

MENLO PARK CITY SCHOOL DISTRICT
EMPLOYMENT AGREEMENT FOR SERVICES AS SUPERINTENDENT

This Agreement is entered into on _____, between the Menlo Park City School District Governing Board ("Board") and Erik Burmeister ("Superintendent").

1. Employment as Superintendent

By this Agreement, the Board employs the Superintendent and the Superintendent accepts employment as the Superintendent of the Menlo Park City School District ("District") of San Mateo County in the State of California.

2. Term of Agreement

2.1 The term of this Agreement shall be three years, beginning on July 1, 2017, and ending on June 30, 2020, unless otherwise terminated or extended.

2.2 Following each annual evaluation of the Superintendent's job performance, the Board shall consider an extension of the term of this Agreement at its sole discretion.

2.3 If the Board decides not to reemploy the Superintendent at the expiration of this Agreement, the Board shall notify the Superintendent in writing at least forty-five (45) days before this Agreement expires, as provided in Education Code Section 35031.

3. Duties and Responsibilities

3.1 The Superintendent shall serve as the Superintendent of the Menlo Park City School District. In that capacity, the Superintendent shall perform all services, acts, and functions necessary or advisable to manage and conduct the business of the District, subject at all times to direction of the Board, state and federal laws, and the District policies and rules.

3.2 The Superintendent shall perform the duties prescribed by the laws of the State of California, the regulations of the State Board of Education, and Board policy. The Superintendent shall act as Secretary to the Board as described in Education Code Section 35025. In addition to the powers and duties described in Education Code Sections 35035 and 35250, the Superintendent shall have such additional powers and duties as specifically delegated to the Superintendent by the Board.

- 3.3 As the chief executive officer of the District, the Superintendent shall implement all Board decisions and manage the schools in accordance with law and Board policies, and shall have primary responsibility for making recommendations to the Board regarding all personnel matters, including selection, assignment, transfer and dismissal of employees. The Board shall retain primary responsibility for formulating and adopting policies. The Superintendent may delegate any of the Superintendent's responsibilities and duties to other District staff but remains accountable to the Board for all areas of operation under the Superintendent's authority.

4. Evaluation Process

- 4.1 The Board may evaluate the performance of the Superintendent at any time during this Agreement, and the Board may meet with the Superintendent at any time during the year to discuss the performance goals. In addition, the Board will evaluate the Superintendent at least once a year according to the procedure set forth below.
- 4.2 The annual written evaluation at a minimum will consist of an assessment of the following elements:
- Relationships with the parents and community, the teaching and classified staff, the management and support staff, and the Board itself;
 - Managing the District's fiscal affairs;
 - Managing the District's curriculum and student learning;
 - Meeting the Board's supplemental goals.

The summary evaluation at a minimum shall involve a numerical rating of 1-10 on each of the above major elements. In consultation with the Superintendent, the Board will establish a simple rubric for the rating.

- 4.3 By September 1 of each year, and in any event no later than September 30, the Superintendent shall notify the Board of its evaluation responsibilities, which shall include, but not be limited to providing the Board with copies of this Agreement, submitting a list of proposed performance objectives, and proposing a schedule for completing a written evaluation of the Superintendent according to this process.

- 4.4 The Board and the Superintendent shall meet to establish the Superintendent's performance objectives. These objectives shall be committed to writing and shall constitute one of the standards by which the Board evaluates the Superintendent's performance. On or before September 1st of each succeeding school year, the parties will meet to establish performance objectives for the year.
- 4.5 The Board shall complete the written evaluation normally before May 1 of each year, but under any circumstance, before the June 30 of each year.

5. Salary

- 5.1 Effective July 1, 2017, the Board shall pay the Superintendent an annual salary of two hundred twenty-three thousand dollars (\$223,000), which shall be Superintendent's annual salary for each year of this three-year Agreement.
- 5.2 General Provisions: The annual base salary shall be payable in twelve equal monthly installments. The District will pay all the usual employer contributions to CalSTRS, SDI, workers' compensation, and other payroll-driven costs as required by law and applicable regulations. The District makes no promises or warranties regarding whether any particular compensation or service credit will be deemed creditable by CalSTRS.
- 5.3 Board Action Required: Specific Board action is required to approve any salary increase. A salary increase shall not be considered by itself as either entering into a new agreement or extending the term of this Agreement. Any changes in salary made during the term of this Agreement shall be made by a written amendment to this Agreement.

6. Health and Welfare Benefits

The Superintendent may participate in the health and welfare benefits programs available to other full-time certified employees of the District, but the Superintendent will be responsible for the full cost of participation in any such programs.

7. Annual Medical Exam

The Superintendent is required to have an annual comprehensive physical examination by a licensed physician paid for by the District. Following the examination, the physician shall provide to the Board a signed statement concerning the Superintendent's ability to perform the duties required of the position. The physician's statement shall be confidential. The District shall

pay the costs of the examination and report to the extent the costs are not covered by medical insurance.

8. Vacation and Holiday Allowance

8.1 The Superintendent will be entitled to twenty-five (25) days of annual vacation with pay exclusive of paid holidays. The parties' express intention is that the Superintendent will take the full amount of vacation each year.

