

**SCHUYLER COMMUNITY SCHOOLS
EARLY RETIREMENT INCENTIVE PROGRAM
AGREEMENT 20__-20__**

This Early Retirement Incentive Program ("ERIP") Agreement is offered and made this day of _____, 20 __, between Colfax County School District 19-0123, a/k/a Schuyler Community Schools ("School District"), and _____ ("Certificated Employee") _____ (address), _____ (city), _____ (state).

WHEREAS, the School District has established an ERIP under the terms of the ERIP Policy, Policy 406.05 for the purpose of encouraging eligible certificated employees who are considering an early leaving decision to accelerate their retirement plans; and,

WHEREAS, the Certificated Employee is desirous of voluntarily participating in the ERIP and in voluntarily resigning from employment; and,

WHEREAS, the Certificated Employee has completed and submitted to the Board of Education an Application for participation in the ERIP, which application has been accepted by the Board of Education of the Schuyler Community School District at a regular or special meeting on the ____ day of _____, 20__.

WHEREAS, the Certificated Employee acknowledges that:

1. Forty-five (45) or more days prior to the Certificated Employee's execution of this Agreement, the Certificated Employee received the ERIP Policy and Application form and a Memorandum from the Superintendent, which provided the Certificated Employee with information as to the class, unit, or group of individuals covered by the ERIP program, eligibility factors for such program, time limits applicable to such program; the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

2. The Certificated Employee has been advised in writing to consult with an attorney prior to executing this Agreement;

3. The Certificated Employee has had forty-five (45) or more days to consider participation in the ERIP;

4. The Certificated Employee understands that the Certificated Employee has the right, for a period of at least seven (7) days following the execution of the ERIP Agreement, to revoke the Agreement, and that the ERIP Agreement does not become effective or enforceable until the revocation period has expired; and,

5. The Certificated Employee's participation in the ERIP is knowing and voluntary and the Certificated Employee was not coerced in any manner to participate in the ERIP.

Approved _____ Reviewed _____ Revised ___ 8-13-2012 _____

NOW, **THEREFORE**, in consideration of the mutual covenants, conditions, and stipulations set forth in this Agreement, the Certificated Employee and the School District hereby agree as follows:

1. **CERTIFICATED EMPLOYEE'S RESIGNATION:** The Certificated Employee, by signing this Agreement, hereby voluntarily, unconditionally, and irrevocably resigns from the Certificated Employee's employment with the School District effective at the end of the 20__-20__ school year. The Certificated Employee waives any and all notice of action by the Board of Education to accept the resignation and to terminate the Certificated Employee's continuing contract and employment with the School District. The Certificated Employee waives any and all rights the Certificated Employee may have under Neb. Rev. Stat. ' ' 79-824 to 79-839 (the teacher tenure law), or other laws as they now exist or as they may be amended in the future relating to continued employment. The Certificated Employee authorizes the School District to advertise for, and contract with, a replacement certificated employee, if deemed appropriate, for the ensuing 20__-20__ school year. The Certificated Employee authorizes the School District to approve and accept this Agreement immediately upon its submission.

The School District, by approving and signing this Agreement, hereby unconditionally and irrevocably accepts the Certificated Employee's resignation, ending all employment relations between the School District and the Certificated Employee, effective at the end of the 20__-20__ school year.

2. **EARLY RETIREMENT BENEFITS:** In consideration of the Certificated Employee's resignation, and of other covenants and conditions set forth in this Agreement, the Certificated Employee shall receive the following ERIP benefits payable by the School District during the three (3) fiscal years immediately following the participant's retirement::

a. **Health Insurance Premium Contribution/Health Reimbursement Account Benefit:** The School District shall credit the account of the Employee under a *Health Insurance Reimbursement Account (HRA)* established and administered by the School District an amount determined as follows: The sum of Ten Thousand Dollars (\$10,000.00) times the Employee's FTE for the Employee's final contract year to be determined as of December 1 of the Employee's final contract year; such FTE not to Exceed 1.0 The amount credited to the HRA account may be "rolled over" to subsequent fiscal years of the HRA plan and School District. The HRA plan shall allow the Eligible Employee to be reimbursed for the cost of his/her health insurance premiums and/or for reimbursement of qualified unreimbursed medical costs. Payment of the Health Benefit shall be in an annual lump sum payment to the HRA account of one-third of the total benefit amount made in September of the school fiscal year following the acceptance of the employee's ERIP application and execution of this Agreement, and in September of each of the two (2) immediately ensuing fiscal years.

