

Myers, Tiffany

From: Kelly Lichter <lichterkelly@gmail.com>
Sent: Monday, November 28, 2022 11:36 AM
To: Lichter, Kelly
Subject: External -Fwd: School Board Attorney Employment Agreement | Draft 1
Attachments: CCSP Employment Agreement_Draft 1.docx

This Email originated outside of Collier County Public Schools and may contain a link. Please do not click links you were not specifically expecting, even from known senders.

Regards,
Kelly Lichter

Sent from my iPhone

Begin forwarded message:

From: "James D. Molenaar" <jdm664@aol.com>
Date: November 26, 2022 at 2:42:31 PM EST
To: lichterkelly@gmail.com
Subject: School Board Attorney Employment Agreement | Draft 1
Reply-To: "James D. Molenaar" <jdm664@aol.com>

Kelly,

Pursuant to our discussion earlier this week, attached please find a draft proposed employment agreement for your review and discussion.

Jim


SCHOOL BOARD ATTORNEY EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of December 2022, by and between the District School Board (hereinafter “Board”) of Collier County Public Schools, Florida (hereinafter “District”), and Mr. James D. Molenaar (hereinafter “Employee”) and shall enter into effect on this date, both of whom understand as follows:

WITNESSETH:

WHEREAS, on December 7, 2022, at a Special Board Meeting, the Board chose James D. Molenaar to become the Board’s Attorney also known as Chief Legal Counsel of said Collier County Public Schools governing Board; and

WHEREAS, it is the desire of the governing Board to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, Employee desires to accept such an appointment and become the Board's Chief Legal Counsel and faithfully carry out all such duties and responsibilities whether contained in Florida Statutes, policies, procedures and/or by-laws and provide all such services as related thereto as requested by the Board during the course and scope of this Agreement; and

WHEREAS, in consideration of the mutual promises, covenants, terms and conditions as set forth herein, the parties agree to the following:

Section 1: Duties

Employee is hereby appointed and employed as, and shall have the authority, duties, and responsibilities of Board Attorney for the Collier County Public Schools governing Board. Employee shall act as Chief Legal Counsel to the governing Board and shall provide legal representation and advice to the Board; and as appropriate, the Superintendent of Schools of Collier County and Collier County Public Schools District staff. Where appropriate, Employee will provide legal assistance to all of the Board’s Advisory Boards and Committees, including but not limited to providing Sunshine Law, Public Records Act and Ethics workshops. Employee shall report directly to the Board and have sole responsibility for the employment and management of their legal staff and operation of the Board’s Attorney’s Office and operations.

Section 2: Term

- A. Employee agrees to remain in the exclusive employ of the Board until June 30, 2025, as specified in Section 20, paragraph D herein, from the effective date of this Agreement, and neither to accept other employment nor to become employed by any other employer until termination of employment pursuant to this Agreement.
- B. On or before December 31 of the year immediately preceding the ending year of the Agreement, including any applicable extensions, the term of this agreement may be extended for a period of three (3) years by the mutual written agreement of the Board and

the Employee. If the Board does not make such notification, this Agreement shall be extended for an additional year. It is contemplated that the Board will base its decision on the question of whether or not to grant the extension on the term of this Agreement on (1) the Employee's performance and (2) the Employee's ability to successfully achieve goals mutually developed and agreed to by the Employee and the Board. Notwithstanding the foregoing, the end date of the first extension term, if implemented will be June 30th, so that the term of this Agreement will ultimately correspond with the Collier County Public Schools' fiscal year.

- C. Nearing the conclusion of the initial employment period, and any applicable extensions, the Employment Agreement may be renegotiated by the Board. The Employee shall be given one hundred-eighty (180) days notice of Board's intent to renegotiate the Agreement or to allow the Agreement to expire without renegotiation. In the event the Board's notice is not to renegotiate, but for the Agreement to expire, no salary or deferred compensation severance payment nor insurance benefits shall be provided Employee or his dependents upon the expiration of the Agreement. Elements of this Agreement may be changed at any time when mutually agreed upon in writing by the Board and Employee.
- D. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 4 of this Agreement.
- E. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Board, subject only to the provisions set forth in Section 5 of this Agreement.

Section 3: Suspension

Board may suspend the Employee with full pay and benefits at any time during the term of this Agreement, but only if:

- A. A majority of the Board and Employee agree, or
- B. After a public hearing, a majority of the Board votes to suspend Employee for just cause, provided, however, that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing by the Board members bringing such charges. Just cause shall include only willful misconduct or willful failure or disregard of Employee's duties under this Employment Agreement.

