

ALPENA PUBLIC SCHOOLS

CONTRACT OF EMPLOYMENT FOR SUPERINTENDENT OF SCHOOLS

It is hereby agreed by and between the **Board of Education of Alpena Public Schools** (hereinafter "Board") and **John R. VanWagoner II** (hereinafter " Superintendent") that pursuant to Section 1229(1) of the Revised School Code, the Board in accordance with its action found in the minutes of its meeting held on the 20th day of May, 2019 has and does hereby employ the Superintendent as Superintendent of its schools for the term of (3) years from July 1, 2019 to June 30, 2022.

Terms and conditions of this contract as described and set forth herein as follows:

1. The Superintendent shall receive an annual year end evaluation which is consistent with the provisions of MCLA 380.1229; MCLA 380.1248; MCLA 380.1249; and MCLA 380.1250. If the Superintendent is rated as being effective, or highly effective, the term of this employment contract shall be extended for an additional year. For each year the Superintendent is rated either effective or highly effective, the Superintendent will be paid \$1000 in a lump sum on or before June 30th of each year.
2. The Board will take official action determining whether or not this contract is extended for an additional year and notify the Superintendent of its action in writing. If no action is taken by the Board, the contract shall be deemed to have been renewed for an additional year, under the same terms as in effect the previous year.
3. The Superintendent shall perform the duties of Superintendent as prescribed by the Board and as may be established, modified and/or amended from time to time by the Board. Superintendent acknowledges the ultimate authority of the Board with respect to his responsibilities and directions related thereto.
4. Superintendent represents that he possesses, holds and will maintain all certificates, credentials and qualifications required by law, including the regulations of the Michigan Department of Education, and those required by the Board to serve in the position assigned. Additionally, Superintendent agrees, as a condition of his continued employment, to meet all continuing education requirements for the position assigned, as are and may be required by law and/or by the Michigan State Board of Education. If at any time Superintendent fails to maintain all certificates, credentials, continuing education requirements and/or qualifications for the position assigned as required herein, this Contract shall automatically terminate and the Board shall have no further obligation hereunder.
5. Superintendent agrees to devote his talents, skills, efforts and abilities toward competently and proficiently fulfilling all duties and responsibilities of the position assigned. Superintendent agrees to faithfully perform those duties assigned by the Board and to comply with the directives of the Board with respect thereto. Further, Superintendent agrees to comply with and fulfill all responsibilities and tasks required by state and federal law and regulations and by the Board to carry out the educational programs and policies of the School District during the entire term of this Contract. Superintendent

agrees to devote substantially all of his business time, attention and services to the diligent, faithful and competent discharge of his duties on behalf of the School District to enhance the operation of the School District and agrees to use his best efforts to maintain and improve the quality of the programs and services of the School District. However, so long as such does not interfere with his express or implied employment duties, he may serve as a consultant to other districts or other educational agencies or associations, lecture, engage in writing activities and speaking engagements, and engage in other activities which are of short-term duration at his discretion, keeping the President of the Board informed. When such activities occur during normal business days, Superintendent agrees to use vacation days or take days with no compensation, subject to the approval of the Board President, computed on a per diem basis on a 261-day calendar. In no case will the School District be responsible for any expense attendant to the performance of outside activities. The Superintendent shall serve as chief executive officer and chief administrative officer of the Board. The Superintendent shall have complete freedom to organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, which in his judgment best serves the District. The responsibility for selection, placement, and transfer of personnel shall be vested in the Superintendent subject to approval by the Board. The Board, individually and collectively, shall refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation.

6. The Superintendent, or his designee, shall have the right to and shall attend all meetings of the Board and all Board committee meetings, both open and closed, and may participate in the deliberations of the Board at all such meetings, with the exception of those closed meetings of the Board involving the Superintendent's evaluation, consideration of the terms of the Superintendent employment as set forth in this Contract, and/or when the Board is acting as a tribunal.

7. Compensation: In consideration of his performance of the duties and responsibilities of the position assigned in conformance with the requirements and expectations of the Board, the School District will pay the Superintendent an annual base salary in accordance with the mutually agreed schedule, with the Superintendent being placed on Step One of this schedule for the 2019-20 school year, and advancing one (1) step in each succeeding school year. In no case will the salary be lowered without the written consent of both parties.