8.2 In no event may the Superintendent accumulate more than ten (10) vacation days in addition to his annual entitlement for the year.

8.3 Upon termination or expiration of this Agreement, the Superintendent shall be entitled to compensation at the then current salary rate for all unused and allowable accumulated vacation days, which is a potential maximum of 35 days (one year's allocation plus ten days), pursuant to Sections 8.1 and 8.2.

8.4 Twice during the school year (December and June) the Superintendent shall provide the Board with a report of vacation taken, scheduled and carried-over, subject to the limitations contained within this Section. Advance written notification to the Board is required for the Superintendent's use of five (5) or more consecutive vacation days. In addition, the Superintendent shall follow District procedures developed by the Business Office for reporting vacation usage.

8.5 The Superintendent shall be entitled to the same paid holidays as are granted to other certificated 12-month management staff.

9. Business and Related Expenses, Automobile Allowance, and Tax Sheltered Annuity

9.1 The Superintendent will follow normal District procedures as developed by the District Business Office for requesting expense reimbursement. Each reimbursement request shall be accompanied by receipts and other appropriate documentation and must be submitted to the Board for approval. The Superintendent shall submit expense reimbursement requests on a monthly basis.

9.2 The Superintendent shall receive two hundred and fifty dollars (\$250) per month to compensate for the general operation of the Superintendent's own vehicle in relation to District related activities within the San Mateo and Santa Clara counties.

- 9.3 Reimbursement for travel outside the two counties will be paid in accordance with Board policy. Prior Board approval is required for reimbursement of out-of-state travel.
- 9.4 The District shall establish an IRS 403(b) account to allow individual contributions by the Superintendent. This provision is conditioned upon the District's ability to establish such an account at no cost to the District and shall be subject to the County Office and IRS rules and regulations.

10. Professional Memberships

- 10.1 The District shall pay individual membership for the Superintendent in the Association of California School Administrators (ACSA) and the national School Superintendents Association (AASA) during each year of this Agreement.
- 10.2 With prior Board approval, the District shall pay membership dues and reasonable expenses for other professional, community, or service organizations selected by the Superintendent.

11. Sick Leave and Other Leaves of Absence

- 11.1 The Superintendent shall be entitled to the following leave provisions that are provide other management certificated employees within the District: sick leave, leave for personal necessity and family illness, bereavement leave, jury duty, industrial accident and illness leave, and religious leave.
- 11.2 The Superintendent shall follow District procedures developed by the Business Office and use District forms for reporting use of sick leave to the Board President and the District personnel department.

12. Outside Professional Activities

Subject to prior written approval by the Board President and Vice President/Clerk, or, at the Board President's determination, prior written approval by the Board, the Superintendent may engage in outside professional activities, including consulting, speaking engagements, writing, lecturing or other professional activities, with or without consideration, provided that the outside activities are not directly or indirectly in conflict, inconsistent or incompatible with the Superintendent's duties and responsibilities under the Agreement. If the Superintendent engages in outside professional activities as authorized by this Section on days that he would regularly be expected to be working for the District, he shall use

earned, accrued, and available vacation time for the period of time during which he is engaged in the outside professional activities. If the Board President and vice-President/Clerk grant approval for the Superintendent to conduct outside professional activities pursuant to this Section, the President shall report to the full Board at the next Board meeting regarding the activities approved.

13. Contract Termination

13.1 This Agreement may be terminated by any of the following means listed below:

13.1.1 Parties' Mutual Written Agreement

13.1.2 Superintendent's Retirement or Death

13.1.3 Superintendent's Disability

The Superintendent may be removed from his position by the Board if a licensed physician selected by the District evaluates the Superintendent and indicates that the Superintendent is unable to perform the essential functions of the Superintendent's position or will be unable to perform the essential functions of the position due to a physical or mental condition for at least six (6) months or longer.

13.1.4 Superintendent's Election to Terminate Agreement

The Superintendent may terminate this Agreement during its term without stating any cause by providing written notice to the Board at least ninety (90) days prior to the termination date. If the Superintendent becomes a candidate for apposition elsewhere during the term of this Agreement, the Superintendent shall advise the Board through the Board President of the Superintendent's intention when he becomes a finalist for any position.

13.1.5 Termination for Cause

The Board may terminate this Agreement for cause, provided, however, the Superintendent shall be given fifteen (15) days written notice of the charges against the Superintendent sufficient to permit the Superintendent a meaningful opportunity to respond to the charges, in person or in writing, to the Board prior to the Board's final decision. If the Superintendent is terminated for cause, no

compensation shall be paid beyond the date of termination. The Superintendent shall have no right to further employment by the District or to any salary or other benefit from the District. A conference with the Board shall be the Superintendent's exclusive right to any hearing that might otherwise be required by law.

Cause shall be defined as conduct that is seriously prejudicial to District. This shall include, by way of illustration and not limitation: failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to District; unprofessional conduct; incompetence; unsatisfactory annual evaluation; neglect of duty; neglect in fulfilling duties as described in this agreement; or breach of this Agreement. Whether cause for termination exists will be at the sole discretion of the Board.