Section 4: Termination and Severance Pay

In the event this Employment Agreement with Board is terminated by the Board before the expiration of the aforesaid term of employment during such time that the Employee is willing and able to perform his duties under this Agreement, then, and only in that event, Board agrees to pay Employee, in addition to any amounts then due Employee, including any unused leave, a lump sum cash payment within ten (10) working days after the effective date of termination. The parties

acknowledge and agree that Employee is vested/tenured in the Florida Retirement System and will be paid an amount equal to twenty (20) weeks of Employee's annual base salary and benefits (vacation, sick, universal leave and retirement) at the rate effective on the date of termination, less any normally required deductions.

Employee's individual and dependent health insurance benefits and term life insurance shall also be continued and provided by the Board for a period of twenty (20) weeks after termination.

In the event Employee is convicted of a felony or of any crime involving moral turpitude, Board may terminate Employee's employment without notice and without any obligation to pay any aggregate severance sum or to provide post-termination insurance benefits described in the above paragraphs.

Section 5: Resignation

In the event Employee voluntarily resigns his position with the Board before expiration of the aforesaid term of his employment, then Employee shall give the Board sixty (60) days advance written notice. If Employee voluntarily resigns, providing the Board with less than sixty (60) days notice, Employee shall forfeit any payment for accrued leave otherwise due and owing.

Section 6: Disability

Should the Employee become physically or mentally incapable of performing any substantial duty permanently or for a period of ninety (90) calendar days, or based on a physician's notification prior thereto of the Employee's inability to carry out the functions of his position, as more fully described herein, the Board may at its option, terminate the Employee for cause, subject to the severance pay requirements of Section 4. In this regard, the Board may request the Employee to submit to a medical examination or examinations, paid for by the Board, to determine whether he is physically and/or mentally capable of performing his duties with or without reasonable accommodations. All medical findings shall be provided directly to the Employee. The treating physician or physicians shall provide a confidential report to the Board regarding whether or not the Employee is able to perform his duties with or without reasonable accommodations. Notice shall promptly be provided to the Disability insurance carrier of the disabling condition.

Section 7: Salary

- A. The Board agrees to pay Employee an annual base salary of \$ [REDACTED]. The Employee shall be paid in bi-weekly installments in accordance with District policies and procedures and subject to all usual and normal payroll deductions.
- B. Board and Employee shall negotiate in good faith to establish, within one hundred and twenty (120) days after execution of this Agreement, a performance-based merit system through which the Employee shall be eligible for a merit adjustment upon successful completion of measurable goals and objectives to be completed or attained by the

Employee during the remainder of the 2023 fiscal year and each fiscal year thereafter during the term of this Agreement. Such annual performance-based merit adjustment shall not exceed a maximum of ten percent (10%) of the Employee's annual base salary. The minimum increase for satisfactory performance under such performance-based merit system will equal the average percentage salary adjustment provided to teachers and/or District employees, for the given fiscal year or three percent (3%) whichever is greater. All such merit adjustments shall be included in Employee's base salary.

- C. On the date that general wage adjustments (i.e., cost of living adjustments, special study pay adjustments, etc.) are granted generally to District employees, Employee's base salary shall be modified to reflect the general wage adjustment granted to other District employees.

Section 8: Performance Evaluation

The Board shall review and evaluate the performance of the Employee in accordance with the performance-based merit system as provided in Section 7. Written evaluations based on said performance system will be provided by each Board Member prior to June 1, 2023, and prior to each June 1st thereafter for the term of this Agreement. A summary of all evaluations will be prepared by the Board Chair for the Board and Employee including the recommended merit wage adjustment. A merit system wage adjustment will take effect on July 1, 2023, and each July 1st thereafter for the term of this Agreement. An updated performance merit system for Employee will be developed in good faith between the Board and Employee and adopted by the Board prior to July 1st of each fiscal year for implementation in the next fiscal year.

Section 9: Hours of Work

All duties required hereunder shall be performed by the Employee personally, or through the assistance of such Board and/or District employees as may be made available from time-to-time by the Board and concerning which the Employee shall assume full responsibility; provided however, that nothing herein shall be deemed to absolve the Employee of personal responsibility for the duties set forth herein. The Employee shall be "on-call" twenty-four (24) hours a day, available to perform said duties and agrees to make himself available as needed during said period. The manner and means of performance of the duties herein shall be determined by the Employee and may include telework. All acts performed by the Employee, explicitly or implicitly, on behalf of the Board as its agent, except that any act which constitutes willful misconduct, or which may be unlawful shall be deemed to be an individual act of the Employee without authority of the Board.

