

July 17, 2003

04-013

APPROVAL OF CONTRACT FOR DR. GERARD "JERRY"
BERGER AS INTERIM PRESIDENT OF PORTLAND
COMMUNITY COLLEGE

PREPARED BY: Jerry Donnelly, Director, Human Resources Department

APPROVED BY: Doreen Margolin, Board Chair

REPORT: The Chair of the Board recommends adoption of the following resolution:

The Board has interviewed Dr. Berger for the position of Interim President of Portland Community College, replacing Dr. Jesus Carreon.

Dr. Berger has exhibited outstanding talents in academic leadership, community partnerships, marketing, administration, and public entity leadership.

RECOMMENDATION: That the Board of Directors retain the services of Dr. Berger as Interim President of Portland Community College beginning August 1, 2003, pursuant to the Employment Contract presented to the Board. That the term of the Contract will extend until a new President is selected and enters into the duties of office. That the Contract contain the following terms: Base salary of \$160,000 on an annualized basis, an automobile allowance of \$1,000 per month; a general expense allowance of \$1,067 per month, and reimbursement of Dr. Berger's current health insurance costs (approximately \$752/month). That the terms and conditions of employment shall otherwise be as set forth in the Employment Contract. That the Board Chair be authorized to execute the Contract on behalf of the Board.

**EMPLOYMENT CONTRACT
BETWEEN DR. GERARD BERGER**

AND

**THE BOARD OF EDUCATION OF THE
PORTLAND COMMUNITY COLLEGE DISTRICT**

THIS EMPLOYMENT CONTRACT, made and entered into this _____ day of _____, 2003, between Portland Community College District, hereinafter referred to as COLLEGE, and Dr. Gerard Berger, hereinafter referred to as INTERIM PRESIDENT.

WITNESSETH:

WHEREAS, COLLEGE President Jesus Carreon has announced his resignation, effective July 30, 2003, and the COLLEGE Board of Education ("Board") is instituting a search for a new president; and

WHEREAS, The length of the search process for a new president requires the appointment of an interim president, who will temporarily perform the duties and obligations of COLLEGE president under the direction of the Board until a new president is recruited, selected, and assumes the duties of the office.

WHEREAS, INTERIM PRESIDENT is desirous of serving as the interim president of COLLEGE and performing all duties required by that office; and

WHEREAS, the COLLEGE is desirous of securing INTERIM PRESIDENT to supervise and direct the COLLEGE and its educational program under the general supervision of the Board; and,

NOW THEREFORE, in consideration of the mutual promises contained herein, the COLLEGE hereby employs INTERIM PRESIDENT, and the INTERIM PRESIDENT hereby accepts such employment upon the terms and conditions following:

1. **TERM.** The COLLEGE hereby employs the INTERIM PRESIDENT beginning on the 1st day of August, 2003, and terminating on the 30th day of June, 2004, or on the date a new President has been selected and assumes the duties of the office, whichever is earlier. In the latter case, the Chair of the Board shall notify INTERIM PRESIDENT in writing of the date of termination following ratification of the new president's appointment. In no event, will the date of termination be less than 30 days from the date of the notice. The terms and conditions of the INTERIM PRESIDENT'S employment shall remain the same throughout the extended term of the Contract, unless the terms and conditions are amended in writing by mutual agreement of the INTERIM PRESIDENT and the COLLEGE.
2. **SALARY.** The INTERIM PRESIDENT shall be paid a salary at the annualized rate of \$160,000. That annual salary rate for the first year of this Contract shall be prorated based the portion of the year worked.

