

**EMPLOYMENT AGREEMENT FOR SUPERINTENDENT  
BETWEEN THE BOARD OF EDUCATION OF THE  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT AND  
WESLEY SMITH, ED.D**

**THIS AGREEMENT** is mutually entered into this 14<sup>th</sup> day of September, 2021, by and between the Board of Education of the Newport-Mesa Unified School District, Orange County, California, hereinafter "Board of Education," and Wesley Smith, Ed.D., hereinafter "Dr. Smith" or "the Superintendent." The parties hereby mutually agree and promise as follows:

**1. EMPLOYMENT TERM**

The Board of Education employs Dr. Smith as the Superintendent and Chief Executive Officer of the Newport-Mesa Unified School District, and Dr. Smith accepts such employment and agrees to perform the duties and responsibilities thereof beginning on the 18<sup>th</sup> day of October, 2021, and concluding on the 30<sup>th</sup> day of June, 2025.

**2. LEADERSHIP ROLE, RESPONSIBILITIES AND DUTIES OF THE SUPERINTENDENT**

2.1. Dr. Smith shall provide leadership and expertise pertaining to the overall operations of the District, and shall serve as the District's Superintendent, Chief Executive Officer, and Secretary to the Board of Education. Dr. Smith agrees to perform at the highest professional level of competence all of the responsibilities and duties required by this Agreement, the laws of this state, and the rules, regulations, and policies of the Board of Education.

2.2. Dr. Smith shall have the responsibilities and duties in the position of Superintendent that are set forth in the Education Code, applicable State and Federal law, and in the Policies of the Board of Education. Serving as the Superintendent, Chief Executive Officer, and Secretary to the Board of Education, Dr. Smith shall be delegated all powers and duties necessary for efficient management and administration of the District to the full extent permitted by law. Subject only to those powers reserved to the Board of Education pursuant to the Education Code, Board of Education Policy, and the rules and regulations of the California State Board of Education, the Superintendent shall have the authority to organize and arrange the administrative and supervisory staff, including instruction, business, human resources, and operations which, in his judgment, best serve the District. The Superintendent is responsible for implementation of Board Policy, while the Board of Education retains the primary responsibility for formulating and adopting policy.

**3. BOARD/SUPERINTENDENT WORKING RELATIONS**

3.1. The Superintendent and Board of Education are committed to on-going professional growth and leadership development as a governance and leadership team. The Superintendent shall endeavor to maintain and improve Superintendent's professional competence and learnings by a variety of means. Throughout the length of this Agreement, the parties will mutually select outside professionals to facilitate the performance of their prospective roles on behalf of the District.

3.2. It is recognized that under the California Education Code, the Board of Education is a collective body. Individual Board members will not give direction to the

Superintendent or any staff member regarding the management of the District or the solution of specific problems. The members of the Board of Education, individually and collectively, will refer promptly to the Superintendent for study and recommendation, any substantial criticism, complaints or suggestions brought to the attention of the Board of Education or any Board member.

#### **4. PROFESSIONAL SCHEDULE, OUTSIDE PROFESSIONAL ACTIVITIES AND SICK LEAVE**

4.1. The Superintendent shall be required to render 224 duty days of full and regular service to the District during each annual period covered by this Agreement or a proration thereof for less than a full fiscal year of service. These duty days are exclusive of holidays defined in Section 37220 of the California Education Code, and any additional local holidays granted by the Board of Education. No vacation days shall be earned during the term of this Agreement.

4.2. The Superintendent, when authorized by the Board of Education, shall attend appropriate professional meetings at local, state, and national levels. Expenses shall be reimbursed in accordance with District policy.

4.3. The Superintendent may participate in outside professional activities such as consulting, writing and speaking engagements, provided that such participation is consistent with his overall responsibilities to the District, and, provided further, that such participation does not interfere with the satisfactory performance of his duties and responsibilities to the District or constitute a conflict of interest.

4.4. The District will fund the Superintendent's annual membership dues in no more than three (3) professional organizations as well as in a local public service organization. The Superintendent will be responsible for any additional assessments, fines, or costs imposed by such organizations.

