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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel 

Board Meeting Date June 8, 2011

Subject **AMENDED EMPLOYMENT AGREEMENT FOR DISTRICT SUPERINTENDENT ANTHONY SMITH**

Action Requested Approval of the Amended Employment Agreement

Background The employment contract for the Superintendent had an original term of July 1, 2009 to June 30, 2012.

Discussion The amended employment contract for the Superintendent 1) extends the term of the employment agreement from June 9, 2011 to June 30, 2015, 2) provides for the option to pay the Superintendent bi-weekly, 3) includes as a part of the Superintendent's evaluation the successful implementation of an annual work plan that is approved by the Board in August of each year, and 4) provides that the Superintendent's evaluation must be completed by the Board no later than December 31 of each year. Except for these changes, there are no changes of substance to the Superintendent's employment agreement. For ease of review, the redline which shows all the changes are attached. After approval by the Board, a version of the Agreement that accepts all the changes will be executed by the Board and the Superintendent.

Action by the Board Approval of Employment Agreement for a term from June 9, 2011 to June 30, 2015

Fiscal Impact General Purpose

Attachment

- Redline of Employment Agreement

**OAKLAND UNIFIED SCHOOL DISTRICT
AMENDED EMPLOYMENT AGREEMENT
FOR SERVICES OF DISTRICT SUPERINTENDENT**

This Employment Agreement for Services of District Superintendent ("Agreement") which was originally effective the first day of July, 2009 and entered into between the GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT (the "Board"), on behalf of the OAKLAND UNIFIED SCHOOL DISTRICT (the "District"), and DR. ANTHONY SMITH (the "Superintendent" or "Dr. Smith") is hereby amended, effective as of June 9, 2011, as provided below.

WHEREAS, the Board desires to employ Dr. Smith as Superintendent for the District and desires to provide Dr. Smith with a written contract in order to enhance the administrative stability within the schools, which the Board believes generally improves the quality of the District's overall educational program; and

WHEREAS, the Board and the Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the District.

NOW, THEREFORE, the Board and the Superintendent, for consideration herein, agree as follows:

1. **TERM.** The Board hereby offers, and Dr. Smith accepts, employment as the Superintendent of Schools for the District, for a term commencing June 9, 2011 ("Effective Date"), and ending June 30, 2015 ("Termination Date"), subject to the terms and conditions set forth herein.

2. **RENEWAL.** Except as provided in this subsection, this Agreement may be renewed under mutually agreed terms and conditions. Any renewal of this Agreement (1) must be approved by the Board, (2) must be in writing, and (3) must be signed by both parties to the Agreement. Unless this Agreement is renewed as set forth above, it shall expire on June 30, 2015.

If the Superintendent elects to retire or resign from the District at the expiration of this Agreement, he shall notify the Board in writing at least 90 days prior to the termination date of this Agreement. If he does not elect to retire or resign, and the parties are unable to agree upon terms and conditions for a renewal, the Board shall provide the Superintendent with not less than 45 days written notice that the Agreement will expire and that the Superintendent is not re-elected.

3. **DUTIES AND RESPONSIBILITIES.**

3.1. Commencing on the Effective Date of this Agreement, the Superintendent shall have charge of the administration of the District in accordance with all applicable state and federal laws and regulations and the directives, rules, regulations and policies of the Board.

3.2. The Superintendent shall serve as the District's Chief Executive Officer, in charge of all educational and financial matters pertaining to the administration and operation of the District. Although the Board retains ultimate power and authority over decisions affecting the District, the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Superintendent, but the Board retains the right to question, approve, or disapprove in its discretion, as it deems appropriate, the recommendations and decisions that the Superintendent makes.

3.3. The Superintendent shall perform the duties and exercise the powers prescribed for a Superintendent by Section 35035 of the California Education Code. The Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions

with the understanding that all personnel are subject to the approval of the Board; hire, terminate, assign and direct employees of the District (with the exception of Board staff, the Internal Auditor, who functionally reports to the Board and administratively to the Superintendent, and the Office of the General Counsel who report directly to the Board); and organize, reorganize and arrange central office, administrative and supervisory staff, as he believes best serves the District.

3.4. The Superintendent shall give his exclusive professional services to the District during the period of this Employment Contract and he shall attend all regular and special meetings of the Board, including Closed Session where no conflict of interest exists, unless otherwise excused by the Board. He shall faithfully and diligently perform the duties and responsibilities regularly performed by Superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state. For his services to the District he shall accept as full payment the compensation provided in this Agreement.

3.5. Pursuant to California Education Code Section 35029, the Board waives the requirement that Dr. Smith hold a credential enabling service as a District Superintendent and issued by the Commission on Teacher Credentialing, State of California.

3.6. In order to improve communications, improve staff morale and community support, and to expedite the problem solving process, the Board, individually and collectively, shall promptly refer all material criticisms, complaints, and suggestions called to its attention to the Superintendent for study and resolution or suggestion.

3.7. This is an Agreement for the performance of professional services as Superintendent by the Superintendent who shall not be assigned to any other position, except in cases of disability (as described in this Agreement), or have his duties reassigned without his consent.

3.8. The Superintendent shall render services in accordance with the District's standard work year for confidential administrators and he shall be entitled to the same holidays as are other non-represented managers of the District.

