

SEPARATION AGREEMENT, COVENANT NOT TO SUE AND RELEASE

This Separation Agreement, Covenant Not to Sue and Release (“Agreement”) is entered into effective this _____ day of January, 2022, by and between Dr. Mike Skelton (“Employee”) and the Benton School District, a public school district organized and existing pursuant to the laws of the State of Arkansas (“District”).

RECITALS

(a) Employee was employed by the District for the 2021-2022 school year as Superintendent of the District pursuant to written contract issued on January 11, 2021, for the period of July 1, 2021 – June 30, 2024 (the “Contract”); and

(b) Certain differences have arisen between Employee and District regarding the administration and operation of the business of the District; and

(c) The parties hereto desire to enter into this Agreement in order to provide for the mutually agreed termination of the Contract, the payment to the Employee, a covenant not to sue, and other consideration upon the terms and conditions as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

1. Mutual Termination. The Employee and District do hereby mutually terminate the Contract.

2. Release by Employee. In consideration of the covenant not to sue and other consideration recited in paragraph 6 herein, Employee does hereby and for his successors and assigns, release, acquit and forever discharge the District and its agents, employees, officers, directors, insurers, attorneys, successors, servants, heirs, executors, administrators, parents, subsidiaries and affiliates (the “Released Parties”) from any and all known and unknown claims,

actions, causes of action, demands, rights, damages, wages, salaries, commissions, bonuses, back pay, front pay, job assignments, promotions, transfers, past employment, benefits, including but not limited to health, dental, and life insurance, pension, retirement, stock plan benefits, profit sharing and retirement plan benefits, 401(k) benefits, accrued leave, costs, loss of service, attorneys' fees, expenses and compensation whatsoever which Employee now has or which may hereafter accrue on account of or in any way relating to the facts, circumstances and transactions arising out of or in any way relating to Employee's employment with the District, including without limitation any facts, circumstances, transactions, allegations or other matters of any kind, from the beginning of time up to and including the date hereof. It is the express intention of Employee to reserve any rights, claims or causes of actions that Employee may have against any person or entity other than the Released Parties, but to release fully and completely the Released Parties. Therefore, for the consideration hereinabove described, Employee agrees to a reduction of the damages recoverable against all other tortfeasors to the extent of the pro rata share of the liability of the Released Parties, and further agree to indemnify, protect and hold harmless the Released Parties from all judgments, claims, losses or expenses arising out of or by reason of any action, claim or demand by any person on account of the damages sustained by Employee, in any capacity, resulting from the facts and circumstances relating to Employee's employment with the District, or any liability or alleged liability under Act 315 of the Acts of Arkansas for 1941, as amended, being the Uniform Contribution Among Tortfeasors Act.

In addition to the above, Employee specifically releases any and all claims that he has or may have had against the Released Parties as of the date of his execution of this Agreement under:

- a. The Family and Medical Leave Act;
- b. Title VII of the Civil Rights Act of 1991 (42 U.S.C. §§ 2000(e), *et seq.*);
- c. The Age Discrimination in Employment Act, as amended;
- d. The Civil Rights Acts of 1866, 1871, 1964 and 1991;
- e. The Americans with Disabilities Act of 1990 (42 U.S.C. § 1211 *et seq.*);
- f. The Rehabilitation Act of 1973 (29 U.S.C. § 701, *et seq.*);

- g. The Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*);
- h. The Equal Pay Act of 1973 (29 U.S.C. Chapter 8, §§ 206(d), *et seq.*);
- i. The Consolidated Omnibus Budget and Reconciliation Act of 1985, (29 U.S.C. § 1161, *et seq.*, as amended);
- j. The Employee Retirement Income and Security Act (29 U.S.C. § 1001, *et seq.*, as amended);
- k. The Older Workers' Benefit Protection Act;
- l. The Arkansas Civil Rights Act;
- m. The Arkansas Whistle-Blower Protection Act;
- n. The Arkansas Teacher Fair Dismissal Act, Ark. Code Ann. §§ 6-17-1501, *et seq.*;
- o. Any and all claims under the laws of any state, county, municipality, or other governmental subdivision of the United States or any state, including but not limited to, the State of Arkansas;
- p. Any and all other relevant Federal and/or State statutory and/or common laws including, but not limited to, intentional infliction of emotional distress, assault and battery, defamation, intentional interference with a contractual/business relationship, and wrongful discharge.

(hereinafter "Released Claims").