4.5. The Superintendent shall receive one day of sick leave per month, credited annually in advance. Earned sick leave shall accrue and accumulate as provided by the California Education Code and Board of Education rules and regulations, provided that the Superintendent shall be credited with all earned and accrued unused sick leave earned prior to his service in the District.

#### **5. ANNUAL PERFORMANCE GOALS AND EVALUATION INSTRUMENT**

5.1. The Board of Education and the Superintendent will meet and discuss in closed session for the purpose of establishing annual performance goals for the Superintendent. The Superintendent's goals adopted by the Board of Education will serve as the basis for the Superintendent's annual evaluation for that year.

5.2. Following adoption by the Board of Education of the Superintendent's annual performance goals, the Superintendent shall submit to the Board of Education in closed session a proposed annual evaluation instrument for the Board of Education's review. The Board of Education will in turn consider, revise as necessary, and then adopt the Superintendent's annual evaluation instrument.

5.3. In the first year of this Agreement, the annual performance goals and evaluation instrument will be adopted by December 31<sup>st</sup>. In subsequent years, adoption

by the Board of Education of the performance goals of the evaluation instrument for the Superintendent will take place before August 15<sup>th</sup>.

5.4. Should the Board of Education and the Superintendent not reach a mutual understanding on the Superintendent's goals and/or the evaluation instrument then the Board of Education shall adopt the written goals and/or the evaluation instrument for the Superintendent for the current school year.

## **6. PROGRESS ASSESSMENT AND ANNUAL EVALUATION**

6.1. Dr. Smith's annual evaluation shall be based upon the Superintendent's annual performance goals and fulfillment of his duties and responsibilities as provided in this Agreement.

6.2 A mid-year progress assessment of the Superintendent's performance will be discussed by the Board of Education and the Superintendent in closed session. The mid-year progress assessment will be completed by January 31<sup>st</sup>.

6.3 By the end of each May, the Superintendent shall provide the Board of Education with a written self-evaluation using the Board approved evaluation instrument and a portfolio of information for the Board's review so that the Board of Education may complete the annual evaluation in June.

6.4. Following completion of the annual evaluation each June, commencing June 2022, the Board of Education will consider extending the term of the Agreement and amendments as appropriate. It is understood that the term of the Agreement may not exceed four (4) years.

6.5. Any failure by the Board of Education to comply with the requirements of this paragraph or paragraph 5 shall not constitute a material breach of this Agreement.

## **7. ANNUAL SALARY**

7.1. The annual salary for the Superintendent shall be Three Hundred and Fifty-Five Thousand Dollars (\$355,000.00) and shall be payable in twelve (12) equal installments. This annual salary and work year shall be included on the District's published Management Salary Schedule. Payment shall be prorated for service of less than a full fiscal year. The Board of Education of Education reserves the right to adjust the annual salary rate of any or all years of the Agreement, provided that the annual salary rate may not be adjusted downward unless the salary rate of a majority of the other certificated employees of the District has been adjusted downward, in which event the Board of Education shall have the right to adjust the Superintendent's salary downward at a commensurate rate. Any change in salary shall be in the form of an amendment and shall become a part of this Agreement; however, it shall not serve to extend the term of the Agreement, unless expressly agreed to in writing by the parties.

7.2. The Superintendent's annual salary shall continue to be adjusted at a percentage rate equal to the percentage rate granted other District certificated Executive Management Employees, and effective upon the same date, effective July 1<sup>st</sup>, 2022.

7.3. It is anticipated that Dr. Smith will be able to collaborate with the Interim Superintendent prior to October 18<sup>th</sup>, 2021. For each half or full day of service, an amount equivalent to Dr. Smith's pro rata daily rate will be paid up to ten (10) days.

## **8. FRINGE BENEFITS**

8.1. The Superintendent shall be provided the same fringe benefits of employment, including group health and welfare benefits, that are granted to the District Certificated Executive Management Employees.

8.2. These health and welfare benefits shall also include the same contribution and deductible amounts that are granted to the District Certificated Executive Management Employees.

