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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date August 13, 2014

Subject **Herbert Allen Smith, Chief of Schools, Office of the Post-Secondary Education – Office of the Superintendent**

Action Requested Approval of Employment Agreement with Herbert Allen Smith

Background Allen Smith is being appointed by the Superintendent to the new position of Chief of Schools, Office of the Post-Secondary Education – Office of the Superintendent

Discussion Employee will serve as the Chief Operating Officer – Office of the Superintendent. In this capacity, Employee shall be responsible for overseeing the District's system of schools. The CSO is responsible for leading a team of Network Superintendents to ensure the following outcomes: significantly improved graduation and post-secondary readiness rates, turnaround of low performing schools and significantly improved leadership teams at network schools. The CSO is tasked with driving significant student achievement gains at the school level and replicating effective, innovative models across the District. Analyzing and using multiple sources of data to guide the continuous improvement of all schools is an important function of this job. The term of the Agreement is September 1, 2014 to June 30, 2017 with an annual salary of \$175,000.

Recommendation Approval of the Employment Agreement with Herbert Allen Smith .

Fiscal Impact Funding resource name: GP -- not to exceed \$175,000 per fiscal year.

Attachment

- Employment Agreement

EMPLOYMENT AGREEMENT

Herbert Allen Smith, Chief of Schools, Office of Post-Secondary Education – Office of the Superintendent

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

Article 1 Acceptance of Employment and Term

- 1.1 District hereby employs Employee and Employee hereby accepts employment with the District on the terms and conditions stated herein. The term of employment shall be September 1, 2014 to June 30, 2017 ("Term"), unless extended in writing by mutual agreement of District and Employee or terminated sooner at the discretion of District.

Article 2 Duties and Obligations of Employee

- 2.1 Employee shall serve as the Chief of Schools, Office of Post-Secondary Education – Office of the Superintendent ("CSO"). In this capacity, Employee shall be responsible for overseeing the District's system of schools. The CSO is responsible for leading a team of Network Superintendents to ensure the following outcomes: significantly improved graduation and post-secondary readiness rates, turnaround of low performing schools and significantly improved leadership teams at network schools. The CSO is tasked with driving significant student achievement gains at the school level and replicating effective, innovative models across the District. Analyzing and using multiple sources of data to guide the continuous improvement of all schools is an important function of this job.
- 2.2 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.
- 2.3 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.
- 2.4 District may use Employee's name during the term of employment as necessary or convenient without additional compensation to Employee.
- 2.5 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. District may continuously maintain throughout the term of employment adequate insurance for such purpose.

Article 4 Compensation

- 4.1 The salary of Employee shall be fixed \$175,000 year, 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 a cost of living adjustment equivalent to three percent of his 2014-15 salary, effective July 1, 2015. Employee shall be entitled to salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible. Employee shall be eligible for stipends provided to other unrepresented management staff.
- 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 PERS retirement based upon the salary herein.
- 4.4 The District shall pay the Employee a one-time payment in the amount of \$15,000 to assist in defraying the costs associated with moving from Charlotte, North Carolina to Oakland. The one-time payment shall be paid no later than July 30, 2014.

