

# PALO ALTO UNIFIED SCHOOL DISTRICT

## CERTIFICATED CABINET EMPLOYMENT CONTRACT

**THIS IS AN EMPLOYMENT CONTRACT** made, by and between the **PALO ALTO UNIFIED SCHOOL DISTRICT** of Santa Clara County, California, a political subdivision of the State of California (hereinafter referred to as "District"), and Cathy Mak, Chief Business Officer (hereinafter referred to as CBO) and collectively referred to as the "Parties".

1. **EMPLOYMENT:** The District hereby agrees to employ Cathy Mak as CBO and the CBO agrees to serve as such, subject to the terms and conditions of this Contract set out below.

2. **TERM:** The term of this contract shall be July 1, 2017 through June 30, 2020, unless terminated earlier by mutual agreement. The parties shall consider renewal for an additional term of three (3) years. This agreement shall be placed on the agenda of the governing board at least 45 days in advance of its expiration for possible action to renew for an addition term of three (3) years.

3. **SALARY:**

a. In consideration of the performance of the duties required by this Contract, the District agrees to pay the CBO an annual salary of Two Hundred Twelve Thousand Four Hundred Twelve dollars (\$212,412) per year which reflects placement at Step 5 plus two career increments on the applicable Salary Schedule. Such salary shall be payable in monthly installments on the last day of each month following rendition of service. The CBO's salary placement and salary schedule shall be annually reviewed by the Board.

b. **Stipends.** In addition to the Salary in paragraph 3a above, the CBO shall be entitled to receive an annual stipend of \$2,423 for each Master's Degree she has obtained for a maximum of two such stipends and an annual stipend of \$2,423 for a doctorate degree she has obtained.

c. **Career Increments.** After serving in this position for three (3) years, the CBO shall be entitled to receive the third career increment of \$3,212. After serving in this position for eight (8) years, the CBO shall be entitled to receive a fourth career increment of \$3,212. After serving in this position for thirteen (13) years, the CBO shall be entitled to receive a fourth career increment of \$3,212.

4. **FRINGE BENEFITS:** The CBO shall receive the following fringe benefits.

a. Health Insurance Benefits. The CBO shall receive health, dental, vision and other fringe benefits in the same manner and subject to the same limitations as other certificated administrative employees as those benefits may change from time-to-time.

b. Transportation Allowance. The CBO is required to have a vehicle available at all times to perform the services and duties of the position. Therefore, the CBO shall be entitled to receive a monthly automobile allowance of Four Hundred Fifty Dollars (\$450.00) for the acquisition, use, maintenance and insurance of an automobile while on all District business for business related travel within a radius of 50 miles from the District's boundaries, irrespective of the number of miles traveled on District business. The CBO shall be solely responsible for all expenses to use, maintain, operate and insure the automobile. The CBO's receipt of this automobile allowance shall be in lieu of any entitlement to mileage reimbursement for travel within a radius of 50 miles from the District's boundaries. No documentation shall be required in order to receive this allowance and the CBO shall have discretion regarding the expenditure of this allowance. Business related travel outside a radius of 50 miles from the District's boundaries shall be reimbursed at the IRS mileage reimbursement rate in effect at the time the expenses are incurred.

c. Expense Reimbursement. A per diem rate of \$50 per day may be claimed by the CBO to cover the cost of meals and miscellaneous expenses other than hotels, parking, travel, and tolls for one (1) or more days outside of the District on District related business. The CBO shall be reimbursed for all other actual expenses incurred in the performance of her duties, including attendance at meetings, conferences, etc., as may be permitted by either Board policy or with the prior approval of the Superintendent. For reimbursement for items beyond the \$50 per day per diem for meals, the CBO shall submit and complete expense claims in writing in accordance with the District's policies, rules and regulations and shall provide the Board with copies of the Superintendent's monthly expense reports. The CBO's expense claims shall be supported by appropriate documentation prior to reimbursement.

d. Tax Deferred Plans. The District agrees to provide the CBO with the ability to use an IRS Section 403b or similar tax deferred plan, an IRS Section 125 Cafeteria Plan, and other plans that are made available to other District employees. All employee and employer contributions to such plans shall conform to all requirements of state and federal law.

e. Cell Phone Allowance. The District shall pay to the CBO Forty dollars (\$40) per month for the acquisition and use of a cell phone. The CBO shall not be required to provide any receipts or proof that the cell phone was used exclusively for District-business.

f. Professional Fees. The District shall pay for annual dues or fees for the CBO's membership in professional associations related to her duties as the parties may mutually agree.

