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Memo

To Board of Education

From Aimee Eng, President, Board of Education
Kyla Johnson-Trammell, Superintendent

Board Meeting Date August 14, 2019

Subject Employment Agreement – Joshua Daniels, General Counsel

Action Requested and Recommendation Approval by the Board of Education of Employment Agreement between the District and Joshua Daniels, General Counsel, for the term 8/15/19 to 6/30/22, for a total annual base salary of \$186,633.99, plus fringe benefit costs of \$35,356.20.

Background and Discussion Joshua Daniels is appointed to the position of General Counsel for the District, reporting to both 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. Joshua Daniels will receive fringe benefits of health insurance and education, travel and cell phone stipends.

Fiscal Impact Funding Resource: General Purpose – base salary of \$186,633.99, plus fringe benefit costs of \$35,356.20.

Attachments Employment Agreement

EMPLOYMENT AGREEMENT

Joshua Daniels, General Counsel

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 Joshua Daniels, 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. In approving and adopting this Agreement, the Governing Board hereby resolves and designates the position of General Counsel as senior management of the classified service pursuant to Education Code § 45100.5. In entering into this Agreement, Employee hereby acknowledges and agrees that as General Counsel, Employee is a member of the senior management of the classified service and that no other employment classification is applicable to Employee's employment with the District. The Board of Education and Superintendent may explore a revision to the position title following one year of satisfactory performance. A possible revision to the position title would not impact the salary terms of the agreement.
- 1.2 The term of this employment agreement is August 15, 2019 through June 30, 2022 ("Term"), unless extended in writing by mutual agreement of District and Employee or terminated sooner at the discretion of District.
- 1.3 District and Employee agree that Employee shall act as the chief legal advisor (hereinafter "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 to the maximum extent permitted by law.

Article 2 Duties and Obligations of Employee

- 2.1 As 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.
- 2.2 The 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 of the General Counsel includes providing, or ensuring the provision of: 1) 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) 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) management and supervision of the District's Office of the General Counsel, including the Labor Relations Division and Board Office Staff; 5) protecting and preserving the legal, ethical and financial stability of the District; and 5) participation 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. Employee is responsible for performing the specific duties below or may delegate them, as Employee deems appropriate, so long as a Employee maintain proper oversight over such delegation.

Specific Duties include:

Governance & Policy

- Advises the Board of Education in 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 strategic plan 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.
- Evaluates and counsels on legal relationships with other political bodies, including but not limited to advising on District responses to other governmental entities.

Management and Leadership

- Plans, organizes and implements long and short-term programs and activities of the Office of the General Counsel 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 Office of the General Counsel; 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.
- Provides strategic legal advice, counsel and guidance to Labor Relations and collaborates with other departments around issues relating to collective bargaining rights.
- Provides advice and counsel to the Governing Board on collective bargaining proposals for authority and direction for the District's negotiations team in collective bargaining.
- 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 tribunals.
- Investigates and responds to complaints filed with the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment and Housing (DFEH), Public Employees Relations Board (PERB) and other agencies.

Litigation/Claims

- Investigates and resolves Government Tort Claims.
- Defends the District in litigation against the District.
- Oversees and manages all outside counsel retained on behalf of the District.
- Prosecutes legal suits on the District's behalf.
- Handles legal briefing as to other legal actions, including but not limited to preparing and filing amicus briefs on the District's behalf.
- Monitors and coordinates the work and performance of the District's third party claims adjuster.

Business Operations

- Drafts, negotiates, and/or reviews agreements, contracts and memoranda of understanding (MOUs).
- Advises staff on legal matters related to procurement, contracts and agreements.
- Prepares and coordinates Request for Proposals, Requests for Qualifications, and other procurement mechanisms.
- 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).

- Advises on 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 students' civil rights, including free speech, searches, nondiscrimination and other related issues.

Charter Schools

- Supports legal compliance with Proposition 39 and charter schools facilities requests.
- Reviews charters for legal compliance.
- Negotiates and drafts leases for use of facilities.
- Supports the Office of Charter Schools department in legal issues relating to charters.
- In conjunction with the Office of Charter Schools, advises the Governing Board and Superintendent on charter petitions, material revisions, and renewal petition requests.
- Represents the District in appeals to the Alameda County Office of Education or State Board of Education relating to charters.