Step One: \$141,964*

Step Two: \$144,803*

Step Three: \$147,699*

*If per pupil foundation increase is less than \$100 compensation will be decreased by 1%)

In addition to the annuity payment provided to all degreed administrators in the district, the Superintendent shall receive as part of his compensation for service under this Contract, a payment equal to four percent (4%) of the Administrator's salary towards a non-elective tax deferred annuity (403b) selected by the Superintendent from those annuities made available through the Board or through a third party that the Board has designated for purposes of 403(b) compliance. The Board-paid annuities will be paid in a lump sum on or before June 30th of each year. The Superintendent may contribute additional dollars to this plan provided the combined contributions do not exceed the

applicable salary deferral limitation established under the Internal Revenue Code. The Superintendent shall receive an allowance for expenses in the amount of \$3,000 per year. This expense allowance shall be considered as additional compensation. The Superintendent shall receive an allowance for mileage in the amount of \$3,000 per year.

In recognition of holding a Doctorate in Educational Leadership, the Superintendent shall receive \$1,840 per year. This shall be considered as additional compensation. The Superintendent shall not be eligible for tuition reimbursement.

The annual salary shall be paid in equal bi-weekly installments beginning with the commencement of the fiscal/contract year (2016-17) prorated to the first work day in year one on a per diem basis using 261-days. The Superintendent will be paid through direct deposit. The Board hereby retains the right to increase the annual salary of Superintendent during the term of this Contract. Any additional increase in salary made during the term of this Contract shall be in the form of a written amendment and when executed by Superintendent and the Board, shall become a part of this Contract.

8. Superintendent is employed on the basis of fifty-two (52) weeks of work per contract/fiscal year (July 1 through June 30) as scheduled by the Board. Superintendent shall be granted vacation time of twenty-two (22) days per fiscal year. Vacation days must be used within the contract/fiscal year for which they are made available and Superintendent shall not receive any additional compensation in lieu of use of vacation days. However, the Superintendent will be permitted to carry over a maximum of five (5) unused vacation days into the next contract/fiscal year. Any vacation days which are carried over pursuant to the preceding sentence must be used in the immediately ensuing contract/fiscal year or will be forfeited. Superintendent shall schedule use of vacation days in a manner to minimize interference with the orderly operation and conduct of business of the School District. All scheduling of vacation is subject to the approval of the Board President.

9. Superintendent's performance shall be evaluated by the Board annually, not later than November 1. The Superintendent's performance shall be evaluated in writing by the Board or a committee appointed by the Board of Education using the criteria, process and evaluation instrument established by the Board.

- Development of Goals: The Superintendent shall, by October 1st of the first year of this Contract, submit for the Board's consideration and adoption a preliminary list of goals for the District. Thereafter the Superintendent shall submit a preliminary list of goals for the District prior to June 1st of each contract year. The goals approved by the Board shall be reduced to writing and shall be among the criteria on which the Superintendent's performance will be reviewed.
- Review of the Performance: The Board shall evaluate and assess the performance of the Superintendent in writing at a mutually agreed upon time, not later than December 1st of each year of this Contract. The meetings at which the Board evaluates the Superintendent will be held in a closed meeting unless the Superintendent requests that it should be held in an open meeting. The evaluation and assessment shall be related to the duties of the Superintendent as outlined in the Superintendent's job description and the annual goals for the District.
- Confidentiality: Unless the Superintendent expressly requests otherwise in writing, the evaluation of the Superintendent shall at all times be conducted in open session. Nothing herein

shall prohibit the Board or the Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel. The ultimate evaluation rating shall however be reported and disclosed as required by law.

10. TERMINATION OF EMPLOYMENT CONTRACT

- This Contract shall be terminated upon the retirement, resignation or death of the Superintendent. The Superintendent shall give ninety (90) days written notice of his resignation and his contract amount shall be prorated accordingly for any resultant short contract year.
- The Superintendent shall be subject to discharge for good and just causes during the term of this agreement, but the Board shall not arbitrarily or capriciously dismiss him. No discharge shall be effective until written charges have been served upon him and he shall have an opportunity for a fair hearing before the Board after ten (10) days notice in writing. At such hearing, he may have legal counsel at his own expense.
- In the event that this contract is terminated by the Board for other than good and just cause, the salary provided for herein shall be continued until the end of the term of this contract.