3. Covenant Not to Sue. From the date hereof, Employee covenants not to sue the Released Parties (and not to file any judicial or administrative charge against the Released Parties) with respect to any such liability. From the date hereof, Employee agrees not to commence any action, file any complaint, or otherwise initiate any action or complaint, either individually or as a representative of any group or class, of any nature whatsoever against the Released Parties before any federal, state, or local court, agency, bureau, commission, or similar office having jurisdiction to consider issues as he might otherwise allege. Not by way of limitation of the general applicability of the foregoing, from the date hereof Employee specifically agrees not to commence or participate in any manner in the commencement of any action or investigation pertaining to the Released Parties. It is the full intent of Employee to grant a full, complete and unconditional release of all matters from the beginning of time up to the date of this Agreement involving the Released Parties.

4. Release by the District. The District, and the Released Parties, agree to accept Employee's performance of his responsibilities and obligations in this Agreement, as full

compromise, settlement and satisfaction of, and as sole consideration for, the final release and discharge of all actions, rights, causes of action, claims and demands whatsoever that now exist or may hereafter accrue against the Employee, as well as his heirs, assigns, agents, and representatives, as a result of, or in any way related to, his employment or association with the District including, but not limited to, the performance of any service or act as well as the failure to perform any service or act. It is understood and agreed by the District and Released Parties that this Agreement is a compromise of a disputed claim and that payment or any other form of compensation or consideration is not to be construed as an admission of liability or wrongdoing on the part of Employee, and that Employee denies liability or wrongdoing but seeks to avoid litigation through this Agreement. It is the full intent of the District and Released Parties that the release they have granted herein be a full, complete and unconditional release of all matters from the beginning of time up to the date of this Agreement.

5. Review of Agreement. Employee agrees that he has had adequate and legally sufficient time to review and seek legal guidance concerning this Agreement. Specifically, Employee acknowledges that this Agreement was provided to him on or about January 10, 2022, and that he has twenty-one (21) days to consider this Agreement. If Employee chooses to execute this Agreement before the end of the twenty-one (21) days, it is solely his choice. Employee may revoke, i.e. cancel, this Agreement within seven (7) days following his signing of this Agreement by providing written notice to Jay Bequette, attorney for the District, within the seven (7) day period, so long as Employee's revocation occurs prior to the time he receives the consideration described in paragraph 6. If Employee chooses to accept such consideration, he may not revoke this Agreement and shall be bound by its terms. Employee understands and agrees that if he revokes this Agreement within the seven (7) days, the Released Parties are not obligated to fulfill the obligations as described in paragraph 6 below and will not otherwise be bound by this Agreement. Employee acknowledges

that he has been advised to consult with an attorney or advisor concerning this Agreement and has done so. Employee understands the rights that have been waived by this Agreement, including rights under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, as amended. Employee further represents and warrants that he freely negotiated the terms of this Agreement and enters into it and executes it voluntarily. Employee understands that this is a voluntary waiver of any and all claims which he may have against the Released Parties, including, but not limited to, any claims under the laws and orders stated above, that relate in any way to his relationship with, complaints about, compensation and benefits due, or separation from the Released Parties.

6. Payment. In consideration of the release, covenant not to sue, and other consideration recited herein, the District agrees to pay to Employee the total sum of Three Hundred Ten Thousand Dollars (\$310,000.00), within ten (10) days of the date of the execution of this Agreement, payable as follows:

(a) Twenty-Seven Thousand Dollars (\$27,000.00) paid to Employee's 403b account;

(b) Twenty-Seven Thousand Dollars (\$27,000.00) paid to Employee's 457 account;

(c) Two Hundred Fifty-Six Thousand Dollars (\$256,000.00) paid to Employee, less applicable withholding and taxes.

(d) Employee covenants and warrants and agrees to indemnify and hold the District harmless for the payment of any taxes or penalties related to the sums paid to Employee pursuant to this Agreement or for any proceedings, including attorney's fees and costs incurred by the District, brought to recover taxes or penalties pertaining to the sums paid to Employee.

7. Arkansas Teacher Retirement Contribution. The Parties agree that payment under Section 5 is not subject to an Arkansas Teacher Retirement System (“ATRS”) contribution and no withholdings will be made or match paid by Employer to ATRS.

8. Future Employment and Contract Work. Employee agrees to never apply for a position with the Released Parties or engage in any contract work for the Released Parties, or take any temporary employment at any of the Released Parties’ worksites. Employee acknowledges that he is not entitled to such employment and understands that he will not be hired or permitted to work on any of the Released Parties’ worksites. If Employee applies for employment, and any of the Released Parties inadvertently hire him or he is inadvertently assigned to a project by an entity providing contracted employees to work with the any of the Released Parties, any of the Released Parties may immediately terminate that employment without cause and without liability.