- 2.3 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.
- 2.4 Throughout the term of this Agreement and any extensions thereof, Employee shall remain in good standing with the State Bar of California and maintain as current Employee's license to practice law in the State of California.
- 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 Employee 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 Employee's duties as 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 the 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 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 to 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 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 General Counsel.
- 3.6 District shall pay Employee's annual dues to the State Bar of California, membership in the Alameda County Bar Association and the California Council of School Attorneys.

Article 4 **Compensation**

- 4.1 The salary of Employee shall be fixed at \$186,633.99 per 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's salary shall be moved to the next step on the salary schedule upon two years of satisfactory (or better) evaluations. Employee shall also be entitled to salary increases provided to all unrepresented management staff and the stipends to which Employee is eligible.
- 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 District shall fund its (the employer's) portion of CalPERS retirement based upon the salary herein.

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 the vacation days during the year in which such days are earned. At District's option, Employee may be reimbursed annually at Employee's daily rate of pay for any unused days, not to exceed twenty (20) days per year. Employee shall not accrue more than twenty (20) vacation days annually. Any cap or limit on total accrued vacation days found in any collective bargaining agreement between the District and one of its collective bargaining units that applies to all members of the collective bargaining unit shall apply to Employee.

- 5.2 Employee shall be entitled to accrue paid sick leave at the rate of 1.0 days per month, up to a maximum of 12 days per year. If Employee does not utilize the total amount of accrued sick leave authorized during any year, Employee may carry over unused sick leave to sick leave in the subsequent year.

- 5.3 Employee is entitled to accrue annual paid personal leave at the rate of five (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 the insurance premiums associated with Employee, and Employee's qualified dependents under Internal Revenue Code § 152. The cost of any increase in insurance premiums in 2020-21 or 2021-22 as compared with 2019-20 shall be borne by Employee. The Employee's responsibility for the cost of any increase in insurance premiums shall not necessarily continue as part of any future employment contract between District and Employee. 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 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 the Governing Board. This means that any employment decision (e.g., termination) must be made jointly by the Superintendent and the Governing Board.
- 7.2 This employment contract may be terminated by:
- a. Termination Without Cause. Either party may terminate this agreement for no reason upon thirty (30) days written notice given as provided below. In the event the Agreement is terminated by the District for without cause under this paragraph, the District shall pay the Employee a severance 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 three (3) months, the maximum severance amount shall be an amount equal to the monthly salary of the employee multiplied by three (3). Subject to Government Code section 53260, regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that the 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, not to exceed three (3) months.

In consideration for said payment, if the severance is accepted by the Employee, the Employee shall have waived all past and present claims against the District, District employees and District Board Members that arise in whole or in part during the Employee's employment or severance from employment, including a waiver of all rights and protections under California Civil Code section 1542. Employee as a condition of said payment shall sign an acknowledgement via a Waiver and Release that Employee has agreed to receive the severance amount in exchange for the aforementioned waivers and release of claims. Any payment made under this section shall be made no later than thirty (30) days after the day Employee executes the aforementioned acknowledgement. These waivers and releases include, but are not limited to, the following:

1. *I expressly waive the provisions of Section 1542 of the Civil Code of the State of California, and I understand that said Section provides:*

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

2. *I agree not to institute or cause to be instituted any action in state or federal court, or before any local, state, or federal governmental entity, relating to or arising out of my employment with the District or separation from District employment, including claims based on the Age Discrimination in Employment Act of 1967.*

3. *I agree not to institute or cause to be instituted any action in state or federal court, or before any local, state, or federal governmental entity, that arises out of or reasonably relates in any manner to my employment with the District or separation of employment with the District including, without limitation, contract or tort claims, claims based on the Fair Employment and Housing Act, Government Code § 12940 et seq., California Labor Code § 132a, 42 U.S.C. § 2000(e) et seq., 29 U.S.C. § 621 et seq., the California Civil Code, the California Government Code, 42 USC Section 1983, Title IX, the Unruh Act, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (except as excluded by law), the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., the False Claims Act, 31 U.S.C. § 3729 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., COBRA, the California Family Rights Act, the Educational Employment Relations Act of 1976, Cal. Govt Code § 3540 et. seq., the Genetic Information Act.*
4. *I understand the following information, which is required by the Older Workers Benefit Protection Act (“OWBPA”), if legally applicable to me:*
 - (a) *I have been advised to consult an attorney regarding this Waiver and Release of Claims (“Waiver and Release”) and the terms contained in this Waiver and Release before deciding whether or not to sign it;*
 - (b) *I have 21 days from the date this Waiver and Release is presented to me to consider this Waiver and Release and to decide whether to sign it, although I may, in the exercise of my own discretion, sign or reject it at any time before the 21-day period expires, thus waiving the remainder of the 21-day consideration period;*
 - (c) *At any time within 7 days after signing this Waiver and Release, I may revoke the waiver and release of Age Discrimination in Employment Act (“ADEA”) claims.*
 - (d) *The waiver and release of ADEA claims is not effective or enforceable until the 7-day revocation period has passed. If during the 7-day revocation period I choose to revoke the waiver and release of claims under this Section 4 of this release, the revocation must be in writing and delivered prior to the expiration of the 7-day period to: Oakland Unified School District, Office of the General Counsel, 1000 Broadway, Suite 300, Oakland, CA 94607.*
5. *I understand that a revocation of the waiver and release of ADEA claims, if legally applicable to me, will release the District from any obligation to provide me with the severance consideration described herein.*