11. In the event of Superintendent's mental and/or physical incapacity to perform the duties of his office, he shall be granted an initial leave of sixty (60) work days for purpose of recovery. The Superintendent shall first exhaust any accumulated sick leave and accrued vacation time, with the balance of the sixty (60) work day period to be unpaid. Health plan premium payments shall be made on behalf of Superintendent during this interval to the extent required by law. Upon utilizing leave under this provision, Superintendent shall furnish medical certification to the Board (or its designee) respecting the necessity for the leave. This certification from Superintendent's health care provider shall include:

(a) The date the serious health condition commenced and the health care provider's best medical judgment concerning the probable duration of the condition and prognosis for recovery.

(b) Diagnosis of the serious health condition.

(c) A brief statement of the regimen of treatment.

(d) An indication of whether or not Superintendent is able to perform the essential functions of his position, with or without reasonable accommodation. If the Board (or designee) has reason to doubt the validity of the medical certification supplied by Superintendent, it may require a second opinion, at Board expense.

Superintendent may request a ninety (90) work day leave extension in the event of his physical and/or mental inability to return to work at the expiration of the initial leave interval, as described above, provided that there is a verified prognosis that Superintendent will be able to resume his duties at the conclusion of the extended leave interval. The Superintendent shall first exhaust any remaining accumulated sick leave, with the balance of the ninety (90) work day period to be unpaid.

Medical certification shall be supplied by Superintendent as a condition to any leave extension. Any extensions of leave for this purpose shall be at the discretion of the Board. If the Superintendent is unable to or does not resume work at the conclusion of a leave taken under this paragraph (or any extension thereof), his employment and this Contract may be terminated at the option of the Board. However, no such termination shall occur where restoration after leave is required by the Family and

Medical Leave Act. Prior to resumption of duty after an unpaid leave of absence for a serious health condition, Superintendent shall provide to the Board a fitness for duty certification from Superintendent's health care provider. A second opinion may be required by the Board, at its expense, unless the securing of the second opinion in this context is precluded by the Family and Medical Leave Act.

12. Superintendent agrees that he shall not be deemed to be granted continuing tenure in the Superintendent position or in any capacity other than that of a classroom teacher, should the probationary period required for tenure as a teacher be fulfilled, by virtue of this Contract or any employment assignment (requiring certification) with the School District. Nor shall the decision of the Board not to continue or renew the employment of Superintendent for any subsequent period in any capacity, other than as a classroom teacher, as may be required by the Teachers' Tenure Act, be deemed a breach of this Agreement or a discharge or demotion within the provisions of the Michigan Teachers' Tenure Act.

13. Superintendent shall submit to such medical examinations, supply such information and execute such documents as may be required by any underwriter, policyholder or third party administrator (TPA) providing insurance programs specified under this Contract. Additionally, upon request of the Board, Superintendent shall authorize the release of medical information necessary to determine if Superintendent is capable of performing the essential job functions required by his assignment, with or without reasonable job accommodation(s). Any physical or mental examination or disclosure of such information required of Superintendent by the Board shall be job related and consistent with business necessity. Any medical or psychological examination under this section shall be at Board expense. Any information obtained from medical or psychological examinations or inquiries shall be considered and treated as confidential.

14. Health Insurance/Dental/Vision/Long-term Disability/Workers Comprehensive coverage/and other fringe benefits will be provided to the Superintendent as afforded to central office administrators in the district. Such coverage levels may be adjusted from time to time to reflect School District standard coverage as negotiated or to be negotiated within its various collective bargaining agreements or subject to change based on the needs of the District. Superintendent shall pay 20% of the premium payments or amounts in excess of statutory hard caps, based on the Board's election, for the foregoing insurance programs via payroll deduction within the Section 125 plan on a per-payroll basis.

The Board shall pay 100% of the premium on: Term life insurance: One times the annual salary to next multiple of \$5,000 (maximum of \$150,000) double indemnity. Upon retirement Superintendent shall have the option of carrying a portion of life insurance at group rates where possible at no extra cost to the School District by paying own premium, provided this is permitted by the Insurance carrier. Long Term Disability insurance: 66-2/3rds percent of salary not to exceed \$4,500 per month or as otherwise may be negotiated with professional staff from time to time. Travel, liability, and errors and omission insurance provided. Payroll deduction for annuities and other deductions will be as currently allowed by practice.

15. The Board reserves the right to change the identity of the insurance carrier, policyholder or third party administrator (TPA) for any of the above coverage, provided that comparable coverage, as determined by the Board, is maintained during the term of this Agreement. The Board shall not be

required to remit premiums for any insurance coverage for Superintendent and his eligible dependents if enrollment or coverage is denied by the insurance underwriter, policyholder or third party administrator (TPA). The terms of any contract or policy issued by any insurance company or third party administrator (TPA) shall be controlling as to all matters concerning benefits, eligibility, coverage, termination of coverage, and other related matters. Superintendent is responsible for assuring completion of all forms and documents needed to receive the above-described insurance coverage. The Board, by remitting the premium payments required to provide the above-described insurance coverage(s), shall be relieved from all liability with respect to insurance benefits.