9. Indemnification by Employee. With the exception of testimony compelled by subpoena, Employee will indemnify and save harmless the entities and persons referred to in paragraph 2 above from any loss, claim, expense, attorneys’ fees, costs, demand, or causes of action of any kind or character through the assertion by any person of a claim or claims connected with the subject matter of this Agreement caused, counseled, initiated, aided, assisted or advanced by Employee, and from any loss incurred directly or indirectly by reason of a falsity or misrepresentation herein by Employee.

10. Indemnification by District. Given that it is impractical for all of the Released Parties (in their individual capacities) to execute this Agreement, the District hereby agrees to indemnify the Employee, and hold him harmless, from any action or inaction required by any of the Released Parties in this Agreement including, but not limited to, the Released Parties’ covenant not to sue the Employee.

11. Construction by Arkansas Law. This Agreement is entered into in the State of Arkansas and shall be construed and interpreted in accordance with its laws.

12. Additional Documents. All parties agree to cooperate fully and to execute with promptness and diligence any and all supplementary documents and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

13. Remedies. The parties and their attorneys acknowledge that any breach of this Agreement would result in irreparable and continuing injury, for which an adequate remedy at law would not exist. Accordingly, if either of the parties or their attorneys breaches any provision of this Agreement, the non-breaching party, without excluding or limiting any other available remedy, will be entitled to entry of an order granting an injunction or specific performance compelling the breaching party to comply with this Agreement, without proof of monetary damages or an inadequate remedy at law. The breaching party will reimburse the non-breaching party to enforce this Agreement, including but not limited to reasonable attorney's fees. The parties agree that it may be difficult, if not impossible, to accurately determine the amount of damages the non-breaching party may incur if this Agreement is breached.

14. Consultation with Counsel. The parties acknowledge to each other that each of them has read the full contents of this Agreement, understands that this Agreement constitutes a contract, has fully informed themselves of the terms, contents, conditions and effects of the Agreement, that no promises or representations of any kind have been made by or on behalf of the parties to this Agreement except as expressly stated herein, that each of them has relied solely on his, her, or its own judgment in executing this Agreement, and represents that he, she, or it, as the case may be, has freely consulted with counsel and enters into this Agreement voluntarily and under no duress. Each party to this Agreement agrees to bear its own costs and attorney's fees

incurred in this matter and no party shall be responsible to any other for any costs or attorney's fees which may have been expended in connection with this matter.

15. Authorization. The parties signing this Agreement represent that they are fully authorized to execute this Agreement for and as the act of the respective parties hereto.

16. Severability. If any provision, paragraph, or subparagraph of this Agreement is adjudged by any court to be void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of the Agreement, including any other provision, paragraph, or subparagraph. Each provision, paragraph, and subparagraph of this Agreement is separable from every other provision, paragraph, and subparagraph, and constitutes a separate and distinct covenant.

17. Entire Agreement. This Agreement constitutes the entire agreement among the parties and supersedes all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof.

18. Disparaging Remarks. As further consideration for this Agreement, Employee and the District and its Board of Education, corporately and individually, agree that they, nor any of them, shall make any disparaging statements, written or oral, about the other party to this Agreement.

19. Confidentiality. This Agreement is a full settlement of disputed issues. The parties acknowledge that this document may be covered by the Arkansas Freedom of Information Act. However, the parties agree to keep confidential this Agreement, and the specific terms of it, to the extent allowed by law.

20. Approval. This Agreement is subject to the approval of the District's Board of Directors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this
_____ day January, 2022.

EMPLOYEE:

By: _____
Dr. Mike Skelton

Witnessed and Approved:

Randy Coleman
Attorney for Employee

BENTON SCHOOL DISTRICT

By: _____
Holley Little
School Board President

Witnessed and Approved:

Jay Bequette
Attorney for District

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF SALINE)

On this _____ day of January, 2022, before me, a Notary Public duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Dr. Mike Skelton, to me personally well known, who stated and acknowledged that he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of January, 2022.

My commission expires: _____
Notary Public
(S E A L)

STATE OF ARKANSAS)
) ss. ACKNOWLEDGMENT
COUNTY OF SALINE)

On this _____ day of January, 2022, before me, a Notary Public duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Holley Little, to me personally well known, who stated that she is the Board President of the Benton School District Board of Directors, a public school district organized and operating pursuant to Arkansas law, and is duly authorized in said capacity to execute the foregoing instrument for and in the name and behalf of said school district, and further stated and acknowledged that she had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of January, 2022.

My commission expires: _____
Notary Public
(S E A L)