5. **AUTHORIZED WITHHOLDING**. Upon the request of the CBO, District shall cause to be withheld from CBO salary, such sums for transmittal to retirement plans, insurance plans, or other purposes as CBO may request.

6. **DUTIES**. CBO agrees to perform the duties of the CBO, for the District in the manner prescribed by the laws of the State of California and under the policies, rules and regulations made for or on the behalf of said District. CBO agrees to devote her full-time attention and skills to said employment during the term of this Contract, with the exception that the CBO, by prior arrangement with the Superintendent, may be assigned other professional duties and obligations not inconsistent with her duties as CBO. Also by prior arrangement with the Superintendent, the CBO may undertake speaking, writing, training or lecturing engagements. If such engagements are undertaken for compensation, the CBO will take non-duty days

7. **WORK YEAR**: The CBO shall be required to render two hundred two hundred twenty-four (224) days of service per year. The CBO shall submit a work calendar to the Superintendent for prior approval no later than June 30 for the following work year. The CBO may be compensated on a per diem basis for additional work days upon the recommendation of the Superintendent and prior approval of the Board.

8. **GOALS and OBJECTIVES**: On or prior to the commencement of this Agreement, the Superintendent and the CBO shall meet to establish goals and objectives for the ensuing school year. The goals and objectives shall be reduced to writing and shall be among the criteria by which the CBO is evaluated. Each school year the Superintendent and CBO will meet to establish goals and objectives for the next succeeding school year, in the same manner and with the same effect as described. The goals and objectives will be monitored and reviewed regularly during the school year for progress and revisions, as necessary.

9. **EVALUATIONS**: The Superintendent and the CBO shall mutually agree on an assessment instrument and format for evaluations, the aforementioned goals and objectives shall be included in the evaluation instrument. The Superintendent shall evaluate and assess in writing the performance of the CBO at least once a year, by June 30<sup>th</sup> during each year in this Agreement. A copy of the written evaluation shall be delivered to the CBO. The CBO shall have the right to make a written response to the evaluation, which shall become a permanent attachment to the CBO's personnel file. Within fifteen (15) days of delivery of the written

evaluation to the CBO, the Superintendent shall meet and discuss the evaluation. If documented unsatisfactory performance occurs:

- (A) The Superintendent shall prepare a plan for remediation;
- (B) The CBO shall have a period of ninety (90) days to remediate the performance. If remediation is successful, the regular evaluation timeline and conditions for evaluation shall be re-implemented.

10. **AMENDMENTS**: This Contract may be amended by mutual consent of both parties and any adjustment in salary of the CBO during the term of this Contract shall be deemed an amendment not a new Contract. In the event that a new Contract is agreed upon between the parties, execution of said Contract shall be deemed as automatic termination of this Contract pursuant to the rules and regulations of the State of California, the State Board of Education, and the rules and regulations of the Board of Trustees of the Palo Alto Unified School District. Said laws, rules, regulations, and policies are hereby made a part of the terms and conditions of this agreement as though fully set forth herein.

11. **TERMINATION OF AGREEMENT**:

a. **Mutual Consent**. This Agreement may be terminated at any time by mutual consent of the Board and the CBO.

b. **Non-Renewal of Agreement by the District**. The Board may elect not to renew this Agreement based on the Superintendent's recommendation by providing written notice to the CBO in accordance with Education Code 35031 (currently 45 days prior notice) or other applicable provisions of law. The CBO's position is designated as a senior management position and therefore not entitled to permanent status.

c. **Termination for Cause**. The Board may terminate the CBO for: (1) acts done in bad faith to the detriment of the District; (2) refusals or failures to act in accordance with specific provisions of this Agreement or directives of the Board or the Superintendent; (3) breach of this Agreement; (4) unsatisfactory performance; (5) any misconduct or dishonest behavior; or (6) conviction of or the entry of a plea of "nolo contendere" to any crime involving dishonesty, fraud, theft, physical violence, or the entry of a civil judgment against the CBO for fraud, breach of trust, or physical or emotional harm to any person. The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties of the parties under this Agreement. If such cause exists, the Superintendent shall meet with the CBO and shall submit a written statement of the grounds for termination and copies of written documents the Superintendent believes support the termination. If the CBO disputes the charges, the CBO shall

then be entitled to a conference before the Board in a closed session meeting. The CBO and the Board shall each have the right to be represented by counsel at their own expense. The CBO shall have a reasonable opportunity to respond to all matters raised in the charges. The conference with the Board shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. If the Board, after considering all evidence presented, decides to terminate this Agreement, it shall provide the CBO with a written decision. The decision of the Board shall be final. The CBO's conference before the Board shall be deemed to satisfy the CBO's entitlement to due process of law and shall be the CBO's exclusive right to any conference or hearing otherwise required by law. The CBO waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the CBO's remedies.