Section 10: Outside Activities

The Employee agrees to remain in the exclusive employ of the Board while employed by the Board.

Section 11: Automobile and Technology

- A. The Board expects that the Employee will travel widely throughout the County as part of his duties and responsibilities. To cover his expenses for travel within the District, the Board shall pay the Employee an automobile allowance at a rate of **XX Hundred and 00/100 dollars (\$X00.00)** per month to cover gas, mileage, and maintenance of the vehicle for such usage. To determine whether the automobile allowance is adequate, the Employee shall record his mileage and travel within the geographical boundaries of the District during the months of September and October. The mileage recorded during the months of September and October will be discussed at the November 14, 2023, Regular School Board Meeting to determine whether the referenced automobile allowance amount should be increased. If automobile expenses are such as to warrant an earlier review, the Employee shall apprise the Board Chair in order to discuss the issue at a Regular or Special Board meeting prior to November 14th, 2023.
- B. All Board business travel outside of Collier County shall be reimbursed at a cents-per-mile rate equal to the GSA/IRS Mileage Reimbursement Rate.
- C. The Board shall provide technology support to help the Employee undertake the duties and responsibilities of his office. To this end, the Employee shall be provided, at the Board's sole expense, at his choosing a laptop computer and a device(s) for scanning, copying, printing and faxing for use at his residence. Moreover, to further assist him, the Board shall provide the Employee with an annual stipend in the amount of **X Hundred and 00/100 dollars (\$X,X00.00) (\$X.00 per month)** for the other technology materials including internet connections as he shall consider necessary to carry out his work as Employee.
- D. The Board shall provide Employee a cellular phone of the make and model of his choosing and services for the Employees business use. Services shall include Personal Hotspot capabilities.

Section 12: Insurance, Vacation, and Sick Leave

- A. **Vacation Leave:** As an inducement to become the Board's Chief Legal Counsel, at signature hereof, Employee shall be entitled to **twenty-four (24) working days of vacation per year**, not including District holidays, on a monthly basis of **two (2)** days per month. Employee is highly encouraged to utilize his vacation leave not only for the Employee's individual health and welfare, but also for the increased effectiveness and efficiency of the District as a whole. If any vacation amount is not used during any given year during the term of this Agreement, such unused amount shall accumulate as leave subject to any future payout for vacation leave. Upon leaving the District, the Employee shall be paid his then daily rate of pay for each accumulated day of vacation leave up to a maximum of sixty (60) days pursuant to F.S. §1012.65. At the Employee's option, the District will reimburse him annually for up to **five (5)** unused days of vacation at his daily rate based on his then annual base salary. Should this agreement be renewed, it is expressly understood that any reimbursement for such unused vacation

days will not alter the statutory limit of sixty (60) days maximum payout for unused vacation days.

- B. **Sick Leave:** The Employee shall receive sick leave in accordance with F.S. §1012.61(2)(a) in which employees are credited with four (4) days of sick leave at the end of the first month of each contract year and thereafter credited with one (1) day of sick leave for each month of employ. Payment of accrued sick leave shall be provided pursuant to the pay-out percentage schedule based on years of service set forth in Board Administrative Procedure 4415. The Employee shall be entitled to participate in the District's sick leave pool program in the manner provided by District policy.
- C. **Insurance:** Board agrees to maintain in force for Employee all health, life insurance or other insurance policies provided by the Board for its other employees. Board agrees to put into force and to make the required premium payments for Employee for insurance policies for life, accident, disability income benefits, major medical and dental, and dependent's coverage group insurance covering Employee and his dependents. Term life insurance for Employee shall be provided at a level of three times (3x) Employee's annual base salary. Disability insurance income benefits shall be a fifty percent (50%) of Employee's annual base salary.
- D. All provisions of law and regulations and rules of the District relating to holidays and other fringe benefits and working conditions as they now exist, or hereafter may be amended, shall also apply to Employee in the manner that they to other employees of the District, in addition to benefits specifically enumerated in this Agreement.