16. Superintendent is entitled to the scheduled holidays as reflected in the administrative work schedule for which no service to the School District is required. The Board has the sole discretion in establishing and adjusting the work schedule as circumstances dictate.

17. If Superintendent is absent from duty on account of personal illness or disability, he shall be allowed full pay for a total of 15 days per contract/fiscal year. Prior to returning to work following a medical leave exceeding three days, written authorization from Superintendent's healthcare provider is required. A medical statement or certification may be required of Superintendent in case of suspected abuse of the sick leave provision at the discretion of the Board President. Unused sick leave days hereunder shall be cumulative to a maximum of 185 days for absence due to personal illness or disability of Superintendent. Accumulated and unused sick leave days shall not be paid at retirement or termination, and may not be used to extend employment beyond days worked.

Other leaves to which the Superintendent is entitled:

- Bereavement absence due to the death of a member of the immediate family or of a relative with whom Superintendent resides at the time of the relative's death - not to exceed five (5) days per occurrence. Board may grant additional bereavement leave days, which will be deducted from sick leave days. "Immediate Family" is defined to include spouse, children or step-children, parents or step-parents, brothers or stepbrothers, sisters or step-sisters, grandparents or grandchildren, sons-in-law, daughters in-law, of the Superintendent and/or spouse, brothers-in-law, and sisters-in-law.
- Emergency Family Illness absence because of an emergency illness of a member of the immediate family. Emergency illness absence days will be deducted from sick leave days. "Immediate Family" is defined to include spouse, children or step-children, parents or step-parents, brothers or sisters of the Superintendent and/or spouse; and any of the following living with the Superintendent at the time of illness; step-brothers, stepsisters, grandparents or grandchildren, sons-in-law, daughters-in-law of the Superintendent and/or spouse, and an individual living with the Superintendent on a non-commercial basis.
- Jury Duty Absence or Subpoena/Court Appearance Leave. If the Superintendent is required to serve jury duty or be absent because of a subpoena/court appearance (if the subpoena is in the line of public service and not a result of Superintendent's being a party to any criminal or civil legal proceeding, or being called as a witness in any civil proceeding not related to his position as Superintendent), such leave will be granted. Any remuneration, exclusive of mileage reimbursement, the Superintendent receives for such service will be signed over to the District.

18. The Superintendent shall be provided with a school sponsored purchasing card and shall use it to pay for all legitimate expenses incurred by the Superintendent which do not require a purchase order under Board Policy and Administrative Guidelines in the continuing performance of the Superintendent's duties under this Contract. The need for reimbursement of items purchased by the Superintendent shall be kept to an absolute minimum. The Superintendent shall comply with all policies, procedures and documentation requirements in accordance with Board policies and established procedures which shall be subject to review by the district's independent auditors and the Board President upon request. Superintendent shall be eligible to be reimbursed for out-of-district travel, meals and lodging in accordance with per diem expense and reimbursement standards, limitations and procedures established by the Board. Superintendent shall be required to present an itemized account of his reasonable and necessary expenses in accordance with direction of the Board or its designee.

The Board and Superintendent agree that Superintendent may use district owned vehicles on out of district school business when such vehicles are available. The Superintendent is hereby authorized to make use of the District's Fleet card or purchasing card for the purposes of fueling the district owned vehicles for school business. The school vehicles shall not be used for personal travel or commute.

19. The Board recognizes that high-performing superintendents continue to learn and develop their leadership practices, technical processes and knowledge in order to meet the complex demands of their jobs. In addition, the Board recognizes that Michigan law requires administrators to be certified, and encourages exemplary professional practice in the Superintendency by making provision for specialty and enhanced endorsement to that certification. Subject to prior approval of the Board, the District will pay for the membership, registration fees, travel (airplane or train), lodging and/or reasonable meal expenses for himself in relation thereto not prepaid by the Board to carry out the goals of the Superintendent's professional leadership development plan per year. Fees or dues for membership in the Michigan Association of School Administrators (MASA), American Association of School Administrators (AASA), Michigan School Business Officials (MSBO) and one local service organization in which he may elect to join shall be paid by the Board unless waived by Superintendent.