b. **Service Benefit:** The School District shall, following the participant's retirement, make a non-elective contribution to a 403(b) annuity or custodial account selected by the participant in an amount equal to two percent (2%) of his/her scheduled salary or administrative contract salary as deemed below at the 1.0 FTE level during the Employee's final contract year multiplied by the Employee's number of years of creditable service with the School District up to a

maximum benefit of Twenty-five Thousand Dollars (\$25,000.00); such amount to be paid over three (3) fiscal years in six (6) equal installments, with one (1) such installment to be paid on or before September 30 of each such fiscal year and one (1) such installment to be paid on or before March 31 of each such fiscal year; with the first installment being payable on the September 30 immediately following the fiscal year of participant's retirement. For purposes of this paragraph the following definitions shall apply:

(1) "Creditable service" shall be the sum of each year's service times that year's FTE.

(2) "Scheduled salary" shall be defined as the 1.0 FTE salary listed on the negotiated salary schedule for the Employee's lane/step in his/her final contract year adjusted for the Employee's FTE plus salary paid for extended contract days based upon such salary schedule placement. This definition excludes salary paid for extra duties or responsibilities, reimbursement of expenses, or fringe benefits. In the case of an Administrator, the scheduled salary shall be the last regular salary at the 1.0 FTE level agreed to in the Administrator's individual employment contract.

(3) "Administrative contract salary" shall be the last regular salary at the 1.0 FTE level agreed to in the Administrator's individual employment contract. This definition also excludes compensation paid for extra duties or responsibilities, reimbursement of expenses or fringe benefits.

If participant fails to designate the 403(b) annuity or custodial account to which the contribution is to be made, the District will hold the contribution until participant does designate the annuity or custodial account. The parties further agree that the non-elective contribution described herein will not exceed any Internal Revenue Code or other limit imposed by law at the time the contribution is made. If the contribution, together with any other contributions on behalf of participant would cause the participant to exceed the maximum allowed by law, the excess shall be paid to participant in cash, less required withholding.

c. **Other Benefits:** The Eligible employee shall receive such other compensation and benefits as described in Board of Education Policy or the Negotiated Agreement in effect in the employee's final contract year.

d. **Beneficiary Designation:** The Certificated Employee hereby designates the following named person or persons to be the Certificated Employee's beneficiary in case of the Certificated Employee's death.

Name	
Address	
Social Security No.	

Any monies due the Certificated Employee will continue to the beneficiary until the total benefit distribution is paid in full pursuant to the provisions of this Agreement.

e. **Tax Consequences:** The payments made pursuant to the ERIP are made to buy-out the tenure rights (i.e., continuing contract rights) of certificated staff, and in effect, make payments to secure the release of unexpired contracts of employment, and to pay a negotiated amount of money in exchange for permanent certificated employees giving up their constitutional and contractual rights to tenure and relinquishing such tenure rights. Further, pursuant to IRS Publication 15-B, contributions to the cost of health insurance premiums of a retiree are not subject to FICA and Social Security taxes. As such, FICA, Social Security taxes and similar taxes, are not to be withheld from payments made pursuant to this ERIP unless, in the sole discretion of the School District, it is determined that the law requires that such taxes or withholding be made, in which event the social security percentage and any other required state or federal withholdings may be subtracted from each payment to the participant. Otherwise, and except as otherwise provided in this ERIP, no state or federal retirement contributions, FICA, FUTA, or state or federal unemployment contributions, including employer and employee share thereof will be withheld from or contributed in relation to the payments. The Certificated Employee agrees that, in the event the School District or the Certificated Employee are called upon to pay the federal government or the State of Nebraska, or any other state or federal authority, sums or payments that should have been withheld from or contributed in relation to the ERIP payments, including retirement contributions, FICA, FUTA, or state or federal unemployment contributions, the Certificated Employee shall indemnify and hold the School District harmless from any and all sums which it is called upon to pay, including the employee's and employer's share thereof and any and all penalties and interest arising from either the employee's share or employer's share thereof.