Article 5 Vacation, Sick and Personal Leave

- 5.1 Employee shall be entitled to twenty (20) annual vacation days with pay. Employee is encouraged to take all vacation days during the year in which such days are earned. At District's option, Employee may be reimbursed annually at his daily rate of pay for any unused days not to exceed twenty (20) per year. Employee shall not accrue more than twenty vacation days annually without the expressed approval of the Employer.
- 5.2 Employee shall be entitled 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 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 or future existing 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 Legal Office.
- 6.3 District shall reimburse Employee, pursuant to the policies and practices of District, the necessary costs and expenses incurred by Employee in performing the duties of, including but not limited to gas, travel, materials, supplies and related expenditures, all of which is 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 Superintendent and Employee agree that this Agreement may be terminated by either party for no reason upon thirty days written notice given as provided below. In the event the Agreement is terminated for no cause, in accordance with Government Code § 53260, Employee shall be entitled to an amount equal to the monthly salary of Employee multiplied by the number of months left of the unexpired term of the Agreement. However, if the unexpired term of the Agreement is greater than six (6) months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 6. No other or additional non-cash settlement may be agreed to, except that health benefits may be continued, limited to the same time restrictions as for cash settlement, or until new employment is found, whichever occurs first. Any payment made under this section shall be made no later than thirty (30) days after the last day of employment. The Superintendent may terminate this Agreement for cause, pursuant to Section 7.2c below, in which case the above shall not apply. Copies of this Agreement and any settlement shall be made available to the public upon request.
- 7.2 This employment contract may otherwise be terminated by:
 - a. Retirement of Employee.
 - b. 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.

- c. 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 Superintendent (or later adjudicated) to be "without cause," the sole remedy shall be to make Employee whole in salary and benefits for the balance of the term hereof, subject to the following: (i) Employee's duty to mitigate such loss through alternative available employment; (ii) offset for Employee's earnings from any active alternative employment or contractual engagements; and (iii) the limitations of Government Code § 53260 (if the remaining contract term exceeds six (6) months). The term "alternative available employment" shall not be construed to require Employee to seek, obtain or mitigate his loss through employment that is not comparable to the position of -, including as it pertains to salary, benefits, duties and responsibilities, or with an employer that is located outside the greater San Francisco Bay Area.

- 7.3 Pursuant to Education Code § 35031, Employee shall be provided written notice at least sixty (60) days in advance of the expiration of his term if he is not to be reemployed.

Article 8 Evaluation

- 8.1 Employer shall evaluate Employee not less than annually upon a schedule to be determined by Employer. The evaluation and assessment shall be reasonably related to the position description of the Employee and to the goals and objectives of the Board of Education for the year in question.
- 8.2 In the event that the Superintendent determines that the performance of the Employee is unsatisfactory in any respect, it shall describe in writing and in reasonable detail specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Superintendent deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the Employee. Employee shall have the right to make a written response to the evaluation and be placed in the personnel file along with the evaluation.

Article 9 Changes in Agreement

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

Article 10 General Provisions

10.1 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:
Antwan Wilson, Superintendent
Oakland Unified School District
1000 Broadway, 6th Floor
Oakland, CA 94607

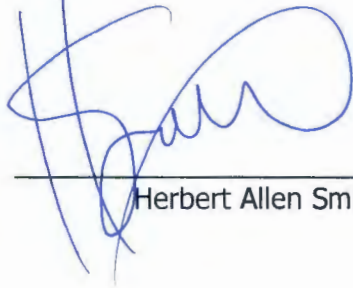
To Employee:
Allen Smith, Chief of Schools
Oakland Unified School District
1000 Broadway, 6th Floor
Oakland, CA 94607

The Superintendent or Employee may change the designated address for the giving of notices by providing to the other amended notice information in writing.

- 10.2 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.*
- 10.3 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th.
- 10.4 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 This Agreement may be modified or extended only in writing and must be signed by District and Employee.

10.9 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.

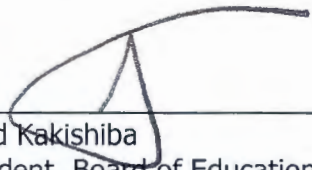
By Employee



Herbert Allen Smith

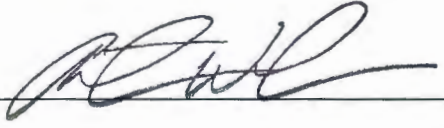
By District

By: _____


David Kakishiba
President, Board of Education
Oakland Unified School District

8-14-19

By: _____


Secretary, Board of Education
Oakland Unified School District

8-14-19

Approved as to Form



Jacqueline Minor, General Counsel

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Rv: