

RETIREMENT AGREEMENT AND RELEASE

This Retirement Agreement and Release (the "Agreement") is entered into by Superintendent Dr. Robert Kobylski ("Superintendent") and the Davenport Community School District, its Board of Education, and their current and former directors, agents, administrators, and employees, whether acting in their official or individual capacities (collectively referred to as the "District").

WHEREAS, the Board of Education currently employs Dr. Kobylski as its Superintendent;

WHEREAS, such employment is pursuant to the terms of a contract ("Employment Agreement"), which extends to June 30, 2022;

WHEREAS, Dr. Kobylski wishes to retire from the District, and the Board of Education believes it in the best interest of the District to accept such retirement, prior to the Employment Agreement termination date of June 30, 2022; and

WHEREAS, it is the intention of the parties to resolve all matters between them relating in any way to Superintendent's employment, compensation, and separation of employment with the Davenport Community School District.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration, and intending to be legally bound by the provisions herein, the parties agree as follows:

1. **RETIREMENT.** Superintendent will retire effective as of the close of business December 7, 2020. Superintendent will tender his written retirement by December 11, 2020, which the District Board of Education will accept at its meeting on December 14, 2020, each effective as of the close of business December 7, 2020. Such retirement will constitute a termination of Superintendent's Employment Agreement by mutual agreement of the Board of Education and Superintendent for purposes of the Employment Agreement and Iowa Code Chapter 279.

2. **EARLY RETIREMENT INCENTIVE.** Currently, the District is offering an Early Retirement Incentive Plan ("Plan") (attached hereto as Exhibit A). In exchange for Superintendent's agreement to retire, the District shall amend the Plan solely for Superintendent to allow for Superintendent to receive the benefits provided under the Plan. Applicable only to Superintendent, the Plan is hereby modified in the following points of detail:

- a. The deadline for Superintendent to elect to participate in the Plan is extended to December 11, 2020.
- b. The eligibility requirement of a minimum duration of 10 years of continuous employment with the District is waived as to Superintendent.
- c. The effective date of retirement shall be December 7, 2020.
- d. The Early Retirement Benefit is modified as provided in paragraph 3 below.

3. **EARLY RETIREMENT BENEFIT.** In lieu of the payments outlined in the Plan, the District will provide the Superintendent a one-time payment of \$57,000, no sooner than January 1, 2021 and no later than January 8, 2021 (the "Payment").

4. **ADDITIONAL PAYMENT/CONSIDERATION FOR THIS AGREEMENT.** The District will provide payment for any unused Vacation Balance the Superintendent has accrued through the date of his retirement, on a per diem basis (8.87 days at a per diem rate of 1/240 of Superintendent's base salary).

5. **COBRA.** The District will provide Superintendent with appropriate documentation regarding COBRA benefits that Superintendent may elect.

6. **TAX TREATMENT.** Superintendent acknowledges that the District has made no representations or warranties whatsoever concerning the treatment for tax purposes of any payments made pursuant to this Agreement. Superintendent further agrees that he is fully responsible for any and all tax liability, interest, or penalties due under federal or state law or regulations as a result of the foregoing payment, except that the District will withhold all appropriate state and federal taxes from the Payment as appropriate. Superintendent agrees to be solely responsible for, and to timely pay, any and all such obligations and to indemnify, defend, and hold the District harmless against any subsequent claims for federal or state taxes, if it is determined that such taxes should have been withheld from the payment. Superintendent is responsible to determine the tax consequence of the payment and act accordingly.

7. **EMPLOYMENT REFERENCE.** A letter of reference, signed by a current Board member, will be provided to Superintendent as part of this Agreement.

8. **RELEASE OF ALL CLAIMS.** In exchange for the payment and consideration made to Superintendent in this Agreement, Superintendent, for himself and on behalf of his spouse, heirs, executors, administrators, attorneys, and assigns, hereby releases the Davenport Community School District, its Board of Education, their current and former directors, agents, administrators, and employees, whether acting in their official or individual capacities, predecessors, successors and assigns, from any and all claims (known or unknown), rights or causes of action of any kind and nature whatsoever, which he has or may claim to have, in any way arising out of, connected with, or arising directly or indirectly from Superintendent's employment, relationship, and/or separation of employment with the District. The waiver of claims applies to all claims and to anyone associated with the District.

Superintendent represents that he understands and accepts that this Agreement specifically covers, but is not limited to, any and all claims, complaints, causes of action or demands, including attorney fees and costs, that Superintendent (or anyone on his behalf) has or may have against the District relating to his employment and separation from employment with the District, whether based on statutory or common law claims, including age, sex, marital status, sexual orientation, gender identity, color, religion, race, national origin, political affiliation, veterans' status, disability, genetic information, or other discrimination, harassment, and/or retaliation arising under the Age Discrimination in Employment Act, the Americans With Disabilities Act, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Employment Retirement Income Security Act ("ERISA") as

amended, 29 U.S.C. § 1001 et seq., the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), the Iowa Civil Rights Act, and any other federal, state, or local statute, Executive Order, or ordinance prohibiting employment discrimination and/or regulating employee benefits in any manner; wrongful discharge, breach of contract, violation of Iowa Code 279 or other provision of applicable law, breach of any express or implied promise, misrepresentation, fraud, retaliation, breach of public policy, infliction of emotional distress, intentional interference with contract, negligence, defamation, promissory estoppel, invasion of privacy, personal injuries, claims for lost wages, claims relating to any form of employee benefits, any life insurance benefits, and any disability insurance benefits; claims for attorney fees or costs; and all other claims of any type or nature, whether known or unknown, matured or unmatured, direct or indirect. The above recitation may not be offered or referred to in any claim or action against the District by any party against the other party for any purpose whatsoever, and does not constitute any admission of liability or wrongdoing, which is expressly denied.

Superintendent acknowledges that the District has agreed to provide the payment and benefits described in this Agreement only if he signs this Agreement and gives up any claims he may have against the Davenport Community School District, its Board of Education, their current and former directors, agents, administrators, and employees, whether acting in their official or individual capacities, predecessors, successors and assigns.

BY SIGNING THIS AGREEMENT, SUPERINTENDENT IS GIVING UP ALL CLAIMS THAT HE MAY HAVE AGAINST THE DISTRICT AND ANY RELATED PERSON OR ENTITY, EXCEPT SUPERINTENDENT DOES NOT WAIVE OR GIVE UP ANY RIGHTS OR CLAIMS THAT MAY ARISE AFTER THE DATE THIS AGREEMENT IS SIGNED.

9. **SPECIFIC WAIVER OF AGE DISCRIMINATION CLAIMS.** In exchange for the amount paid to Superintendent under this Agreement, Superintendent specifically waives any claims that Superintendent or any person claiming under him may have against the District, or any related person or entity, under the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, and any successor to either of these laws or any other similar law. However, Superintendent does not waive any rights or claims that may arise after the date of this Agreement.

10. **NO DETERMINATION OF VALIDITY OF CLAIMS.** The District expressly denies any violation of the District’s policies or procedures, the Employment Agreement, or any federal, state, or local laws or regulations. Although this Agreement resolves all issues between the District and Superintendent, this Agreement does not constitute an adjudication or finding on the merits of any claim(s) by Superintendent, and will not be construed as an admission by the District of any such violation. This Agreement and any settlement discussions shall not be admissible in any proceeding as evidence or an admission by the District of any violation of any policies, law, or regulation. This Agreement may be introduced in any proceeding to enforce the Agreement.

11. **COVENANT NOT TO SUE.** A “covenant not to sue” is a legal term that means a promise not to file a lawsuit in court. It is different from the general Release of All Claims contained in Paragraph 8 above. Besides waiving and releasing the claims covered by Paragraph

8, Superintendent further agrees never to sue the Davenport Community School District, its Board of Education, their current and former directors, agents, administrators, and employees, whether acting in their official or individual capacities, predecessors, successors and assigns, in any forum for any reason arising out of or related in any way to Superintendent's employment with the District, including but not limited to claims, laws, or theories covered by the General Release language in Paragraph 8 above and limited by the language set forth in Paragraph 8 above.

Superintendent acknowledges that the terms set forth in this Agreement are in full and final settlement of all potential claims, and that he will have no claim for costs, attorneys' fees, or other amounts incurred in connection with the settlement or litigation of any potential claims, which existed related in any way to his employment with the District through the date of this Agreement.

Notwithstanding this Covenant Not To Sue, the parties may bring a claim against the other party to enforce this Agreement, and the parties may participate in any agency investigation without violating this Agreement. Superintendent further agrees that if he participates in any way with any proceeding any agency may pursue against the District, he is waiving his right to recover any individual relief in any such proceeding, including, but not limited to, back pay, front pay, reinstatement, attorneys' fees, and/or punitive damages, whether such proceeding was brought by a civil agency or another party. If Superintendent sues the District, or files a claim of any nature against the District in violation of this Agreement, Superintendent shall be liable to the District for its reasonable attorneys' fees and other litigation costs incurred in defending against such a suit.