13.1.6 Termination Without Cause and With Severance

13.1.6.1 Notwithstanding any other provision of this Agreement, the Board may, for any reason, without cause or a hearing, terminate this Agreement at any time without notice.

13.1.6.2 If the Board terminates this Agreement without cause before its normal expiration, pursuant to this Section 13.1.6, it shall pay Superintendent's salary for not more than six (6) months or for the number of months remaining in the unexpired term of this Agreement, whichever is less.

The actual amount to be paid shall be determined by the base annual salary paid in the last year of actual employment with the District, and shall not include the value of any other form of compensation or benefit, reimbursements or benefits received under this Agreement. Subsections 13.1.6.2 and 13.1.6.7 comply with the requirements of Government Code Section 53260.

13.1.6.3 If Superintendent is gainfully employed, receives income from consulting activities or other sources, or commences drawing retirement benefits from a retirement system during any portion of the time he is being compensated by District pursuant to

this Section 13.1.6, such earnings, retirement payments, or income shall reduce, on a dollar-for-dollar basis, District's obligation under this Section 13.1.6.

- 13.1.6.4 Payments to Superintendent shall be made on a monthly basis during the severance period unless the Board agrees otherwise. As a condition of payment, the Superintendent must file a written statement with the Board no later than the tenth (10th) day of each month listing his income, retirement, earnings, and/or health benefits contribution eligibility for the previous month. If the Superintendent fails to file the required income/earnings/benefits statement by the tenth (10th) day of any month, the District shall have no duty to pay the severance payment for that month.
- 13.1.6.5 Payments made pursuant to this Section 13.1.6 may be subject to applicable payroll deductions and treated as compensation for state and federal tax purposes. No payments made pursuant to this provision shall constitute creditable compensation for retirement purposes. Payments made pursuant to this provision shall be considered as final settlement pay and shall not count for any retirement purposes; accordingly, no deductions shall be made for retirement purposes, unless otherwise required by law.
- 13.1.6.6 The Parties agree that any damages to the Superintendent that may result from the Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the Parties agree that the payments made pursuant to this termination without cause provision constitute reasonable liquidated damages for the Superintendent, fully compensate the Superintendent for all tort, contract and any other damages of any nature whatsoever, whether in law or equity, and do not result in a penalty. The Parties agree the District's completion of its obligations under this provision constitutes the Superintendent'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.

- 13.1.6.7 Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Superintendent and the Superintendent shall not be entitled to the cash, salary payments, or other non-cash settlement as set forth above. This provision is intended to implement the requirements of Government Code Section 53260, subdivision (b).

13.2 Exclusive Remedies

The parties expressly understand and agree that any breach or termination of this Agreement by the District 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.

14. Arbitration

- 14.1 All disputes over the meaning or application of this agreement shall be subject to final and binding arbitration. No civil action concerning any dispute arising under this Agreement shall be instituted before any court.
- 14.2 If the parties cannot agree on an arbitration procedure, the dispute shall be submitted to binding arbitration under the auspices of the American Arbitration Association. Unless agreed otherwise, the formal arbitration shall be conducted according to the rules of the American Arbitration Association before a single arbitrator. The cost of the arbitrator, court reporter, transcript and related hearing costs shall be shared equally by the parties. All other costs, including the cost of representation, shall be borne by the party incurring them.
- 14.3 The arbitrator selected by the parties will first attempt to mediate a resolution of the dispute.

14.4 The arbitrator's award shall be final and binding and may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly.

15. General Provisions

15.1 Governing Law: This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the State Board of Education, and to the rules, regulations, and policies of the Governing Board of the Menlo Park City School District.

15.2 Entire Agreement: This Agreement is the full and complete agreement and understanding between the parties. There are no oral understandings, terms, or conditions, and neither party has relied on any representation expressed or implied, not contained in this Agreement.

15.3 Amendment: This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument signed by both parties.

15.4 Construction: This Agreement shall be construed as a whole according to its plain and fair meaning and shall not be construed more strongly against either party regardless of who is responsible for its preparation.

15.5 Severability and Savings: If any provision of this Agreement is held invalid by operation of law or by any arbitrator, tribunal, or court of competent jurisdiction, or if compliance with or enforcement of any provision is restrained by an arbitrator, tribunal, or court pending a final determination as to its validity, the remainder of this Agreement shall not be affected.

15.6 No Assignment: The Superintendent may not assign or waive any rights granted or obligations assumed under this Agreement.

We sign this Agreement as the full and complete understanding of the relationships between the parties.

GOVERNING BOARD OF THE MENLO PARK CITY SCHOOL DISTRICT, SAN
MATEO COUNTY, STATE OF CALIFORNIA.

By: _____
Board Member

By: _____
Board Member

By: _____
Board Member

By: _____
Board Member

By: _____
Board Member

Date: _____

I accept this offer of employment and agree to comply with the conditions of this Agreement and to fulfill all of the duties of employment of the Superintendent of the Menlo Park City School District.

SUPERINTENDENT

Erik Burmeister

Date: _____