## **9. MOVING REIMBURSEMENT AND OPERATIONAL ALLOWANCES**

9.1. The Superintendent will be reimbursed for reasonable moving expenses to Orange County, California, in an amount not to exceed Twenty Thousand Dollars (\$20,000). The Superintendent will obtain two moving bids and submit the bids and final statement to the District for review and payment.

9.2. The Superintendent shall be provided with a transportation allowance in the amount of Six Hundred and Fifty Dollars (\$650.00) per month to defray the cost of operation of his personal vehicle in relation to District-related activities.

9.3. The Superintendent shall also be provided with a communication allowance in the amount of One Hundred Dollars (\$100.00) per month.

## **10. ANNUAL MEDICAL EXAMINATION**

Prior to commencing employment as the Superintendent, Dr. Smith shall provide the Board President with a written statement from his personal physician advising the Board of Education that the Superintendent is physically and mentally fit to perform his duties on a full-time basis. The Superintendent also agrees to undergo a comprehensive medical examination annually during his employment with the District and to also provide the Board President with a written statement from his personal physician advising the Board of Education that the Superintendent is medically and physically fit to perform his duties on a full-time basis. Dr. Smith shall also promptly inform the Board of Education of any condition which, in his judgment or the judgment of his physician, would adversely affect the performance of his duties as Superintendent. The District shall reimburse the Superintendent for the cost of all District-required medical examinations.

## **11. NON-RENEWAL OF AGREEMENT**

In the event the Board of Education determines Dr. Smith is not to be reelected or reemployed upon the expiration of this Agreement, the Superintendent shall be given written notice thereof by the Board of Education at least 120 calendar days prior to the expiration of this Agreement. The Superintendent shall notify all members of the Board of Education in writing by March 15<sup>th</sup> of the year in which his contract expires of the Board of Education's option to provide written notice of non-renewal at least 120 calendar days written notice prior to the expiration of this Agreement. Failure to give such notification from the Board of Education to the Superintendent shall result in the renewal of this Agreement as if notice had not been provided under Education Code 35031.

## **12. OPTION TO TERMINATE AGREEMENT WITHOUT CAUSE**

12.1. Notwithstanding any other provision of this Agreement, the Board of Education, in its complete discretion, shall have the option to terminate this Agreement and the Superintendent's employment with the District prior to the expiration of the term of this Agreement or any subsequent extension thereof. If the Board of Education elects this option, the District shall pay from the date of termination until the expiration of this Agreement, or for a period of twelve (12) months, whichever is less, a sum equal to the Superintendent's base salary (paragraph 6) at the rate in effect during the Superintendent's last month of service. Payments shall be made on a monthly basis. The Board of Education shall set the effective date of termination. It is agreed and understood that the calculation for purposes of the termination payments shall only utilize the base salary rate in effect under paragraph 7 of this Agreement or any subsequent amendment thereto on the date of the notice of termination. Therefore, the termination payments shall not include any other payment or allowance, such as contributions to the State Teachers Retirement System ("STRS") or operational allowances (paragraph 9) that would have been earned or accrued. In addition, District provided health and welfare insurance benefits earned under paragraph 8 shall be maintained by the District for the same duration of time represented by the salary payments pursuant to this paragraph, or until the Superintendent finds other employment, whichever occurs first.

12.2. It is understood that paragraph 12 is intended and agreed to satisfy the requirements of section 53260. Furthermore, it is understood that no notice of non-renewal of agreement, per paragraph 11, is required if the Board of Education should exercise the option to terminate this Superintendent's Employment Agreement per this paragraph. The Superintendent acknowledges that payment pursuant to this paragraph constitutes full and complete satisfaction of any claim for contract damages, express or implied, arising out of this Agreement or the Superintendent's employment with the District.

## **13. TERMINATION FOR CAUSE**

This Agreement may be terminated by the Board of Education for cause for material breach or for any of the grounds enumerated in Education Code section 44932.