12. **VOLUNTARY AGREEMENT/CONSULTATION WITH ATTORNEY.** This Agreement contains a release of certain claims that Superintendent may have. Superintendent recognizes and understands his right to consult with an attorney (at his expense) before signing this Agreement to make sure he understands its terms and their legal implications. Superintendent acknowledges that the District has advised him to consult with an attorney with regard to this Agreement and his potential claims. By signing this Agreement, Superintendent acknowledges that he has had ample time to review and consider this Agreement, and to consult with legal counsel of his choosing; that he understands the terms and effect of this Agreement in its entirety; that he is not relying on any other statements or representations by the District or its representatives; and that he voluntarily enters into this Agreement without duress or coercion.

13. **APPLICABLE LAW.** This Agreement will be interpreted and enforced based on the laws of the State of Iowa, without giving effect to Iowa's conflict of law provisions.

14. **RETURN OF THE DISTRICT'S PROPERTY.** Superintendent agrees to immediately return any of the District's property that is in his possession, including keys to the building, and further agrees not to retain copies of any of the District's property and/or business records.

15. **PUBLIC DISCLOSURE.** The parties specifically acknowledge this Agreement is subject to disclosure in response to a request under Iowa's public records law.

16. **JOINT STATEMENT; NO DEROGATORY COMMENTS.** The parties agree a joint statement may be created and, if requested by the public or media, such statement will be provided regarding this Agreement and any matter covered by this Agreement, including Superintendent's employment with the District and his retirement. The parties further agree to make their reasonable best efforts to maintain the integrity of their relationship.

17. **ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST.** This Agreement contains the entire agreement between Superintendent and the District with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

18. **EMPLOYEE ACKNOWLEDGMENTS.** Superintendent agrees that he: (i) has not suffered any on-the-job injury; (ii) he has been paid for all accrued vacation, expenses, benefits, and wages; (iii) he is entering into this Agreement knowingly and voluntarily; (iv) he has been advised by this Agreement to consult with an attorney (at his cost) before signing this Agreement; (v) he has had sufficient time to consider this Agreement before signing it; and (vi) he is not otherwise entitled to the Payment described in the Agreement.

19. **VIOLATION OF AGREEMENT.** If either party violates the Agreement, the other party may resort to any remedies available under applicable law, and the prevailing party shall be entitled to recover its reasonable attorney's fees.

20. **PRIOR AGREEMENTS NOT ENFORCEABLE.** This Agreement contains the entire agreement of the parties; and any prior representations, promises, or agreement (whether oral or written) that are not in this Agreement are superseded and not enforceable. The terms of this Agreement may not be altered, amended, or waived, except by another written agreement signed by all parties.

21. **UNDERSTANDING THE TERMS.** Each party acknowledges that they have read this Agreement completely, and fully understand the terms, nature, and effect of this Agreement, which the parties voluntarily execute in good faith.

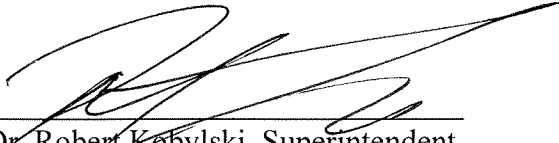
22. **WAITING PERIOD/EFFECTIVE DATE.** Superintendent understands that he has had twenty-one (21) calendar days from his receipt of this Agreement to consider and accept it. Superintendent further understands that he may revoke this Agreement within seven (7) calendar days after signing it and that the Agreement does not become effective (including payment of any benefits) until the seven (7) day revocation period expires. If Superintendent wishes to revoke his acceptance of this Agreement, he must do so by sending a revocation to Wendy Meyer, Lane & Waterman LLP, 220 N. Main Street, Ste. 600, Davenport, Iowa 52801. If Superintendent fails to have the revocation actually delivered in the manner set forth above within the seven (7) day revocation period, the revocation will not be effective.

23. **UNDERSTANDING THE TERMS.** Superintendent and the District acknowledge they have read this Agreement completely, and fully understand the terms, nature, and effect of this Agreement, which Superintendent and the District voluntarily execute in good faith.

24. **SEVERABILITY.** The parties agree that the provisions of this Agreement are severable, and that the invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any or all other provisions.

25. **COUNTERPARTS.** Duplicate copies of this Agreement may be signed, and each copy will be considered an original document, but when taken together, all copies will constitute one agreement.

Dated: 12/2/20



Dr. Robert Kobylski, Superintendent

Dated: _____

Dan Gosa, Board President
For Davenport Community School District