The INTERIM PRESIDENT'S annual salary will be paid in equal monthly installments of \$13,333.33 in accordance with the schedule of payment to the administrative staff of the COLLEGE.
3. **INTERIM PRESIDENT AND BOARD RESPONSIBILITY.** The INTERIM PRESIDENT shall be the chief executive officer of the COLLEGE. As such, the INTERIM PRESIDENT shall have the primary responsibility for execution of Board policy, whereas the Board shall retain the primary responsibility for formulating and adopting that policy.
4. **DUTIES.** As chief executive officer of the COLLEGE, the INTERIM PRESIDENT shall perform the duties of INTERIM PRESIDENT that are consistent with board policies as currently defined or as hereafter may be defined by the Board, it being specifically understood that the District reserves the right to modify or change the duties of the INTERIM PRESIDENT from time to time.

The INTERIM PRESIDENT shall devote full time, skill, labor and attention to the operation of the COLLEGE.

The INTERIM PRESIDENT shall have responsibility within board policy to organize, reorganize and arrange the administrative staff, including instruction and business affairs, which in his judgment best serves the COLLEGE. The INTERIM PRESIDENT shall have the responsibility for all personnel matters, including selection, assignment, transfer and termination subject to Board approval and consistent with Board policy on Personnel Standards and Practices.

The INTERIM PRESIDENT shall:

- A. periodically evaluate all COLLEGE employees as provided for by Board policy;
 - B. establish and maintain an appropriate community relations program;
 - C. endeavor to maintain and improve his professional competence by all available means, including subscribing to and reading appropriate periodicals, joining appropriate professional associations, and participating in activities of such associations; and
 - D. be entitled to:
 - a. present his recommendation to the Board on any subject under consideration by Board prior to action taken on the subject by the Board;
 - b. attend each meeting of the Board, unless excused by the Board; and
 - c. serve as an *ex officio* member of each committee established by the Board.
5. **PERFORMANCE EVALUATION.** The Board may during the term of this contract meet to evaluate the job-related performance of the INTERIM PRESIDENT. INTERIM President's performance will be evaluated based upon the performance of the duties outlined in Sections 3 and 4 of this Employment Contract, compliance with adopted Board Policies, and furtherance of adopted COLLEGE Goals. Such performance evaluations shall be held in executive session, except as may be otherwise required by the Oregon Public Meetings Law.
6. **PROFESSIONAL ACTIVITIES.** With prior approval of the Board, the INTERIM PRESIDENT may undertake consultative work, speaking engagements, writing and other professional activities for honoraria and expenses, provided such activities do not interfere with the INTERIM PRESIDENT'S normal duties.
7. **WORK YEAR/VACATION.** The INTERIM PRESIDENT shall be required to render full and regular service to the COLLEGE for the entire period covered by this Contract, except that he shall be entitled to 22 days vacation on an annualized basis which shall be accrued in accordance with College policy for the administrative staff, in addition to the following holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving day and the Friday after Thanksgiving Day, Christmas Eve, Christmas Day, the day following Christmas Day, New Year's Day, Martin Luther King Jr.'s birthday and Memorial Day. Any time off taken during spring or summer break periods must be counted among the 22 days of vacation.

In the event of termination or expiration of this Employment Contract, the INTERIM PRESIDENT shall be compensated for unused accrued vacation time at the salary rate effective at the time of the termination or expiration of this Employment Contract.

8. **FRINGE BENEFITS.**

- A. *Benefits Provided:* COLLEGE shall provide the following benefits to INTERIM PRESIDENT during the term of this contract:
 - a. *Health Insurance:* INTERIM PRESIDENT is currently participating in a Blue Cross/Blue Shield Health Plan through his former employer, Chemeketa Community College. COLLEGE shall pay the monthly cost of this plan (approximately \$752 per month).

