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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marion McWilliams, General Counsel

Board Meeting Date April 10, 2019

Subject Employment Agreement – Michael Smith, Interim General Counsel

Action Requested and Recommendation Ratification by the Board of Education of Employment Agreement between the District and Michael Smith, Interim General Counsel, for the term 3/15/19 to 7/31/19, for a total base salary of \$74,250.00, plus fringe benefit costs of \$10,272.16.

Background and Discussion During the period from March 15, 2019 through May 3, 2019, Michael Smith will work with Marion McWilliams, the Board and the Superintendent to support the transition of General Counsel Marion McWilliams. During the transition period between March 15, 2019 and May 3, 2019, Marion McWilliams shall retain all rights, duties and responsibilities as General Counsel of the District. Commencing on May 4, 2019, Employee shall serve as the Interim General Counsel. The Interim General Counsel reports to the Board of Education and the Superintendent and is the primary legal advisor and legal representative of the District.

State law (SB-1436) requires the Board to report a summary of the salaries or compensation paid in the form of fringe benefits of a local agency executive. Michael Smith will receive fringe benefits of health insurance and education, travel and cell phone stipends.

Fiscal Impact Funding Resource: General Purpose – base salary of \$74,250.00, plus fringe benefit costs of \$10,272.16.

Attachments Employment Agreement

EMPLOYMENT AGREEMENT

Michael L. Smith, Interim General Counsel

In consideration of the mutual promises made herein, the Oakland Unified School District, a local public entity pursuant to Government Code § 811.2 and by the California Education and Government Codes (hereinafter, "OUSD" or "District"), and Michael L. Smith, an individual (hereinafter, "Employee"), enter into this Employment Agreement ("Agreement") and agree as follows:

Article 1 Acceptance of Employment and Term

- 1.1 The term of this employment agreement shall be March 15, 2019 through July 31, 2019 ("Term"), unless extended in writing by mutual agreement of District and Employee or terminated sooner.
- 1.2 District offers, and Employee hereby accepts, employment as Co-General Counsel for the period March 15, 2019 through May 3, 2019, and as Interim General Counsel for the District for the period May 4, 2019 through July 31, 2019, subject to the terms and conditions stated herein.
- 1.3 District and Employee agree that Employee shall act as the chief legal advisor (hereinafter "Interim General Counsel") for District and agree that all information exchanged is attorney-client privileged or confidential business information and that all services provided hereunder are legal services.

Article 2 Duties and Obligations of Employee

- 2.1 During the period from March 15, 2019 through May 3, 2019, Employee will work with Marion McWilliams, the Board and the Superintendent to support the transition of General Counsel Marion McWilliams. During the transition period between March 15, 2019 and May 3, 2019, Marion McWilliams shall retain all rights, duties and responsibilities as General Counsel of the District. Commencing on May 4, 2019, Employee shall serve as the Interim General Counsel.
- 2.2 As Interim General Counsel, Employee shall plan, organize, manage, budget for, direct, staff and control the legal work of the District; report to the Board and the Superintendent on the legal matters of the District; and, shall serve as a member of the Superintendent's senior leadership team and cabinet.
- 2.3 The Interim General Counsel reports to the Board of Education and the Superintendent and is the primary legal advisor and legal representative of the District. The primary responsibilities include: 1) providing legal advice to the Board of Education on a vast array of complex governance and policy issues, including but not limited to public meeting laws, election laws, bonds and parcel taxes, and conflict of interest laws; 2) providing legal advice

to the Board of Education, Superintendent and the District senior leadership team on legal issues, including general public education law, special education law, labor and employment law, litigation and claims, contracts, bids, construction, real property, and charter school law; 3) managing and supervising the District Legal Office, including the Labor Relations Department; 5) protecting and preserving the legal, ethical and financial stability of the District; and 5) as a member of the senior management team, serving as a highly visible representative of the school district and a participant in all major policy discussions.