Section 13: Retirement

The Board agrees to execute all necessary agreements provided by MissionSquare Retirement (formerly known as ICMA Retirement Corporation) or NACO Public Employee Benefit Services Corporation (as determined by the Employee) and the Florida Retirement System ("FRS") for Employee's continued participation in said retirement plan. The Board shall make a contribution to the FRS on behalf of the Employee each pay period. The Board agrees to pay the maximum allowable annual amount into the Employee's retirement fund on Employee's behalf, on the effective date of this Agreement and on the anniversary of said date thereafter, and to transfer ownership to succeeding employers upon Employee's resignation or termination, or to Employee upon his retirement, in accordance with any applicable rules, regulations or laws. The Employee is designated as Senior Management Service Class Employee.

Section 14: Dues and Subscriptions

Board agrees that the public is served by the Employee's participation in professional organizations that enhance his professional development and in community organizations through which Employee can enhance the level of service provided to the District, Board, and its stakeholders.

Board will budget for and pay for the professional development dues and subscriptions of Employee necessary for his continuation and full participation in national, state, regional and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Board, including but not limited to: The Florida Bar Association, the Collier County Bar Association, The Florida School Board Attorneys Association, The Michael R. N. McDonnell American Inn of Court, The Association of Certified Fraud Examiners, The Institute of Internal Auditor, The Florida Records Management Association, and the Florida Department of State, Division of Corporations, Notary Section.

Section 15: Professional Development and Travel

- A. Board agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee, and to adequately pursue necessary official functions of Board, including but not limited to: lawsuits and meetings involving Board and/or District; District project financial meetings including bond closings, etc.
- B. Board agrees to budget for and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the Board. The Employee shall not be required to take vacation leave to attend such meetings and conferences.
- C. Employee may use a District pool or rental car for any out-of-county professional and business travel. All out of state travel not specifically provided for herein shall be pre-approved by the Board. Reimbursement for out-of-county travel shall be provided by Florida Statutes. These shall include, but not necessarily be limited to, reimbursement for travel associated with attending conferences, conventions, meeting, Continuing Legal Education (CLE), Continuing Professional Education (CPE), or conducting other business in the furtherance of his work as Employee. In accordance with F.S. §112.061, such travel expenses shall include but not be limited to, transportation fares, meals, mileage, lodging, taxi, or ride share fares, parking fees, and communication expenses.
- D. Membership in Civic and Community Organizations and Related Expenses: To encourage Employee's involvement in civic and community organizations and activities, the Board shall provide the Employee with a stipend of **X Hundred Dollars (\$X,X00.00)** each year of this Agreement for the purpose of membership in civic and community organizations and participation in community activities. The Employee shall maintain records of costs of such participation to be reviewed at the November 14, 2023, Regular School Board Meeting to determine whether the stipend amount should be increased. If the costs of such activities warrant an earlier review, the Employee shall apprise the Board Chair to discuss the issue at a Regular or Special School Board Meeting prior to November 14, 2023.

Section 16: Indemnification

In addition to that required under state and local law, Board shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, including costs and attorneys’ fees relating thereto whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee’s duties as Chief Legal Counsel.

Section 17: Bonding

Board shall bear the full cost of any fidelity or other bond required of the Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

The Board and Employee shall fix any such other terms and conditions of employment as they may determine from time-to-time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or any other law.

Section 19: Notices

Notices pursuant to this Agreement shall be in writing, transmitted by personal service or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

To the Board: The Board Chair in place at the time of the notice
The District School Board of Collier County
5775 Osceola Trail
Naples, Florida 34109

The Employee: James D. Molenaar
Chief Legal Counsel
The District School Board of Collier County
5775 Osceola Trail
Naples, Florida 34109

Effective written notice may also be provided via electronic mail. Written Notices shall be deemed effective upon deliver or receipt.

Section 20: General Provisions

- A. The text herein shall constitute the entire agreement between the parties
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. This Agreement is a personal services contract and neither this Agreement nor Employee's obligations under this Agreement are assignable.

D. This Agreement shall become effective commencing on December 7, 2022, providing for an employment termination date of June 30, 2025, unless this Agreement is extended or renegotiated as provided herein.

E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the Board has caused this Agreement to be signed and executed on its behalf by its Chairperson, and the Employee has signed and executed this agreement, the month, date and year first above written.

WITNESSES:

THE DISTRICT SCHOOL BOARD
OF COLLIER COUNTY, FLORIDA

Name

By: _____
KELLY LICHTER, CHAIRPERSON

Date: _____

Date: _____

Name

EMPLOYEE

Date: _____

JAMES D. MOLENAAR

Date: _____