20. The District will defend, indemnify and hold the Superintendent harmless from and against all claims, suits, judgments, liabilities, costs and expenses, of a civil nature and excluding criminal matters, arising from actions taken or decisions made in good faith within the scope of employment while being Superintendent. The Superintendent shall give the Board notice of any claim for defense and indemnification hereunder promptly upon knowledge of any possible claim or action against the Superintendent. The Board shall have the right to appoint the attorney and conduct the defense of any such claim or action. If, in the opinion of the Board, the Superintendent fails to fully cooperate in the defense of any claim or action, then this provision of defense, indemnify and save harmless shall become null and void. This paragraph survives the termination and expiration date of this contract.

21. This Contract contains the entire agreement and understanding by and between the Board and Superintendent with respect to the employment of Superintendent and no representations, promises, contracts or understandings, written or oral, not contained herein, shall be of any force or effect. All prior agreements pertaining to, connected with, or arising in any manner out of the employment of Superintendent by the Board, are hereby terminated and shall hereafter be of no force or effect whatsoever. Provided, that this contract is voidable pursuant to the provisions of the Revised School Code pertaining to criminal records checks. No amendment to or modification of this Contract shall be

valid or binding unless it is in writing, approved by official action of the Board reflected in its minutes, and signed by Superintendent and the President and Vice President of the Board. No valid waiver of any provision of this Contract, at any time, shall be deemed a waiver of any other provision of this Contract at such time or at any other time.

22. In the event of any dispute between the parties relating to discharge of Superintendent during the term of this Contract, the parties hereby agree to submit such to binding arbitration. Selection of the arbitrator and the arbitration proceedings shall be conducted under the National Rules for the Resolution of Employment Disputes of, and administered by, the American Arbitration Association. Arbitration under this provision shall be conducted pursuant to the terms of the Michigan Arbitration Act, MCLA 600.5001 *et seq* and MCR 3.602. The parties intend that this process of dispute resolution shall be inclusive of all contract and statutory claims advanced by Superintendent arising from Superintendent's discharge during the term of this Contract, including (but not limited to) claims of unlawful discrimination and all claims for damages or other relief. However, this agreement to arbitrate does not restrict Superintendent from filing a claim or charge with any state or federal district (such as the Equal Employment Opportunity Commission or the Michigan Department of Civil Rights), and does not apply to any claims for unemployment compensation or workers' compensation which may be brought by Superintendent. Instead, this agreement to arbitrate claims applies to those matters which would otherwise be subject to state or federal court proceedings. This agreement to arbitrate means that the Superintendent is waiving his right to adjudicate discrimination claims in a judicial forum and is instead opting to arbitrate those claims. In any such arbitration proceeding, Superintendent shall have the right to representation by counsel of his choice, the right to appointment of a neutral arbitrator, the right to reasonable discovery and the right to a fair hearing. However, Superintendent, through this agreement to arbitrate such claims, does not waive any statutory rights or remedies in the context of such arbitration proceedings. The arbitrator's fee and the costs imposed by the American Arbitration Association shall be shared equally by the Board and Superintendent, subject to the right of either party to seek to tax such fees as costs against the other party. Any claim for arbitration under this provision must be filed with the American Arbitration Association, in writing, and served on the Board within one hundred eighty (180) days of the effective date of Superintendent's discharge during the term of this Contract. The Decision and Award of the arbitrator shall be final and binding and judgment thereon may be entered in the Circuit Court for the 26th Judicial Circuit of Michigan (Alpena County).

23. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Contract shall continue in full force and effect without said provision(s).

24. Superintendent agrees that any claim or suit arising out of Superintendent's employment with the Board must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or suit. Superintendent understands that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, but agrees to be bound by the six (6) month period of limitation set forth herein and waives any statute of limitations to the contrary. Should a court of competent jurisdiction determine that this provision allows an unreasonably short period of time to commence a law suit, it is the intent of the parties that the court enforce this provision to the extent possible and declare the law suit barred unless it was brought within the minimum reasonable time within which the suit should have been commenced.

25. This Agreement is executed on behalf of Alpena Public Schools pursuant to the authority granted as contained in the resolution of the Board adopted on 6-17-19, the same being incorporated herein by reference. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

Date: 7-31-19



John R. VanWagoner II, Superintendent

Date: 7-24-19



Gordon Snow, Board of Education President

Date: July 24, 2019



Mike Barnett, Board of Education Treasurer