Specific Duties include:

Governance & Policy

- Advises the Board of Education in certain open and closed session, regular and special meetings.
- Assists in the formulation and development of Board policies and procedures; advises the Board of Education and the Superintendent of unusual trends or problems; and recommends appropriate corrective action.
- Advises the Board of Education, Superintendent, school sites and departments on legal requirements, and the development of and compliance with board policies and administrative regulations.
- Supports the District's five year strategic plan, "Community Schools, Thriving Students" to ensure that every student graduates from high school as a caring, competent, critical thinker, ready for college and career.
- Ensures all District employees and partners comply with laws, regulations, policies and the District's strategic plan.
- Advises on major policy initiatives.
- Advises the District on public records laws, open government laws, election laws, including parcel taxes and bonds, and conflict of interest laws and requirements.
- Drafts legislative proposals presented to the California legislature.
- Drafts and reviews legal documents including rules, regulations, and resolutions.

Management and Leadership

- Plans, organizes and implements long and short-term programs and activities of the Legal Division and Labor Relations.
- Selects, trains and evaluates the performance of assigned staff.
- Provides for continuing departmental staff training regarding legal issues, processes and procedures.
- Directs the preparation and maintenance of a variety of narrative and statistical reports, records and files related to assigned activities and personnel.
- Develops and prepares the annual preliminary budget for the legal division; analyzes and reviews budgetary and financial data; and controls and authorizes expenditures in accordance with established limitations.

Labor and Employment

- Advises the District on public employees' legal rights and duties.
- Collaborates with Labor Relations and other departments around issues relating to collective bargaining rights.
- Advises on employee discipline and misconduct.
- Represents the District in employee discipline and termination proceedings.
- Represents the District in Labor and Employment law matters before state and federal courts.
- Investigates and responds to complaints filed with the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment and Housing (DFEH) and other agencies.

Litigation/Claims

- Investigates and resolves Government Tort Claims.
- Represents the District in litigation.

Business Operations

- Drafts, negotiates, and/or reviews contracts and memoranda of understanding (MOUs).
- Advises staff on matters related to procurement, contracts and agreements.
- Prepares and coordinates Request for Proposals, Requests for Qualifications, and other contract outreach.
- Supports fiscal services audits, waivers and compliance.
- Supports the District's Facilities and Buildings and Grounds programs and services, including the Bond program modernization programs, local business program and Project Labor Agreement.

Special Education

- Handles state and federal special education and Section 504 compliance issues.
- Represents the District at special education mediations and due process hearings.
- Represents the District in special education litigation.

General Student Matters

- Investigates and responds to regulatory inquiries from the Office of Civil Rights (OCR) and the California Department of Education (CDOE).
- Facilitates child custody conflicts and abuse reporting responsibilities at school sites.
- Responds to student records requests.
- Advises school sites and student discipline office in suspension, expulsion, and transfer of students.
- Advises on constitutional issues related to student's civil rights, including free speech, searches, nondiscrimination and other related issues.

Charter Schools

- Supports compliance with Proposition 39 and charter schools facilities requests.
 - Reviews charters for legal compliance.
- 2.4 Employee shall adhere to and comply with all laws, statutes, regulations, policies and administrative bulletins that presently or prospectively govern District and the conduct of its employees.
- 2.5 District and Employee agree that any intellectual property created by Employee related to or concerning the legal work of the District is owned jointly. Employee shall grant to District the right to share equally in any royalties received by Employee arising out of any intellectual property created by Employee related to or concerning the legal work of the District.
- 2.6 District may use Employee's name during the term of employment as necessary or convenient without additional compensation to Employee.
- 2.7 Employee warrants and represents that he has the ability and authority to enter into this Agreement, that there are no restrictions or limitations on entering into this Agreement, and that entering into this Agreement will not violate any agreement(s) Employee has with any third parties.