d. **Early Termination.** The CBO may terminate this Agreement at any time with at least a 45-day advance written notification to the Superintendent. The Board may, without cause or a hearing, terminate this Agreement at any time, with at least a fourteen (14) day notice. In consideration for exercise of this right, the District shall pay to the CBO, for the remainder of the term of this Agreement or six (6) months, whichever is less, a sum equal to the difference between CBO's gross monthly salary at the rate in effect during the last month of service and the amount earned from any other employment-related source (whether as an employee, independent contractor, consultant or self-employed). As a condition of payment hereunder, the CBO shall immediately seek other employment to the fullest extent required by law. In addition, the CBO shall notify the District immediately if he earns income from any employment-related activity as defined above. The CBO shall also be entitled to District paid health benefits, as those benefits may change from time-to-time, for a period of six (6) months or until the CBO becomes entitled to other health benefits, whichever occurs first. The parties agree that damages to the CBO that may result from the 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, along with the District's Agreement to provide paid health benefits, constitutes reasonable liquidated damages for the CBO, fully compensates the CBO for all tort, contract and other damages and does not result in penalty. The parties agree that the District's completion of its obligations under this provision constitutes the CBO's sole remedy of 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.

e. **Disability.** Upon expiration of the CBO's paid leave entitlement and upon written evaluation by a licensed physician of the CBO's choice, indicating the inability of the CBO to perform the essential functions of the position as a result of a physical or mental disability, with reasonable accommodation, this Agreement may be immediately terminated by the Board upon written notice to the CBO.

f. **Death.** Death of the CBO terminates the Agreement immediately. In such event, all salary and other monetary amounts due to the CBO at the time of death shall be paid to the CBO's estate unless otherwise declared in writing.

g. **Termination for Inappropriate Fiscal Practices.** Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the CBO has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the CBO and the CBO shall not be entitled to any cash, salary payments, health benefits or other non-cash settlement (e.g. health benefits) as set forth above. If the CBO elects to contest the Board's determination in this regard, the CBO may request a hearing before an administrative law judge who shall determine the amount of the cash settlement in accordance with the requirements of Government Code section 53260(b).

h. **Abuse of Office Provisions.** In accordance with Government Code section 53243 et seq., and as a separate contractual obligation, if the CBO receives a paid leave of absence or cash settlement and this Agreement is terminated for any reason, such paid leave or cash settlement shall be fully reimbursed to the District by the CBO if the CBO is convicted of a crime involving an abuse of office or the position of CBO. In addition, if the District funds the criminal defense of the CBO against charges involving abuse of office or position and the CBO is then convicted of such charges, the CBO shall fully reimburse the District all funds expended for the CBO's criminal defense. Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the CBO has engaged in fraud, misappropriation of funds, or other illegal practices, then the Board may terminate the CBO and the CBO shall not be entitled to the cash, salary payments, health benefits or other non-cash settlement as set forth above. This provision is intended to fully implement the requirements of Government Code section 53260, subdivision (b). In addition, if this Agreement is terminated, any cash settlement related to the termination that CBO receives from the District shall be fully reimbursed to the District if the CBO is convicted of a crime involving an abuse of her office or position. For purposes of this provision, "abuse of office or position" means either

of the following: (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority and (b) a crime against public justice, including but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