4. **SALARY & BENEFITS.**

4.1. The annual salary of the Superintendent shall be Two Hundred Sixty-Five Thousand Dollars (\$265,000), payable in twelve (12) equal monthly installments or bi-weekly at the option of the District in the event the District implements 24-pay.

4.2. Effective July 1, 2009, the Superintendent and his dependents shall be entitled to paid coverage under the District's health, vision, and dental insurance plans, except that the Superintendent shall pay all co-pays required by health care providers. The District shall not require the Superintendent to contribute to insurance premium costs.

4.3. The District shall pay the Superintendent's membership dues and reasonable related expenses to belong to a reasonable number of relevant professional organizations, including the Association of California School Administrators. Any such expenses in excess of \$5,000 shall be approved by the Board.

4.4. The District shall provide the Superintendent with the same life insurance benefits as it does for all other confidential administrators.

4.5. In addition to paying the employer contribution to the Public Employee's Retirement System ("PERS"), and in addition to the annual salary under 4.1, the District shall pay the Superintendent's total employee contribution to PERS. This employer-paid employee contribution shall be an additional component of the Superintendent's base salary that shall be paid to PERS as a payroll deduction from the Superintendent's monthly check.

4.6. If the Superintendent completes two (2) years of successful performance and meets the Board's Results and Operational Expectation policies, as more specifically defined in Section 8 of this Agreement, on June 30, 2011 and on every June 30 every year thereafter that the Superintendent is employed by the District, the Board agrees to make an annual contribution to a Supplemental Retirement Plan in an amount equal to the cost of purchasing one year of Non-Qualified Service for the Superintendent from PERS for that school year for up to a maximum of five (5) years. Notwithstanding the foregoing, said contribution shall be prorated in the event the Superintendent leaves the District's employ before the end of any school year of employment for which he is eligible to receive a contribution. The District shall make said annual contribution within ten (10) business days of the end of the second year of employment and within ten (10) business days of the end of any other year of employment during which the Superintendent is eligible for this additional contribution. In the event the Superintendent leaves the District's employ before the end of any year of employment for which he is eligible to receive a contribution, said contribution shall be made within ten (10) business days of the Superintendent's last day of employment with the District. The Supplemental Retirement Plan shall be a plan established under Section 403(b) of the Internal Revenue Code (the "Code") and/or a plan established under Section 457(b) of the Code. The 403(b) plan shall be established as an employer-paid plan and the Superintendent shall have no right to receive such contributions in cash. The Superintendent shall at all times be 100% vested in his account under the Supplemental Retirement Plan. The Supplemental Retirement Plan shall provide for the tax-deferred transfer of funds to PERS in order for the Superintendent to purchase the Non-Qualified Service described herein. The Superintendent shall pay all costs associated with the implementation and maintenance of the Supplemental Retirement Plan.

5. VACATION & LEAVE.

5.1. The Superintendent shall be entitled to twenty-five (25) annual vacation days with pay. The Superintendent is encouraged to take all vacation days during the year in which such days are earned. At District's option, the Superintendent may be reimbursed annually at his daily rate of pay for any unused days not to exceed twenty (20) per year. The Superintendent shall not accrue more than twenty-five vacation days annually without the written approval of the Board. The Superintendent shall provide the Board with reasonable advance notice of any travel, including any planned use of vacation, before any such travel or vacation is taken.

5.2. Upon termination or expiration of this Agreement, the Superintendent shall be entitled to receive payment for any accrued and unused vacation time equal to the number of accrued but unused vacation multiplied by his Daily Rate of Pay, subject to the limitations on the accrual of vacation time set forth in this Agreement. Payment for any such accrued and unused vacation time shall be made within ten (10) business days of the end of the fiscal year. The Superintendent's Daily Rate of Pay shall be defined as his then-current annual salary divided by 240.

5.3. The Superintendent shall commence employment with a balance of 58 days of sick leave (in acknowledgment of his balance of sick leave with his prior employer(s)). The Superintendent shall further be entitled to accrue paid sick leave at the rate of 1.0 days per month up to 12 days per year. If the Superintendent does not utilize the total amount of accrued sick leave authorized during any year, he may carry over the unused time to sick leave in the subsequent year.

6. EXPENSES. The Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing his professional responsibilities for the District, including reasonable expenses for travel outside the District. The District shall reimburse the Superintendent for automobile travel outside of the District at the then-current deductible mileage rate as provided by the Internal Revenue Service. Any such request for reimbursement shall comply

fully with all District rules and requirements relating to expense reimbursements; and shall be presented to the Board President for review and approval.

7. **PROFESSIONAL ACTIVITIES.** The Superintendent may engage in outside activities such as consulting and speaking, provided that such activities do not interfere and are compatible with the Superintendent's performance of his duties and responsibilities. Such outside activities are subject to the following approval and notification requirements: (1) if the activity requires no more than two (2) days of the Superintendent's time, he shall provide reasonable advance notice to the Board of his participation in such activity; (2) if the activity requires more than two (2) days of the Superintendent's time, he shall first receive prior approval from the Board President to participate in such activity and, if such approval is given, he must provide reasonable advance notice to the Board. The Superintendent further understands and agrees that any outside employment which may be allowed by this Agreement must be at all times subservient to his duties as Superintendent, and must be performed on vacation or leave days which have been authorized or approved by the Board.