3. WAIVER AND RELEASE OF CLAIMS: By entering into this Agreement the Certificated Employee hereby releases, waives, acquits, and forever discharges the School District, all past, present, and future members of the Board of Education of such School District in their official and individual capacities, the Administrators, and all other officers, agents, and employees of the School District, in their official and individual capacities, from any and all claims, however characterized, whether for damages, costs, expenses, compensation, penalties, wages, benefits, reinstatement, attorneys' fees, or attorneys' fees under 42 U.S.C. ' 1988, or the like, with respect to, arising out of, or in relation to the Certificated Employee's employment with the School District, including, but not limited to, claims or rights:

a. under the Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA) (29 U.S.C. ' 621 et seq.), and the Act Prohibiting Unjust Discrimination in Employment on the Basis of Age (Neb. Rev. Stat. ' 48-1001 et seq.);

b. under the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. ' 1001 et seq.);

c. under Title VI (42 U.S.C. § 2000d et seq.; 34 CFR §100 et seq.), Title VII (42 U.S.C. §2000e, et seq.) and Title IX of the Civil Rights Act of 1964 (20 U.S.C §1681; 34 CFR 106.1 et seq.);

d. under the Civil Rights Act of 1866 and 1871 (42 U.S.C. ' 1981, through and including 42 U.S.C. ' 1988);

e. under the Americans with Disabilities Act (42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. §791, et seq.; 34 CFR §104, et seq.), and the Family Medical Leave Act of 1993 (29 U.S.C. ' 2601 et seq.);

f. under the Nebraska Fair Employment Practices Act (Neb. Rev. Stat. §48-1101 et seq.), the Nebraska Equal Opportunity in Education Act (Neb. Rev. Stat. §79-2,116 et seq.), the Industrial Relations Act, including unfair labor practices claims under that Act (Neb. Rev. Stat. §48-801 et seq.), and civil rights claims under Neb. Rev. Stat. § 20-168 and other state and local laws;

g. .under the Wage Payment and Collection Act (Neb. Rev. Stat. §48-1228 et seq.), including claims or rights to be paid for any unused leave, but excluding rights to salary earned and unpaid for the final year of employment;

h. of or relating to discrimination on the basis of race, ethnic background, color, religion, sex, age, disability, handicap, marital status or national origin, or other protected status, free speech, and unlawful retaliation, before the state or federal EEOC or NEOC, or any other agency or department or state or federal courts under any state or federal constitution, law, rule, or regulation;

i. for breach of contract or tort, including but not limited to negligence, libel, slander, and breach of confidentiality or privacy;

j. of whatsoever nature arises under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Certificated Employee's employment with the School District, this Agreement, the ERIP, or the Certificated Employee's resignation from such employment.

This waiver and release is given in exchange for good and valuable consideration (the ERIP severance benefit) beyond that to which the Certificated Employee is otherwise entitled to pursuant to law or agreement.

4. **LEGAL NOTICES:**

a. **Consult Attorney.** The Certificated Employee is advised to consult with an attorney before entering into the ERIP by signing this Agreement.

b. **Time to Consider.** The Certificated Employee is given a period of at least forty-five (45) days within which to consider the ERIP policy and the Agreement. The Certificated Employee acknowledges that the Certificated Employee has had sufficient time to consider the waiver and release of claims and all other matters contained in this Agreement. In the event the Certificated Employee signs this Agreement prior to the forty-five (45) day time period, the Certificated Employee hereby states and affirms that: (1) the Certificated Employee's decision to accept such shortening of time is knowing and voluntary; (2) the Certificated Employee's decision to accept such shortening of time was not induced by the School District through fraud or misrepresentation, and (3) the Certificated Employee's decision to accept such shortening of time

was not induced by the School District through a threat to withdraw or alter the offer prior to the

expiration of the forty-five (45) day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period.

c. Right to Revoke. The Certificated Employee has the right, for a period of seven (7) days following the execution of this Agreement, to revoke this Agreement. This Agreement shall not become effective or enforceable until the revocation period has expired.

STATE OF NEBRASKA)
)
) ss.
)
 COUNTY OF COLFAX)

 Certificated Employee

On this _____ day of _____, 20__ , before me, the undersigned notary public, duly commissioned and qualified in the aforesaid county, personally appeared _____, personally known to me to be the identical person who signed the above and foregoing Agreement, and that such person acknowledged the execution of the Agreement to be the person's voluntary act and deed.

 Notary Public

ACCEPTANCE

The above Early Retirement Incentive Program Agreement is hereby accepted and approved.

DATED this _____ day of _____, 20__.

**COLFAX COUNTY SCHOOL DISTRICT 19-0123, a/k/a
 SCHUYLER COMMUNITY SCHOOLS**

BY: _____
 President or Other Duly Authorized School Official