Article 3 Obligations of District

- 3.1 District agrees to defend, indemnify and hold Employee harmless against any claims, demands, actions, lawsuits, losses or damages of any kind or nature arising out of or related to the course and scope of Employee's discharge of his duties as Interim General Counsel. District may continuously maintain throughout the term of employment adequate insurance for such purpose.
- 3.2 District agrees Employee shall have final authority over the selection of personnel and allocation of resources within the Office of General Counsel, provided that authority is exercised in accordance with the laws, statutes, regulations, policies and administrative bulletins that presently or prospectively govern District and the conduct of its employees.
- 3.3 Except for matters related to the Interim General Counsel's employment contract or employment status, the District agrees Employee shall have the sole authority to retain, supervise and discharge outside legal counsel for the District, and implement such policies and procedures for the retention of outside counsel that are in the best interests of the District. The Board and Superintendent reserve the right to retain outside counsel as necessary or appropriate on matters related to the Interim General Counsel's employment contract or employment status.
- 3.4 District agrees to provide to the Office of the General Counsel sufficient resources to adequately represent and defend the District in legal proceedings.

- 3.5 District shall provide Employee within the Office of General Counsel with the office, equipment, material and resources reasonably necessary to fulfill the duties, responsibilities and obligations of Interim General Counsel.

Article 4 Compensation

- 4.1 For the period March 15, 2019 through July 31, 2019, Employee shall be paid the total base salary of \$74,250 for services provided under this Agreement, payable monthly in the same manner as other confidential administrators, at the rate of \$758.62 per day, and payable on the same schedule as other non-represented senior management employees, or at such other times as the District may provide for the payment of employee salaries. Employee shall be entitled to salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible, including but not limited to those stipends Employee last received as Deputy General Counsel prior to assuming the Interim General Counsel position.
- 4.2 District shall have the right and obligation to deduct or withhold from compensation due Employee those sums required for applicable federal, state and local income taxes and Social Security taxes.
- 4.3 Employer shall fund Employer's portion of CalPERS retirement based upon the salary herein.

Article 5 Vacation, Sick and Personal Leave

- 5.1 Employee may retain all accrued but unused leave balances that he currently has with the District as of March 15, 2019. Employee shall be entitled to continue to accrue vacation at the rate of twenty (20) annual vacation days with pay.
- 5.2 Employee shall be entitled to continue to accrue paid sick leave at the rate of 1.0 days per month up to 12 days per year. If Employee does not utilize the total amount of accrued sick leave authorized during any year, Employee may carry over the unused time to sick leave in the subsequent year.
- 5.3 Employee is entitled to continue to accrue annual paid personal leave at the rate of 5 days per year. If Employee does not utilize the total amount of accrued personal leave authorized during any year, such leave may be carried over to unused sick leave in the subsequent year.

Article 6 Employee Health Benefits and Expense Reimbursement

- 6.1 District agrees to pay directly to Employee's existing or future health, dental and vision providers, not to exceed the maximum benefits afforded to any other employee, the insurance premiums associated with Employee and his qualified dependents under Internal Revenue Code § 152. District further agrees to maintain during the term of employment long term disability insurance for Employee.

- 6.2 District shall pay the reasonable expenses of Employee to attend appropriate professional and official meetings at the local, state and national level subject to constraints of the budget of the Office of the General Counsel.
- 6.3 District shall reimburse Employee, pursuant to the policies and practices of District, the necessary costs and expenses incurred by Employee in performing his duties, including but not limited to gas, travel, materials, supplies and related expenditures, all of which must be properly documented by receipts.

Article 7 Termination of Employment

- 7.1 District and Employee agree Employee shall serve at the pleasure and will of the Board and the Superintendent, and Employee agrees that this Agreement may be terminated by:
- a. The District at any time during this Agreement by providing Employee with fifteen (15) days written notice. In such case, Employee shall be reinstated to his permanent prior position as Deputy General Counsel on the date immediately following the effective date of termination.
 - b. Employee at any time during this Agreement by providing the District with fifteen (15) days written notice. In such case, Employee shall be reinstated to his permanent prior position as Deputy General Counsel on the date immediately following the effective date of termination.
 - c. Mutual written agreement between the District and the Interim General Counsel at any time. In such case, Employee shall be reinstated to his permanent prior position as Deputy General Counsel on the date immediately following the effective date of termination.
 - d. Retirement of Employee.
 - e. Death or disability of Employee. For purposes of this Agreement, “disability” means Employee’s inability, by reason of physical or mental infirmity or both, to perform the duties contemplated under this Agreement for a period of 120 consecutive days or 150 days in the aggregate in a consecutive twelve (12) month period. “Disability” shall be determined by a licensed physician acceptable to District and Employee. The physician’s fee shall be paid by District. Any termination for disability shall not prejudice any rights under any disability policies benefiting Employee.
 - f. Discharge for Cause. For purposes of this Agreement, “cause” shall mean Employee’s (a) conviction (or a *no lo contendre* plea) to any felony; (b) dishonesty in performing his duties under this Agreement; (c) repeated and willful misconduct under this Agreement; or (d) willful neglect of his duties under this Agreement.