8. **EVALUATION.**

8.1. The Board shall evaluate and assess in writing the performance of the Superintendent at least once a year during the term of this Agreement using mutually agreeable performance criteria. The Board considers the Superintendent performance to be identical to the District's performance. The District's accomplishment of the Board's Results policies, and operation according to the values expressed in the Board's Operational Expectation policies will be considered successful performance by the Superintendent. The evaluation and assessment shall be reasonably related to the position of the Superintendent and the goals and objectives of the District for the evaluation period and shall take into account, but shall not be limited to, the Superintendent's 1) successful implementation of the Superintendent's annual work plan which shall be approved by the Board in August of each year, 2) leadership to the District based on the direction of the Board, 3) effective communication with the Board and the District stakeholders, 4) successful development and implementation of a District-wide Academic Plan to improve instruction and student performance, and 5) successful implementation of the District's fiscal sustainability plan.

8.2. Within sixty (60) days of the Effective Date of this Agreement, the Board and the Superintendent shall mutually develop short-term and long-term goals for the Superintendent's service under this Agreement and a format for a written evaluation and assessment of the Superintendent's performance. In the event that the Board and the Superintendent fail in their attempt, in good faith, to agree on the development and adoption of short-term and long-term goals for services under this Agreement and/or a format for a written evaluation and assessment of the Superintendent's performance within sixty (60) days, the Board shall establish the short-term and long-term goals and/or evaluation form for the Superintendent within ninety (90) days of the Effective Date of this Agreement.

8.3. The Board shall complete the Superintendent's annual evaluation no later than December 31 of each year this Agreement is in effect, based upon the results from the preceding fiscal year. By way of example, the Superintendent's evaluation for the 2010-11 school year must be completed no later than December 31, 2011, based upon results from the 2010-11 fiscal year.

9. **TERMINATION.** This Agreement may be terminated by the following:

9.1. Death of the Superintendent.

9.2. Disability. The Board may terminate this Agreement due to the disability of the Superintendent, as defined below, after expiration of sick leave entitlement as provided by this Agreement, statute, and policies.

9.2.1 Disability shall mean that the Superintendent is unable to further serve in his position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a physician selected by the Board and who is licensed to serve in the State of California.

9.2.2 In the event the Superintendent is disabled and said disability would prevent him from reassuming his duties for a period of thirty (30) days or more, the Board may appoint an Acting Superintendent to fulfill the duties and responsibilities of the Superintendent under this Agreement.

9.2.3 In the event the Superintendent is disabled and unable to perform his duties under this Agreement, and such disability continues for more than ninety (90) days, the Board may terminate this Agreement without any obligation to pay severance payments. In the event of termination due to disability, the Superintendent shall continue to receive the salary and benefits provided for in the Agreement for a period of three (3) months from the date of termination pursuant to the terms of this paragraph. The Board's decision and termination as to the disability of the Superintendent shall be final and shall be based on the written opinion of a licensed medical doctor as set forth above.

9.3. By the Board without cause.

9.3.1 The Board may elect to terminate this Agreement, without cause, upon thirty (30) days written notice to the Superintendent. Prior to exercising this option, the Board shall provide the Superintendent with an opportunity to meet with the Board to discuss its intentions. However, no cause need be alleged or demonstrated by the Board.

9.3.2 In the event the Board exercises this option, the Superintendent agrees to relinquish any claims which he may have against the District, its officers, agents, and employees, arising from the terms of this Agreement, in return for the payment specified in this paragraph. In acknowledgement of the difficulty or impossibility of calculating possible damages to the Superintendent as a result of such termination, the parties agree that in the event of termination as provided for in this Agreement, and regardless of the term of this Agreement, the cash settlement amount of liquidated damages shall be an amount equal to the monthly salary of the Superintendent multiplied by the number of months remaining on his Agreement, but not to exceed 12 months, except as otherwise required by law.

9.3.3 In addition, in the event of such termination, the District will maintain in effect the Superintendent's health and welfare benefits for a period of time equal to the number of months remaining on his Agreement, but not to exceed 12 months, and, in any event, only until the Superintendent finds other full-time employment, whichever occurs first. The Parties agree that no duty is hereby imposed upon the Superintendent to seek full-time employment following termination of this Employment Contract as provided in this Section 9.3. Notwithstanding this paragraph, the Superintendent shall retain any rights he has to continue health and welfare fringe benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or any other applicable federal or state law.

9.3.4 The cash settlement liquidated damages specified above will be paid by District to Superintendent within 30 days from the effective date of termination of the Superintendent.

9.4. By the Board for cause.

9.4.1 The Board may elect to terminate this Agreement for cause upon thirty (30) days written notice to the Superintendent. Cause shall constitute conduct, which the Board decides is seriously prejudicial to the District, including, but not limited to, the grounds enumerated in Section 44932 of the California Education Code and specifically including the following: (a) the Superintendent's conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in the sole opinion of the Board cause embarrassment to the District; (b) the Superintendent engages in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (d) the Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Superintendent's material breach of any material term of this Agreement or his willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within 30 days after written notice of such noncompliance has been given to the Superintendent by the Board; and (f) the Superintendent's persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, or any other cause listed in the California Education Code.

