performance, and indicate what objective(s) must be accomplished and the date by which it should be accomplished in order for the Superintendent's performance to be deemed satisfactory.

6. COMPENSATION

The Superintendent's base annual salary, effective July 1, 2021, shall be \$252,000 and an annual stipend of \$1,500 in recognition of a Master's Degree. The base annual salary and stipend shall be paid in equal monthly installments. This annual base salary amount and the stipend includes recognition for any other certifications and licenses, workdays, vacation and holidays. The annual salary and stipend shall be prorated for less than a year of employment.

Beginning in the 2023-2024 fiscal year, the Superintendent's base annual salary shall be increased by 5%, contingent upon a satisfactory performance evaluation for the preceding year, as determined by the Board through the evaluation process.

At the discretion of the Board, and based on Superintendent's merit, job performance, District fiscal considerations, and any other criteria determined relevant by the Board, the Board may grant an additional increase for any year of the Agreement. Specific Board action, approving a written amendment to this Agreement in open session, is required to approve any such salary increase. Any salary increase shall not be considered either as entering into a new agreement or extending the term of this Agreement.

7. FRINGE BENEFITS

The Superintendent shall receive the following fringe benefits:

a. **Medical, Dental, Vision and Life insurance**

The same medical, dental, vision and life insurance as provided to the District's management personnel. A term Life insurance policy of \$150,000 is provided in addition to the existing group policy for management employees, or an equal premium amount applied toward a disability policy for the duration of this Agreement. The District will provide a \$1000 annual cap toward District medical coverage or in lieu of District medical coverage. The Superintendent will not be eligible for lifetime health benefits.

- b. Cell phone
The Superintendent shall be provided a cell phone stipend in a manner that is consistent with the stipend provided other management employees.
- c. Professional Dues and Expenses
Payment of the Superintendent's membership dues for ACSA, CALSA, and AASA. Membership dues and expenses for two other professional or community service organizations selected by the Superintendent and approved by the Board.

8. EXPENSE REIMBURSEMENT

The District shall reimburse the Superintendent for all actual, necessary and reasonable expenses which are incurred within the scope of employment, pursuant to Board Policy 3350. The Superintendent shall provide expense records which the District normally requires for reimbursement.

Superintendent shall be responsible for providing his own automobile and appropriate levels of automobile insurance. Mileage reimbursement for District related travel for actual and necessary travel expenses incurred while performing authorized services for the District will be paid in accordance with board policy.

9. WORK YEAR AND VACATION

The Superintendent is a twelve month employee and his annual salary is based on a full twelve month work year, with the exception that the Superintendent will be entitled to 29 vacation days and 15 holidays. The Superintendent shall submit to the Board a work year calendar each year before July 31. The Superintendent shall notify the Board President in advance of any changes he plans to make to his work calendar.

The Superintendent shall take vacation during the year in which it is earned, unless the Board President gives written approval to carry over unused days. At the conclusion of each fiscal year, the District shall pay to the Superintendent the amount owed for any vacation days accumulated and unused during that fiscal year. In the event of termination or expiration of this Agreement, the Superintendent shall be entitled to compensation for unused accrued vacation up to a maximum of 29 days at the then current salary rate. The Superintendent is entitled to paid holidays as specified by California and/or Federal law and District policy.

10. SICK LEAVE

The Superintendent is entitled to 12 sick leave days per year. The Superintendent may also use personal necessity and business leave days in accordance with District policy for full time employees.

11. PROFESSIONAL GROWTH ACTIVITIES

Prior to September 1 each year, the Superintendent shall submit to the Board a schedule of anticipated professional growth activities for the school year. Any additions to this schedule shall require prior Board approval. At regular intervals to be scheduled during the year by the Board and Superintendent, the Superintendent shall report back to the Board concerning these professional growth activities and any information and/or educational developments as the Board may request.

12. OUTSIDE PROFESSIONAL ACTIVITIES

The Superintendent's professional priority is the District during the term of this Agreement and any extensions that may occur. The Superintendent may serve as a consultant, speaker, lecturer or engage in other activities on a short-term basis. Any such activities that require the Superintendent to be absent from the District on work days per the annual work year calendar shall be reported to the Board President and subject to Board approval. Any compensation received by the Superintendent for these outside professional activities shall belong to the Superintendent if they are completed on the Superintendent's vacation or non-work days.

13. EXTENSION OF AGREEMENT

The parties acknowledge that the initial term of this Agreement is three (3) school years. In each year of this agreement, at the discretion of the Board and upon the Superintendent's receipt of a satisfactory overall evaluation, the Board may offer to extend this Agreement for a period of one (1) additional year on the same terms and conditions set forth herein. If the Superintendent is agreeable to the extension, then the extension shall be ratified by the Board at the next regularly scheduled Board meeting following the date of the evaluation, during open session and memorialized in writing delivered to the Superintendent.