6. *This acknowledgement of waiver and release may be signed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Faxed, electronic and/or email signatures shall be acceptable signatures for purposes of binding the parties to the terms of the Waiver and Release.*

7. *I understand the contents of this release and sign the same voluntarily and without duress.*

b. Retirement of Employee.

c. 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 with or without reasonable accommodation for a period of 120 consecutive days or 150 workdays 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.

d. Failure to Maintain License. The failure to maintain the license to practice law in the State of California for more than 30 days, or suspension or termination by the State Bar of California or the California Supreme Court of the ability to practice law in the State of California shall result in immediate termination of this Agreement.

e. Discharge for Cause. For purposes of this Agreement, "cause" shall mean Employee's (a) conviction (or a *nolo contendere* plea) to any felony or misdemeanor; (b) dishonesty in performing Employee's duties under this Agreement; (c) repeated and willful misconduct under this Agreement; or (d) willful neglect of Employee's duties under this Agreement.

Prior to final determination by the Board of Education of cause for termination, Employee must have been given thirty (30) 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 pursuant to 7.2.a above.

7.3 Pursuant to Education Code § 35031, Employee shall be provided written notice at least forty five (45) days in advance of the expiration of Employee's term if Employee is not to be reemployed.

Employee Initials acknowledging termination clauses: JRJ

Article 8 **Evaluation**

- 8.1 The Board and Superintendent shall evaluate Employee not less than annually upon a schedule to be determined. The evaluation and assessment shall be reasonably related to the position description and to the goals and objectives of the District for the year in question.
- 8.2 In the event that the Superintendent and Board of Education determine that the performance of the Employee is unsatisfactory in any respect, the District 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 Board of Education 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, to be placed in the personnel file along with the evaluation.

Article 9 **General Provisions**



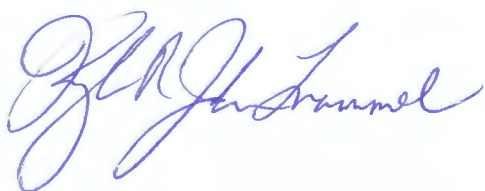
- 9.1 All notices required to be given under this Agreement shall be delivered via hand delivery, by first class mail or via email as follows:

| To District: | To Employee: |
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| Kyla Johnson-Trammell, Superintendent Oakland Unified School District 1000 Broadway, Suite 300 Oakland, CA 94607 kyla.johnson@ousd.org | Josh Daniels 1000 Broadway Oakland, CA 94607 |
| Aimee Eng Board President Board of Education Oakland Unified School District 1000 Broadway, Suite 300 Oakland, CA 94607 aimee.eng@ousd.org | |

- 9.2 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.
- 9.3 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.*

- 9.4 "Year" as used in this Agreement means a fiscal year, July 1 through and including June 30th. "Day" or "days" as used in this Agreement means calendar days unless stated otherwise.
- 9.5 No waiver of any rights or obligations under this Agreement may occur unless provided in writing.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 This Agreement may be modified or extended only in writing and must be signed by District and Employee.
- 9.10 This Agreement shall be effective upon execution by Employee and the President and Secretary of the Board of Education.

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| <p>By District</p> <p>By:  8/14/19</p> <p>Aimee Eng President, Board of Education Oakland Unified School District</p> | <p>By Employee</p> <p> 8/3/19</p> <p>Josh Daniels</p> |
| <p>By:</p> <p>Kyla Johnson-Trammell Superintendent and Secretary, Board of Education Oakland Unified School District</p> | <p></p> |