9.4.2 Cause shall also constitute unsatisfactory performance provided the Board complies with all of the following conditions: (a) the Board shall be responsible for specifically identifying the material deficiencies as part of the formal evaluation process and advising the Superintendent with specificity of what he would need to do to remediate said material deficiencies; (b) a majority of the Board determines that the performance of the Superintendent continues to be materially unsatisfactory even after receiving a formal evaluation and the aforementioned notice of material deficiencies; and (c) the Board provides the Superintendent with written notice of the termination at least ninety (90) days prior to the effective day of termination.

9.4.3 Dismissal for cause shall be effective upon action taken by the Board, and all salary and benefits provided for in this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to said action shall be paid to the Superintendent within thirty (30) days of said action.

9.4.4 Timely notice of discharge for cause shall be given in writing and the Superintendent shall be entitled to appear before the Board to discuss such charges. If the Superintendent chooses to be accompanied by legal counsel at such meeting, he shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

9.5. By the Superintendent at any time during this Agreement by providing the Board with thirty (30) days written notice. In the event the Superintendent exercises his option to terminate this Agreement, the District shall have no obligation to pay a cash settlement as provided in Section 9.3 unless the parties otherwise agree in writing.

9.6. By mutual agreement between the Board and the Superintendent at any time. In the event the parties mutually agree to terminate this Agreement, the District shall have no obligation to pay a cash settlement as provided in Section 9.3 unless they otherwise agree in writing.

9.7. Under no circumstances shall any cash settlement between the Board and the Superintendent exceed the maximum amount allowed under Government Code Section 53260 *et seq.*

10. **APPLICABLE LAWS.** This Agreement is subject to all applicable laws and regulations 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 District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein.

11. **MEDIATION.** Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

12. **ENTIRE AGREEMENT.** It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

13. **SAVINGS CLAUSE.** 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 full force and effect.

14. **NOTICES.** Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite his or her name below, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

If at any time during the term of this Agreement the Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow himself to be considered, for such a position, the Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate. If the Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement, and the Board may then terminate this Agreement for cause and in accordance with section 9.4 herein.

15. **LIMITATION OF DAMAGES FOR BREACH.** The parties agree that in the event of breach of this Agreement, the damages for such breach shall not exceed the sums due as compensation under this Agreement in accordance with the limitations set forth in California Government Code Section 53260 *et seq.*

16. **INDEMNIFICATION OF SUPERINTENDENT.** In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought

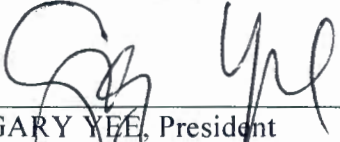
against the Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Superintendent was acting within the scope and course of his employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after his employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings.

If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent Superintendent, then Superintendent may engage separate legal counsel for which the District shall indemnify Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Superintendent under any other insurance or professional association membership.

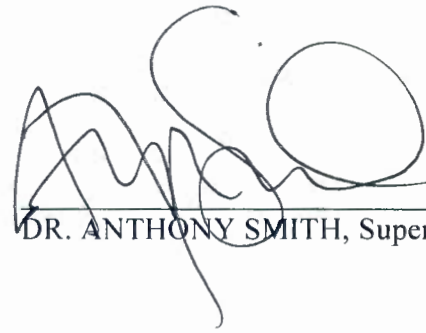
17. **WAIVERS.** No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

IN WITNESS WHEREOF, the parties hereto, or their duly authorized representatives, affix their signatures to this Agreement on June 9, 2011, in Oakland, California.

GOVERNING BOARD OF THE OAKLAND
UNIFIED SCHOOL DISTRICT:

By 
DR. GARY YEE, President

By 
EDGAR RAKESTRAW, Secretary


DR. ANTHONY SMITH, Superintendent

GOVERNMENT CODE
SECTION 53260-53264

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee 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 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b) (1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Superintendent, terminates its contract of employment with its district Superintendent of schools that local agency employer may not provide a cash or noncash settlement to its Superintendent in an amount greater than the Superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by an administrative law judge after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the Effective Date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

53261. The cash settlement specified in Section 53260 shall not include any other noncash items except health benefits, which may be continued for the same duration of time as covered in the settlement, pursuant to the same time limitations as provided in Section 53260, or until the employee finds other employment, whichever occurs first.

53262. (a) All contracts of employment with a Superintendent, deputy Superintendent, assistant Superintendent, associate Superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.

(b) Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.

53263. For purposes of this article, "local agency" means any general law county, general law city, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies.

53264. This article shall apply prospectively and shall affect any contract originally approved by the governing body, or any existing contract that is extended by the governing body, after the effective date of this article.

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To Board of Education

From Jacqueline P. Minor, General Counsel 

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AMENDED EMPLOYMENT AGREEMENT
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WHEREAS, the Board and the Superintendent believe that a written contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the District.

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3. **DUTIES AND RESPONSIBILITIES.**

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3.2. The Superintendent shall serve as the District's Chief Executive Officer, in charge of all educational and financial matters pertaining to the administration and operation of the District. Although the Board retains ultimate power and authority over decisions affecting the District, the Board shall not unreasonably interfere with the day-to-day decision-making processes of the Superintendent, but the Board retains the right to question, approve, or disapprove in its discretion, as it deems appropriate, the recommendations and decisions that the Superintendent makes.

3.3. The Superintendent shall perform the duties and exercise the powers prescribed for a Superintendent by Section 35035 of the California Education Code. The Superintendent shall have the authority to accept resignations of personnel, for and on behalf of the Board; fill vacant positions

with the understanding that all personnel are subject to the approval of the Board; hire, terminate, assign and direct employees of the District (with the exception of Board staff, the Internal Auditor, who functionally reports to the Board and administratively to the Superintendent, and the Office of the General Counsel who report directly to the Board); and organize, reorganize and arrange central office, administrative and supervisory staff, as he believes best serves the District.

3.4. The Superintendent shall give his exclusive professional services to the District during the period of this Employment Contract and he shall attend all regular and special meetings of the Board, including Closed Session where no conflict of interest exists, unless otherwise excused by the Board. He shall faithfully and diligently perform the duties and responsibilities regularly performed by Superintendents of school districts in this state, including active participation in community and civic organizations and those required by the laws of the state. For his services to the District he shall accept as full payment the compensation provided in this Agreement.

3.5. Pursuant to California Education Code Section 35029, the Board waives the requirement that Dr. Smith hold a credential enabling service as a District Superintendent and issued by the Commission on Teacher Credentialing, State of California.

3.6. In order to improve communications, improve staff morale and community support, and to expedite the problem solving process, the Board, individually and collectively, shall promptly refer all material criticisms, complaints, and suggestions called to its attention to the Superintendent for study and resolution or suggestion.

3.7. This is an Agreement for the performance of professional services as Superintendent by the Superintendent who shall not be assigned to any other position, except in cases of disability (as described in this Agreement), or have his duties reassigned without his consent.

3.8. The Superintendent shall render services in accordance with the District's standard work year for confidential administrators and he shall be entitled to the same holidays as are other non-represented managers of the District.

4. **SALARY & BENEFITS.**

4.1. The annual salary of the Superintendent shall be Two Hundred Sixty-Five Thousand Dollars (\$265,000), payable in twelve (12) equal monthly installments or bi-weekly at the option of the District in the event the District implements 24-pay.

4.2. Effective July 1, 2009, the Superintendent and his dependents shall be entitled to paid coverage under the District's health, vision, and dental insurance plans, except that the Superintendent shall pay all co-pays required by health care providers. The District shall not require the Superintendent to contribute to insurance premium costs.

4.3. The District shall pay the Superintendent's membership dues and reasonable related expenses to belong to a reasonable number of relevant professional organizations, including the Association of California School Administrators. Any such expenses in excess of \$5,000 shall be approved by the Board.

4.4. The District shall provide the Superintendent with the same life insurance benefits as it does for all other confidential administrators.

4.5. In addition to paying the employer contribution to the Public Employee's Retirement System ("PERS"), and in addition to the annual salary under 4.1, the District shall pay the Superintendent's total employee contribution to PERS. This employer-paid employee contribution shall be an additional component of the Superintendent's base salary that shall be paid to PERS as a payroll deduction from the Superintendent's monthly check.

4.6. If the Superintendent completes two (2) years of successful performance and meets the Board's Results and Operational Expectation policies, as more specifically defined in Section 8 of this Agreement, on June 30, 2011 and on every June 30 every year thereafter that the Superintendent is employed by the District, the Board agrees to make an annual contribution to a Supplemental Retirement Plan in an amount equal to the cost of purchasing one year of Non-Qualified Service for the Superintendent from PERS for that school year for up to a maximum of five (5) years. Notwithstanding the foregoing, said contribution shall be prorated in the event the Superintendent leaves the District's employ before the end of any school year of employment for which he is eligible to receive a contribution. The District shall make said annual contribution within ten (10) business days of the end of the second year of employment and within ten (10) business days of the end of any other year of employment during which the Superintendent is eligible for this additional contribution. In the event the Superintendent leaves the District's employ before the end of any year of employment for which he is eligible to receive a contribution, said contribution shall be made within ten (10) business days of the Superintendent's last day of employment with the District. The Supplemental Retirement Plan shall be a plan established under Section 403(b) of the Internal Revenue Code (the "Code") and/or a plan established under Section 457(b) of the Code. The 403(b) plan shall be established as an employer-paid plan and the Superintendent shall have no right to receive such contributions in cash. The Superintendent shall at all times be 100% vested in his account under the Supplemental Retirement Plan. The Supplemental Retirement Plan shall provide for the tax-deferred transfer of funds to PERS in order for the Superintendent to purchase the Non-Qualified Service described herein. The Superintendent shall pay all costs associated with the implementation and maintenance of the Supplemental Retirement Plan.

5. VACATION & LEAVE.

5.1. The Superintendent shall be entitled to twenty-five (25) annual vacation days with pay. The Superintendent is encouraged to take all vacation days during the year in which such days are earned. At District's option, the Superintendent may be reimbursed annually at his daily rate of pay for any unused days not to exceed twenty (20) per year. The Superintendent shall not accrue more than twenty-five vacation days annually without the written approval of the Board. The Superintendent shall provide the Board with reasonable advance notice of any travel, including any planned use of vacation, before any such travel or vacation is taken.