## **14. TERMINATION DUE TO DEATH OR PERMANENT INCAPACITY**

The employment of the Superintendent shall cease upon the death of the Superintendent or his permanent incapacity to perform the duties of Superintendent, as determined by a physician appointed by the Board of Education. Thereafter all of the obligations of the District and the Board of Education to the Superintendent shall cease.

## **15. RESOLUTION OF DISPUTES, BINDING ARBITRATION**

15.1. Dr. Smith and the Board of Education on behalf of the District agree that any claims or causes of action either party has arising out of or relating to the other party shall be exclusively resolved by final and binding arbitration including without limitation disputes arising out of or relating to application, interpretation, enforceability, revocability or validity of this arbitration provision. Arbitration shall apply to any and all common law or statutory claims, with the exception of any claims that the employee may have for workers' compensation benefits or unemployment compensation benefits.

15.2. The parties will exercise their best efforts to resolve by agreement all disputes arising hereunder. If agreement cannot be reached then either party may request the Orange County office of JAMS pursuant to its Employment Arbitration Rules and Procedures to supply a list of five (5) arbitrators who shall serve as the sole arbitrator. Within five days, the parties shall alternately strike names from the panel list until one name remains. The remaining arbitrator shall serve as the arbitrator. The order of striking shall be determined by lot.

15.3. The arbitrator who is selected shall follow the JAMS Employment Arbitration Rules and Procedures and render a final and binding award. However, it is understood that JAMS Rule 26, is subject to the California Public Records Act to the extent the Act applies to the Award of the Arbitrator.

15.4. The fees and expenses of the arbitration, including but not limited to the fees and costs of the arbitrator including a reporter's transcript shall be shared and paid equally by the parties to this Agreement. Either party shall bear the expense of the presentation of their own case, including his or its own attorney's fees. No attorney fees shall be awarded by the arbitrator to either party for any reason.

15.5. The Award of the arbitrator shall be final and binding on the parties and the Newport-Mesa Unified School District, and shall be enforceable in a court of competent jurisdiction.

## **16. GENERAL PROVISIONS**

### **Interpretation**

16.1. This Agreement shall not be construed in favor of or against either party but shall be construed as if all parties participated in the negotiation and preparation of this Agreement.

### **Entire Agreement**

16.2 This Agreement supersedes any and all other agreements, promises and representations either oral or in writing, between the parties hereto with respect to the employment of the Superintendent by the District and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

### **Amendments**

16.3. Any amendments to this Agreement shall be effective only if signed by both parties.

### **Effect of Waiver**

16.4. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed

a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

### **Partial Invalidity**

16.5. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

### **Notices**

16.6. All notices under this Agreement shall be in writing and shall be delivered by personal service or by email. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service if served personally or by District email. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices of the parties shall be addressed as follows:

To Employer: President, Board of Education  
Newport-Mesa Unified School District

To Superintendent: Dr. Wesley Smith  
Newport-Mesa Unified School District

### **Defense and Indemnification**

16.7. The District shall provide for the defense and indemnification of Dr. Smith from claims or lawsuits arising from acts or omissions in the scope or course of his employment consistent with California law. This provision shall continue to remain in full force and effect after the term of this Agreement, for a period of four years, unless Dr. Smith is terminated for cause under paragraph 13.

### **Abuse of Office or Position**

16.8. In accordance with Government Code section 53243.2, the parties acknowledge, regardless of the term of this Agreement, that if the Agreement is terminated, any cash settlement related to the termination that the Superintendent may receive from the District shall be fully reimbursed to the District within thirty (30) days if the Superintendent is convicted of a crime involving an abuse of his office or position.

### **No Attorney's Fees**

16.9. Neither party shall be entitled to, nor awarded any attorney's fees pertaining to this Agreement, including but not limited to, any administrative or legal proceeding arising out of the enforcement or challenge to this Agreement. In this regard, it is agreed and understood that each party shall bear his or its own attorney fees, costs, and expenses and shall not be entitled to any claim for reimbursement from the other party.

## Savings

16.10. If any provisions of this Agreement are held to be contrary to law by final legislative act or by final judgment of a court of competent jurisdiction; however, all other provisions of this Agreement shall continue in full force and effect.