12. **Dispute Resolution.**

a. **Mediation.** The CBO and Board agree to make a good faith effort to settle any dispute or claim that arises under this Agreement through discussion and negotiations. In the event of a claim or dispute, the CBO or Board may request, in writing, to the other party to refer the dispute to mediation. This request must be made within thirty (30) days of the action giving rise to the dispute. Upon receipt of a request for mediation, both parties shall make a good faith effort to select a mediator and complete the mediation process within sixty (60) days. The mediator's fee, if any, shall be paid by the District. Each party shall bear its own attorney fees and costs. The parties shall use a mediator through the California State Mediation and Conciliation Service. No person shall serve as mediator in any dispute in which that person has any financial or personal interest in the outcome of the mediation. The mediator's recommendation for settlement, if any is non-binding on the parties. Mediation pursuant to this provision shall be private and confidential. Only the parties and their representatives may attend any mediation session. Other persons may attend only with the written permission of both parties. All persons who attend any mediation session shall be bound by the confidentiality requirements of California Evidence Code section 1115 et seq. and shall sign an agreement to that effect. Completion of mediation shall be a condition precedent to arbitration, unless the other party unreasonably refuses to cooperate in the setting of mediation.

b. **Binding Arbitration.** The CBO and Board agree to submit all disputes regarding the termination of this Agreement to final and binding arbitration, either following mediation which fails to resolve all disputes or in lieu of mediation as may be agreed by the parties. Either party may make a written request to the other for arbitration. If made in lieu of mediation, the request must be made within thirty (30) days of the action giving rise to the dispute. If the request for arbitration is made following an unsuccessful attempt to mediate the parties' disputes, the request must be made within five (5) days of termination of the mediation. The parties shall make a good faith attempt to select an arbitrator and complete the arbitration with ninety (90) days. The arbitrator's qualifications must meet the criteria set forth above for a mediator, except, in addition, the arbitrator shall be an attorney unless otherwise agreed by the parties. The arbitration shall take place in Santa Clara County, California, unless otherwise agreed by the

parties. The arbitrator's fee shall be paid equally by both parties. Each party shall bear its own attorney fees and other costs. The arbitrator shall render a written decision and provide it to both parties. The arbitrator may award any remedy or relief otherwise available in court and the decision shall set forth the reasons for the award. The arbitrator shall not have any authority to amend or modify this agreement. Any arbitration conducted pursuant to this paragraph shall be governed by California Code of Civil Procedure sections 1281 et seq.

13. **Waiver**. Any waiver of any breach of any term or provision of this Agreement shall be in writing and shall not be construed to be a waiver of any other breach of this Agreement.

14. **Complete Agreement**. This Agreement constitutes and contains the entire agreement and understanding between the parties concerning the CBO's employment with the District. This instrument supersedes and replaces the existing employment agreement and all prior negotiations and all agreements proposed or otherwise, whether written or oral.

15. **Governing Law**. This Agreement has been executed and delivered within the State of California, and rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

16. **Construction**. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions of this Agreement and shall have no force or effect.

17. **Execution**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

18. **No Assignment**. This is an Agreement for personal services. The CBO may not assign or transfer any rights granted or obligations assumed under this Agreement.

19. **Modification**. This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument executed by both parties.

20. **Exclusivity**. To the extent permitted by law, the employment relationship between the District and the CBO shall be governed exclusively by the provisions of this Agreement and not by Board policies, administrative regulations, Management Handbooks or similar documents.

21. **Independent Representation**. The CBO 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



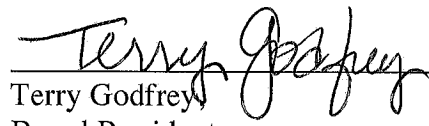
them by their attorneys or representatives, and that those terms are fully understood and voluntarily accepted.

22. **Savings Clause.** If any provision of this Agreement or its application is held invalid, the invalidity shall not affect the other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and the provisions of this Agreement are declared to be severable.

23. **Board Approval.** The effectiveness of this Agreement shall be contingent upon approval by the District's Board in open session as required by law.

24. **Public Record.** The parties recognize that, once final, this Employment Agreement is a public record and must be made available to the public upon request.

PALO ALTO UNIFIED SCHOOL DISTRICT

  
Terry Godfrey  
Board President

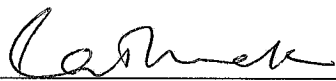
5/9/17  
Date Signed

### ACCEPTANCE OF OFFER

I accept the above offer of employment and the terms and conditions thereof and will report for duty as directed above. I understand that the District is relying upon information provided by me during the application process in extending this offer of employment. By signing below, I represent that I have not provided the District with any false information or made any material misrepresentations during the job application process.

I further represent I have not entered into an Agreement of employment with the governing board of another school district or any other employer that will in any way conflict with the terms of this employment agreement.

Dated: 5/9/17

  
Cathy Mak,  
CBO

Approved by the Board on: 5/9/17