- b. *Auto Allowance:* COLLEGE shall pay INTERIM PRESIDENT an automobile allowance of \$1000.00 per month.
 - c. *Expense Allowance:* COLLEGE shall pay INTERIM PRESIDENT an expense allowance of \$1067.00 per month.
 - d. *Sick leave:* INTERIM PRESIDENT shall accrue sick leave at the same rate as other executive class employees of COLLEGE.
 - e. *Personal Leave:* INTERIM PRESIDENT shall be entitle to personal leave at the same rate as other executive class employees of COLLEGE.
- B. *No PERS Contribution.* INTERIM PRESIDENT is a retired member of the Public Employees Retirement System (PERS). COLLEGE shall not make any contribution to PERS on account of INTERIM PRESIDENT'S employment under this Agreement. INTERIM PRESIDENT shall not work more than 1,039 hours in any calendar year.
9. **EXPENSES.** The COLLEGE shall reimburse the INTERIM PRESIDENT according to COLLEGE policy for incidental expenses reasonably incurred in the performance of his duties and documented for the COLLEGE.
10. **TERMINATION OF EMPLOYMENT CONTRACT.**
- A. *No cause termination of Contract.* The COLLEGE may discharge INTERIM PRESIDENT as INTERIM PRESIDENT and terminate this Contract without any showing of cause upon ten (10) days' written notice. The INTERIM PRESIDENT will be paid for days actually worked and holidays that occur prior to contract termination. If INTERIM PRESIDENT is terminated under this subsection, he will be paid one month's salary on the date of termination as severance.
 - B. *Termination at the request of the INTERIM PRESIDENT.* In the event the INTERIM PRESIDENT intends to act to terminate this employment contract prior to its termination day, he shall give the COLLEGE no less than thirty (30) days written notice in advance. It is agreed that such request be accepted by the COLLEGE. The INTERIM PRESIDENT will be paid for days actually worked and holidays that occur prior to contract termination.
11. **PROFESSIONAL LIABILITY.** The COLLEGE shall hold harmless and indemnify the INTERIM PRESIDENT from any and all demands, claims, suits, and legal proceedings brought against the INTERIM PRESIDENT in his individual capacity or in his official capacity as agent and employee of the COLLEGE, provided the incident arose while the INTERIM PRESIDENT was acting within the scope of employment. In no case will individual Board members be considered personally liable for indemnifying the INTERIM PRESIDENT against such demands, claims, suits, actions, and legal proceedings.
- If, in the good faith opinion of INTERIM PRESIDENT, conflict exists regarding legal defenses to a third-party claim against the INTERIM PRESIDENT and COLLEGE (i.e., pressing the defense of one party would tend to injure the other party), the INTERIM PRESIDENT may engage separate counsel, and the COLLEGE shall indemnify the INTERIM PRESIDENT for the costs of such counsel, subject to the same limitations, provisions, and exceptions set forth above. The COLLEGE shall not, however, be required to pay the costs of any legal proceeding in the event the COLLEGE and the INTERIM PRESIDENT have adverse interests in any litigation.
12. **BREACH OF EMPLOYMENT CONTRACT.** Failure by the INTERIM PRESIDENT to fulfill the obligations set forth in this Employment Contract shall be considered a breach of this contract and will terminate the contract immediately.
13. **APPLICABLE LAW.** This Employment Contract is subject to all applicable laws of the state of Oregon.
14. **NOTICES.** Any notices that are required under the terms of this Contract shall be first class mailed or hand delivered to the parties at the following addresses:

COLLEGE
Board Chair
Portland Community College
Post Office Box 19000
Portland, Oregon 97280

INTERIM PRESIDENT
Gerard Berger

15. **MODIFICATION.** The parties may, during the term of this Employment Contract, mutually agree to modify any of its terms. Any modifications will be in writing, signed by both parties and attached to this document.

IN WITNESS WHEREOF, the COLLEGE pursuant to the authority of its Board of Education has caused two originals of this Employment Contract to be signed in the name of the COLLEGE by the Chair of the Board of Education, and the INTERIM PRESIDENT has hereunto affixed his hand and seal the day and year herein above mentioned.

PORTLAND COMMUNITY COLLEGE DISTRICT
PORTLAND, OREGON

By _____
Bob Palmer,
Chair, Board of Education

Date _____

By _____
Dr. Gerard Berger
INTERIM PRESIDENT

Date _____