## Complete Agreement

16.11. This Agreement is the full and complete Agreement between the parties. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval of such amendment, modification, or variation by the Board of Education and the Superintendent.

## 17. APPLICABLE LAW

This Agreement is subject to all applicable laws of the State of California, rules and regulations of the California State Board of Education, and rules, regulations, and policies of this Board of Education, all of which are made a part of the terms and conditions of this Agreement as though set forth herein.

Executed this 14<sup>th</sup> day of September, 2021.

### BOARD OF EDUCATION NEWPORT-MESA UNIFIED SCHOOL DISTRICT

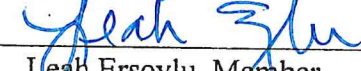
By:   
Karen Yelsey, President

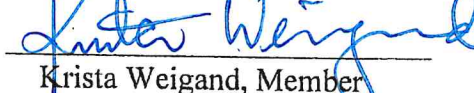
By:   
Michelle Barto, Vice President

By:   
Charlene Metoyer, Clerk


By:   
Ashley Anderson, Member

By:   
Carol Crane, Member

By:   
Leah Ersoylu, Member

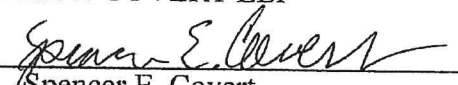
By:   
Krista Weigand, Member

**WESLEY SMITH, ED.D.**

  
Wesley Smith, Ed.D., Superintendent

Approved as to Form:

PARKER & COVERT LLP

By:   
Spencer E. Covert  
Legal Counsel to the Board of Education  
Newport-Mesa Unified School District



**FIRST AMENDMENT TO  
EMPLOYMENT AGREEMENT FOR SUPERINTENDENT  
BETWEEN THE BOARD OF EDUCATION OF THE  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT AND WESLEY SMITH, ED.D.**

**WHEREAS**, on September 14, 2021, the Board of Education and Dr. Smith approved the Employment Agreement for Dr. Smith as District Superintendent ("Employment Agreement"); and,

**WHEREAS**, Dr. Smith received a positive annual evaluation from the Board of Education for the 2021-2022 school year.

**NOW THEREFORE**, it is hereby agreed between the Board of Education and Dr. Smith to enter into this First Amendment to the Employment Agreement this 13th day of September, 2022, providing as follows:

**1. EMPLOYMENT TERM.** Dr. Smith's employment term as Superintendent shall be extended from June 30, 2025 to June 30, 2026.


**2. OTHER PROVISIONS OF THE EMPLOYMENT AGREEMENT.** All other provisions of the Employment Agreement shall continue to remain in full force and effect, except as otherwise having been amended in writing between the Board of Education and Dr. Smith.


**IN WITNESS WHEREOF**, the parties hereto have duly approved and executed this First Amendment to the Employment Agreement on September 13, 2022, at a regular meeting of the Board of Education of the Newport-Mesa Unified school District.

**BOARD OF EDUCATION  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT**

By:   
Michelle Barto, President

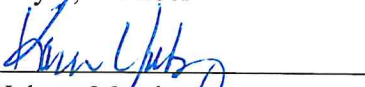
By:   
Charlene Metoyer, Vice President

By:   
Ashley Anderson, Member

By:   
Krista Weigand, Member

By:   
Carol Crane, Clerk


By:   
Leah Ersoylu, Member

By:   
Karen Yelsey, Member

## ACCEPTANCE

I hereby accept the foregoing First Amendment to Employment Agreement and agree to faithfully perform all of the duties and responsibilities as the Superintendent of the Newport-Mesa Unified School District.

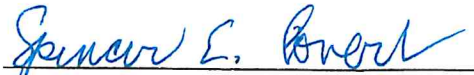
Date: September 13, 2022

By:   
Wesley Smith, Ed.D.

## APPROVED AS TO FORM:

PARKER & COVERT LLP

Date: September 1, 2022

By:   
Spencer E. Covert  
Legal Counsel to the Board of Education  
Newport-Mesa Unified School District