5.2. Upon termination or expiration of this Agreement, the Superintendent shall be entitled to receive payment for any accrued and unused vacation time equal to the number of accrued but unused vacation multiplied by his Daily Rate of Pay, subject to the limitations on the accrual of vacation time set forth in this Agreement. Payment for any such accrued and unused vacation time shall be made within ten (10) business days of the end of the fiscal year. The Superintendent's Daily Rate of Pay shall be defined as his then-current annual salary divided by 240.

5.3. The Superintendent shall commence employment with a balance of 58 days of sick leave (in acknowledgment of his balance of sick leave with his prior employer(s)). The Superintendent shall further be entitled to accrue paid sick leave at the rate of 1.0 days per month up to 12 days per year. If the Superintendent does not utilize the total amount of accrued sick leave authorized during any year, he may carry over the unused time to sick leave in the subsequent year.

6. EXPENSES. The Superintendent shall be reimbursed for all reasonable, actual and necessary expenses incurred in the course and scope of executing his professional responsibilities for the District, including reasonable expenses for travel outside the District. The District shall reimburse the Superintendent for automobile travel outside of the District at the then-current deductible mileage rate as provided by the Internal Revenue Service. Any such request for reimbursement shall comply

fully with all District rules and requirements relating to expense reimbursements; and shall be presented to the Board President for review and approval.

7. **PROFESSIONAL ACTIVITIES.** The Superintendent may engage in outside activities such as consulting and speaking, provided that such activities do not interfere and are compatible with the Superintendent's performance of his duties and responsibilities. Such outside activities are subject to the following approval and notification requirements: (1) if the activity requires no more than two (2) days of the Superintendent's time, he shall provide reasonable advance notice to the Board of his participation in such activity; (2) if the activity requires more than two (2) days of the Superintendent's time, he shall first receive prior approval from the Board President to participate in such activity and, if such approval is given, he must provide reasonable advance notice to the Board. The Superintendent further understands and agrees that any outside employment which may be allowed by this Agreement must be at all times subservient to his duties as Superintendent, and must be performed on vacation or leave days which have been authorized or approved by the Board.

8. **EVALUATION.**

8.1. The Board shall evaluate and assess in writing the performance of the Superintendent at least once a year during the term of this Agreement using mutually agreeable performance criteria. The Board considers the Superintendent performance to be identical to the District's performance. The District's accomplishment of the Board's Results policies, and operation according to the values expressed in the Board's Operational Expectation policies will be considered successful performance by the Superintendent. The evaluation and assessment shall be reasonably related to the position of the Superintendent and the goals and objectives of the District for the evaluation period and shall take into account, but shall not be limited to, the Superintendent's 1) successful implementation of the Superintendent's annual work plan which shall be approved by the Board in August of each year, 2) leadership to the District based on the direction of the Board, 3) effective communication with the Board and the District stakeholders, 4) successful development and implementation of a District-wide Academic Plan to improve instruction and student performance, and 5) successful implementation of the District's fiscal sustainability plan.

8.2. Within sixty (60) days of the Effective Date of this Agreement, the Board and the Superintendent shall mutually develop short-term and long-term goals for the Superintendent's service under this Agreement and a format for a written evaluation and assessment of the Superintendent's performance. In the event that the Board and the Superintendent fail in their attempt, in good faith, to agree on the development and adoption of short-term and long-term goals for services under this Agreement and/or a format for a written evaluation and assessment of the Superintendent's performance within sixty (60) days, the Board shall establish the short-term and long-term goals and/or evaluation form for the Superintendent within ninety (90) days of the Effective Date of this Agreement.

8.3. The Board shall complete the Superintendent's annual evaluation no later than December 31 of each year this Agreement is in effect, based upon the results from the preceding fiscal year. By way of example, the Superintendent's evaluation for the 2010-11 school year must be completed no later than December 31, 2011, based upon results from the 2010-11 fiscal year.

Deleted: April 15

Deleted: in each year during which

9. **TERMINATION.** This Agreement may be terminated by the following:

9.1. Death of the Superintendent.

9.2. Disability. The Board may terminate this Agreement due to the disability of the Superintendent, as defined below, after expiration of sick leave entitlement as provided by this Agreement, statute, and policies.

9.2.1 Disability shall mean that the Superintendent is unable to further serve in his position, with or without accommodations, because of physical and/or mental condition as certified in a written evaluation by a physician selected by the Board and who is licensed to serve in the State of California.

9.2.2 In the event the Superintendent is disabled and said disability would prevent him from reassuming his duties for a period of thirty (30) days or more, the Board may appoint an Acting Superintendent to fulfill the duties and responsibilities of the Superintendent under this Agreement.

9.2.3 In the event the Superintendent is disabled and unable to perform his duties under this Agreement, and such disability continues for more than ninety (90) days, the Board may terminate this Agreement without any obligation to pay severance payments. In the event of termination due to disability, the Superintendent shall continue to receive the salary and benefits provided for in the Agreement for a period of three (3) months from the date of termination pursuant to the terms of this paragraph. The Board's decision and termination as to the disability of the Superintendent shall be final and shall be based on the written opinion of a licensed medical doctor as set forth above.