Prior to final determination by the Board of Education of cause for termination, Employee must have been given sixty (60) calendar days written notice of such possible

action, and of the grounds therefore, and a reasonable opportunity to be heard by the Board of Education in the way of explanation or defense.

In the event that such termination is determined by the Board and Superintendent (or later adjudicated) to be “without cause,” the remedy shall be to make Employee whole in salary and benefits to which he would have otherwise been entitled under this Agreement and to immediately reinstate Employee to his permanent prior position as Deputy General Counsel.

The Board and Superintendent reserve the right to appoint a different Interim General Counsel in the event of temporary or permanent disability or extended unavailability of the Interim General Counsel.

- g. Expiration of the term of this Agreement on July 31, 2019. No further notice is required for this Agreement to terminate at the end of its term. Upon expiration of the term of this Agreement, Employee shall be entitled to reinstatement to his permanent prior position as Deputy General Counsel on the date immediately following the expiration date of this Agreement.

Article 8 General Provisions

- 8.1 All notices required to be given under this Agreement shall be delivered via hand delivery, by first class mail or via email as follows:

To District:

Kyla Johnson-Trammell, Superintendent
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607
kyla.johnson@ousd.org

To: The Board of Education
Attn: Board President
c/o Board Office
1000 Broadway, Suite 680
Oakland, CA 94607
aimee.eng@ousd.org.

To Employee:

Michael L. Smith, Interim General
Counsel
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607
mike.smith@ousd.org

- 8.2 Additional written amendments may be added to the Agreement by mutual consent of the Employee and the Board of Education and Superintendent at any time during the period of this Agreement.

- 8.3 Any controversy between the District and Employee involving the construction or application of any of the terms, provisions, or conditions of this Agreement shall, on the written request of either party served on the other, be submitted to binding arbitration. Arbitration shall comply with and be governed by the provisions of the California

Arbitration Act. District and Employee shall agree on the selection of one person to hear and determine the dispute. If the parties are unable to agree on a single arbitrator to hear the dispute, they shall obtain a list of arbitrators from the American Arbitration Association and select the arbitrator by alternative strike method. The arbitration shall be governed by the California Arbitration Act, Code of Civil Procedure § 1280 *et seq.*

- 8.4 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th.
- 8.5 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 8.6 This Agreement constitutes the entire agreement between District and Employee concerning the subject matter of this Agreement. Any prior agreements or understandings between District and Employee concerning the same subject matter not contained within this Agreement are null and void.
- 8.7 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 lawful rules and regulations of the Board.
- 8.8 If during the term of this Agreement it is found that a specific clause of the Agreement is illegal under Federal or State law, the remainder of the Agreement not affected by such a ruling shall remain in force.
- 8.9 This Agreement may be modified or extended only in writing and must be signed by District and Employee.
- 8.10 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.


By District

By Employee

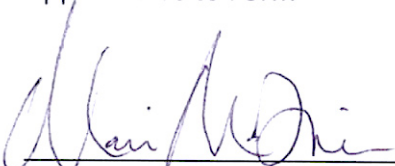
By: Aimee Eng
Aimee Eng
President, Board of Education
Oakland Unified School District

Michael L. Smith
Michael L. Smith

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By: [Signature]

By: 
Kyla Johnson-Trammell
Superintendent and Secretary,
Board of Education
Oakland Unified School District

Approved as to Form


Marion L. McWilliams, General Counsel

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