14. TERMINATION OF AGREEMENT

This Agreement may be terminated prior to its expiration by any of the following methods:

- A. Mutual Agreement. At any time the parties may mutually agree to terminate the agreement.
- B. Disability. Should the Superintendent be unable to serve in his position due to physical and/or mental condition, and upon expiration of the Superintendent's sick leave and disability entitlement as provided by statute or Board policies, after submission of a written evaluation by a licensed physician selected by the Board, which evaluation indicates the Superintendent's inability to carry out the duties of the position of Superintendent, this Agreement may be terminated by the Board.
- C. Unilateral Termination by Superintendent. The Superintendent may terminate this Agreement by providing the Board with a written notice of intent to terminate. This notice shall be provided no less than ninety (90) days prior to the effective date of said termination. The Superintendent and the Board may mutually agree to a termination notice of less than ninety (90) days. Should the Superintendent become a finalist for other employment, he shall immediately notify the Board.
- D. Unilateral Termination by Board. The Board, at its sole discretion and without the need for any cause, may, upon giving written notice to the Superintendent, terminate this Agreement. If the Board elects this option to terminate the Agreement, the District shall pay the Superintendent severance pay at the selection of the Superintendent, in one lump-sum payment or equal monthly payments beginning no later than the effective date of termination, the base salary the Superintendent would have earned for the remainder of this Agreement following the effective date of termination, not to exceed the equivalent of twelve months of salary. The Superintendent shall also receive the same District paid medical, dental, and vision insurance for the same period of time in accordance with Government Code 53261. If the contract is

terminated under this provision, any cash settlement related to the termination that Superintendent may receive from the District shall be fully reimbursed to the District if the Superintendent is convicted of a crime involving an abuse of office or position.

- E. Non-renewal of Agreement by Board. The Board shall provide the Superintendent with at least forty-five (45) calendar days' written notice prior to the expiration date of this Agreement of the Board's intention not to renew or extend this Agreement beyond its then current expiration date. The Board and the Superintendent agree that this is intended to implement the notice requirement in Education Code section 35031. It shall be the duty of the Superintendent to notify each member of the Board in writing of this non-renewal provision of the Agreement no later than December 1 immediately prior to the expiration of this contract or any extension thereof. If the Superintendent fails to provide this notice to the Board, he shall be deemed to have waived the requirements and automatic renewal provisions of section 35031, and shall further be deemed to have received notice of his non-renewal by the Board as if he had received actual timely notice of non-renewal.
- F. Termination for Cause. The Board may discharge the Superintendent for cause. Discharge for cause shall be warranted only for conduct that is prejudicial to the District, including but not limited to, neglect of duty.

Notice of discharge for cause shall be given in writing and the Superintendent shall be entitled to appear before the Board to discuss such causes.

If the Superintendent chooses to be accompanied by legal counsel at such meeting, the Superintendent shall bear any costs he incurs for such representation. Such meeting shall be conducted in closed session unless mutually agreed otherwise.

The Board shall prepare a written statement of reasons for any decision to discharge for cause and provide it to the Superintendent. The Superintendent shall have the right to submit a written response to the decision, which the District shall attach to and make a part of the decision.

All documents relating to termination of this Agreement shall be treated as confidential personnel matters and maintained in confidence except as required by California law.

- G. Remedies. The parties expressly understand and agree that any breach or termination of this Agreement by the District and/or Board shall not result in the Superintendent's continued employment or reinstatement. The remedies provided in this Agreement are the exclusive remedies available to the Superintendent.

If the contract is terminated under any of the foregoing provisions, any cash settlement related to the termination that Superintendent may receive from the District shall be fully reimbursed to the District if the Superintendent is convicted of a crime involving an abuse of office or position.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding 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.

16. APPLICABLE LAW

This Agreement shall be construed in accordance with, and governed by the laws of the State of California; should any provision of this Agreement be invalid, the remainder of this Agreement shall nevertheless be binding and effective.

17. VENUE

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed by the laws of that State. Venue of any action to enforce this Agreement shall be in Santa Clara County, California.

18. ATTORNEYS' FEES

The parties further agree and understand that in the event that legal proceedings are initiated for the purpose of enforcing the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to an award of reasonable attorneys' fees and costs incurred in bringing or defending such action.

19. AMENDMENTS

The parties agree that the terms of this Agreement cannot be changed or supplemented orally and may be modified or superseded only by a written instrument executed by all parties.

20. EXECUTION IN COUNTERPARTS

This Agreement may be executed in two or more counterparts which, taken together, shall constitute the whole Agreement between the parties. A fax or "pdf" signature shall be as valid as an original signature. A copy of this document shall be as valid as the original.

21. EFFECTIVE DATE

The effective date of this Agreement shall be July 1, 2021 even though the date on which the Board may approve this Agreement may occur on a different date.

22. NON-WAIVER

Failure to insist upon strict performance of any requirement of this Agreement shall not be construed as a waiver of any other or future performance hereunder.

23. INDEMNITY AND DEFENSE OF SUPERINTENDENT

The District shall indemnify, save, hold harmless and defend the Superintendent from any claim, demand, suit, action and proceeding of any kind and in any forum wherein the Superintendent is alleged to have acted in any way related to his duties as Superintendent or related to the District. The District's obligation to indemnify shall be excused only as to liability for damages awarded against the Superintendent upon exhaustion of all appeals from any finding by a court of competent jurisdiction that the Superintendent's action was outside the scope of his employment, intentionally violated a criminal law of California or constituted intentional fraud with malice without reversal of such finding. Upon retirement or separation from the District, the Superintendent will continue to be indemnified for any actions taken against him related to his role as Superintendent.

24. NO ASSIGNMENT

The Superintendent may not assign or transfer any rights granted or obligations assumed under this contract.

25. INDEPENDENT REPRESENTATION

The Superintendent and the Board each recognize that in entering into this Agreement, the parties have relied upon the advice of their own attorneys or other representatives, and that the terms of this Agreement have been completely read and explained to them by their attorneys or representatives, and that those terms are fully understood and voluntarily accepted. The Superintendent acknowledges and agrees that legal counsel for the Board represents the Board's interest exclusively and that no attorney-client relationship exists between Superintendent and legal counsel to the Board.

Dated: _____

Diego Rodriguez Ochoa
Superintendent
San Mateo-Foster City School District

Dated: _____

Kenneth Chin
President, Governing Board
San Mateo-Foster City School District

Ratified in a public meeting of the Governing Board on _____