9.3. By the Board without cause.

9.3.1 The Board may elect to terminate this Agreement, without cause, upon thirty (30) days written notice to the Superintendent. Prior to exercising this option, the Board shall provide the Superintendent with an opportunity to meet with the Board to discuss its intentions. However, no cause need be alleged or demonstrated by the Board.

9.3.2 In the event the Board exercises this option, the Superintendent agrees to relinquish any claims which he may have against the District, its officers, agents, and employees, arising from the terms of this Agreement, in return for the payment specified in this paragraph. In acknowledgement of the difficulty or impossibility of calculating possible damages to the Superintendent as a result of such termination, the parties agree that in the event of termination as provided for in this Agreement, and regardless of the term of this Agreement, the cash settlement amount of liquidated damages shall be an amount equal to the monthly salary of the Superintendent multiplied by the number of months remaining on his Agreement, but not to exceed 12 months, except as otherwise required by law.

9.3.3 In addition, in the event of such termination, the District will maintain in effect the Superintendent's health and welfare benefits for a period of time equal to the number of months remaining on his Agreement, but not to exceed 12 months, and, in any event, only until the Superintendent finds other full-time employment, whichever occurs first. The Parties agree that no duty is hereby imposed upon the Superintendent to seek full-time employment following termination of this Employment Contract as provided in this Section 9.3. Notwithstanding this paragraph, the Superintendent shall retain any rights he has to continue health and welfare fringe benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or any other applicable federal or state law.

9.3.4 The cash settlement liquidated damages specified above will be paid by District to Superintendent within 30 days from the effective date of termination of the Superintendent.

9.4. By the Board for cause.

9.4.1 The Board may elect to terminate this Agreement for cause upon thirty (30) days written notice to the Superintendent. Cause shall constitute conduct, which the Board decides is seriously prejudicial to the District, including, but not limited to, the grounds enumerated in Section 44932 of the California Education Code and specifically including the following: (a) the Superintendent's conviction for, indictment regarding (or procedural equivalent), or the entering of a guilty plea (or plea of nolo contendere) to, any crime with respect to which imprisonment is a possible punishment (whether or not actually imposed), which involves moral turpitude or which might, in the sole opinion of the Board cause embarrassment to the District; (b) the Superintendent engages in acts which are defined as moral turpitude under state or federal law and cause embarrassment to the District; (c) actions by the Superintendent during the term of this Agreement involving willful malfeasance or gross negligence in the performance of the Superintendent's duties hereunder which could be materially and demonstrably injurious to the District; (d) the Superintendent's commission of an act of fraud, embezzlement, theft or material dishonesty against the District; (e) the Superintendent's material breach of any material term of this Agreement or his willful failure or refusal to perform any material obligation or duty as required by this Agreement that has not been cured within 30 days after written notice of such noncompliance has been given to the Superintendent by the Board; and (f) the Superintendent's persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, or any other cause listed in the California Education Code.

9.4.2 Cause shall also constitute unsatisfactory performance provided the Board complies with all of the following conditions: (a) the Board shall be responsible for specifically identifying the material deficiencies as part of the formal evaluation process and advising the Superintendent with specificity of what he would need to do to remediate said material deficiencies; (b) a majority of the Board determines that the performance of the Superintendent continues to be materially unsatisfactory even after receiving a formal evaluation and the aforementioned notice of material deficiencies; and (c) the Board provides the Superintendent with written notice of the termination at least ninety (90) days prior to the effective day of termination.

9.4.3 Dismissal for cause shall be effective upon action taken by the Board, and all salary and benefits provided for in this Agreement shall cease upon said action by the Board. Salary and benefits earned or accrued prior to said action shall be paid to the Superintendent within thirty (30) days of said action.

9.4.4 Timely notice of discharge for cause shall be given in writing and the Superintendent shall be entitled to appear before the Board to discuss such charges. If the Superintendent chooses to be accompanied by legal counsel at such meeting, he shall bear any fees and/or costs therein involved. Such meeting shall be conducted in closed session unless specifically prohibited by law. The Superintendent shall be provided a written decision describing the results of the meeting. Discharge of the Superintendent pursuant to this Agreement may be accomplished by a majority vote of the Board.

9.5. By the Superintendent at any time during this Agreement by providing the Board with thirty (30) days written notice. In the event the Superintendent exercises his option to terminate this Agreement, the District shall have no obligation to pay a cash settlement as provided in Section 9.3 unless the parties otherwise agree in writing.

9.6. By mutual agreement between the Board and the Superintendent at any time. In the event the parties mutually agree to terminate this Agreement, the District shall have no obligation to pay a cash settlement as provided in Section 9.3 unless they otherwise agree in writing.

9.7. Under no circumstances shall any cash settlement between the Board and the Superintendent exceed the maximum amount allowed under Government Code Section 53260 et seq.

10. **APPLICABLE LAWS.** This Agreement is subject to all applicable laws and regulations 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 District, except as otherwise stated herein. Said applicable laws, rules, regulations and policies are hereby made part of the terms and conditions of this Agreement as though fully set forth herein.

11. **MEDIATION.** Before filing a lawsuit in respect of a dispute under this Agreement, a party claiming to be aggrieved ("aggrieved party") must first notify the other party ("other party") of its claim and initiate mediation under the mediation rules of the Judicial Arbitration and Mediation Service ("JAMS") unless the parties within thirty (30) days of the aggrieved party's notice agree upon a neutral mediator and a timetable for the mediation. If the parties cannot so agree, the mediation will be initiated by the aggrieved party and conducted by JAMS and each party will use its best efforts to mediate the dispute as expeditiously as possible. Unless (a) such mediation has been unsuccessful in resolving the dispute or (b) the other party has unreasonably delayed the mediation, the aggrieved party cannot file a lawsuit in respect of the dispute. The costs of mediation shall be borne equally by both parties.

12. **ENTIRE AGREEMENT.** It is expressly understood by both parties that any previous letter, email, or any other communication, whether oral or in writing, between the parties is null and void and of no legal force or effect. This Agreement constitutes the full and complete understanding between the parties hereto, and its terms can be changed or modified only in writing, signed by all parties or their successors in interest to this Agreement.

13. **SAVINGS CLAUSE.** 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 full force and effect.

14. **NOTICES.** Any notice required or permitted under this Agreement will be in writing and deemed to have been duly given on the date of service if served personally, or on the third day after mailing if mailed, first class postage prepaid, return receipt requested, and addressed to the addressee at the address stated opposite his or her name below, or at the most recent address specified by written notice given to the sender by the addressee under this provision.

If at any time during the term of this Agreement the Superintendent knowingly becomes a candidate for the position of Superintendent (or similar position) of another school district by any means, including, without limitation, by submitting an application, requesting consideration or agreeing to allow himself to be considered, for such a position, the Superintendent shall notify the Board in writing within three (3) business days of knowingly becoming such a candidate. If the Superintendent fails to follow the notice procedures set forth above, such failure will be deemed to constitute a material breach of this Agreement, and the Board may then terminate this Agreement for cause and in accordance with section 9.4 herein.

15. **LIMITATION OF DAMAGES FOR BREACH.** The parties agree that in the event of breach of this Agreement, the damages for such breach shall not exceed the sums due as compensation under this Agreement in accordance with the limitations set forth in California Government Code Section 53260 *et seq.*

16. **INDEMNIFICATION OF SUPERINTENDENT.** In accordance with the provisions of California Government Code Section 995, the Board shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions and legal proceedings brought

against the Superintendent in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident giving rise to any such demand, claim, suit, action or legal proceeding arose while the Superintendent was acting within the scope and course of his employment; and provided further, that such liability coverage is within the authority of the Board to provide under California law. The Board shall provide indemnity from liability as set forth above for all claims made and occurrences throughout the term of this Contract and any extensions thereof and after his employment with the District ends. In no case will individual Board members be considered personally liable for indemnifying the Superintendent against such demands, claims, suits, actions and legal proceedings.

If, in the opinion of legal counsel to the District or counsel to the insurance carrier to the District, a conflict exists with regards to providing a defense to Superintendent under the District's insurance policy and the insurance carrier and/or the District does not provide and assign separate counsel to represent Superintendent, then Superintendent may engage separate legal counsel for which the District shall indemnify Superintendent for costs and legal fees to such items for which the District has agreed to provide indemnification as stated above. Those costs and legal fees shall not exceed reasonable rates and amounts, provided that such legal costs and fees are not recoverable by Superintendent under any other insurance or professional association membership.

17. **WAIVERS.** No delay or omission on the part of either party in exercising any rights under this Agreement constitutes a waiver of the right or of any other right. A waiver or estoppel found in one instance does not constitute a waiver or estoppel in another instance, whether the circumstances are the same or different.

IN WITNESS WHEREOF, the parties hereto, or their duly authorized representatives, affix their signatures to this Agreement on June ____, 2011, in Oakland, California.

Deleted: 2009

GOVERNING BOARD OF THE OAKLAND UNIFIED SCHOOL DISTRICT:

By DR. GARY YEE, President

DR. ANTHONY SMITH, Superintendent

Deleted: NOEL GALLO

By EDGAR RAKESTRAW, Secretary

GOVERNMENT CODE

SECTION 53260-53264

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee 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 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

(b) (1) Notwithstanding subdivision (a), if a local agency employer, including an administrator appointed by the Superintendent, terminates its contract of employment with its district Superintendent of schools that local agency employer may not provide a cash or noncash settlement to its Superintendent in an amount greater than the Superintendent's monthly salary multiplied by zero to six if the local agency employer believes, and subsequently confirms, pursuant to an independent audit, that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices. The amount of the cash settlement described in this paragraph shall be determined by an administrative law judge after a hearing.

(2) This subdivision applies only to a contract for employment negotiated on or after the Effective Date of the act that added this subdivision.

(c) The cash settlement formula described in subdivisions (a) and (b) are maximum ceiling on the amounts that may be paid by a local agency employer to an employee and is not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

53261. The cash settlement specified in Section 53260 shall not include any other noncash items except health benefits, which may be continued for the same duration of time as covered in the settlement, pursuant to the same time limitations as provided in Section 53260, or until the employee finds other employment, whichever occurs first.

53262. (a) All contracts of employment with a Superintendent, deputy Superintendent, assistant Superintendent, associate Superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.

(b) Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.

53263. For purposes of this article, "local agency" means any general law county, general law city, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies.

53264. This article shall apply prospectively and shall affect any contract originally approved by the governing body, or any existing contract that is extended by the governing body, after the effective date of this article.