

## SUPERINTENDENT'S CONTRACT

AGREEMENT made this first day of March, 2006, by and between the BOARD OF EDUCATION, LEWIS-PALMER SCHOOL DISTRICT NO. THIRTY-EIGHT ("the Board") and MICHAEL G. POMARICO, Ed.D., ("Superintendent"), ratified by a resolution adopted at the special meeting of the Board held on March 2, 2006, and as found in the minutes of that meeting.

The Board and the Superintendent, in consideration of the promises and the covenants herein specified, agree as follows:

### 1. **Employment**

- 1.1 Superintendent is hereby hired and retained from July 1, 2006, to June 30, 2009, as Superintendent of Schools for Lewis-Palmer School District No. Thirty-eight, Monument, Colorado ("District").

Although this Agreement is for employment of the Superintendent for a period of three contract years, any financial commitment on the part of the Board contained in this Agreement is subject to annual appropriation by the Board based upon the fiscal resources of the District and the parties agree that the Board has no obligation to fund the financial obligations under this Agreement other than for the current year of the contract term and that the Board has not irrevocably pledged and held for payment sufficient cash reserves for the payment of salary or benefits herein for the entire term of the Agreement. Annual appropriation of the financial commitments contained in this Agreement beyond the current year of the contract term shall only be withheld because sufficient funds are not available for budgeting for a superintendent's position.

- 1.2 Automatic renewal of Agreement. If the Board does not notify the Superintendent in writing before January 31, 2007, and each January 31 thereafter, that this Agreement will not be renewed, it shall be deemed that the Board has renewed this Agreement for an additional year. The Superintendent shall remind the Board of the existence of this automatic renewal clause. Such notice shall be provided two months prior to the Board meeting where renewal or nonrenewal is to be considered.

### 2. **Professional Responsibilities of Superintendent**

- 2.1 Duties. The Superintendent shall have charge of the administration of the schools under the direction of the Board. He shall be the chief executive officer of the Board; subject to the approval of the Board he shall direct and assign teachers and other employees of the schools under his supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the District subject to the approval of the Board; shall select all personnel subject to the approval of the Board; shall from time to

time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district, and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by state and federal law and reasonably assigned by the Board from time to time.

2.2 Services. This Agreement is intended by the parties to be a full-time contract and the Superintendent will devote his attention to the functions of Superintendent at all times during the term of this Agreement. It is not contemplated that the Superintendent will ordinarily perform services on weekends or legal holidays. However, it is intended that the Superintendent shall remain available on such days to meet the responsibilities of superintendent of schools on such occasions as are necessary.

2.3 Relationship to Board. The Board shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation unless the Board determines that the welfare of the District, its students or its staff requires action inconsistent with this provision. The Superintendent or his designee shall have the obligation, unless excused, to attend all Board meetings and District-created citizen committee meetings, serve as *ex officio* member of all board committees, and provide administrative recommendations on each item of business considered by each of these groups. The Board shall have the option to meet without the Superintendent present to discuss matters relating to the Superintendent's status. It shall inform him of the nature of the discussion, and he shall be given an opportunity to respond to any criticism received or discussed in these sessions.

2.4 Outside Activities. The Superintendent shall devote time, attention and energy to the business of the District. At times other than vacation, participation in outside activities by the Superintendent shall be kept to a reasonable level and shall not interfere with the efficient operation of the Superintendent's office or matters of the school district. The Superintendent may undertake consultative work, speaking engagements, writing, lecturing or other professional duties and obligations during his work day with notification of the Board.

### 3. **Salary**

The District shall pay the Superintendent for his services an annual base salary of One Hundred Fifty Thousand Dollars (\$150,000.00) to be paid in equal monthly installments in accordance with the policy of the Board governing payment of salary to other certificated members of the professional staff. This salary may be increased from time to time by written addendum to this Agreement signed by each of the parties hereto. It is agreed, however, that by so doing, it shall not be deemed that the Board and Superintendent have entered into a new agreement or that the termination date of this Agreement has been in any way extended

3.1 Performance Bonus - During school year 2006-2007 and each year thereafter during the term of this Agreement, the Superintendent may earn up to Five Thousand Dollars (\$5,000.00) for achievement of mutually agreed to goals set by the Board and Superintendent. Said goals shall be mutually agreed upon prior to the opening of school for each year of this Agreement. Payment shall be made to the Superintendent in one lump sum in the pay period following the end of the school year.

4. **Fringe Benefits**

The Superintendent shall be entitled to all the benefits applicable to 12-month administrative employees, including, but not limited to, vacation and illness benefits and leaves, any other forms of insurance protection, retirement program, choice of tax sheltered annuities, and other administrative employee benefits, unless specifically modified by this Agreement as follows:

4.1 Vacation. The Superintendent shall receive twenty-one (21) days of vacation annually, exclusive of regular school holidays and Saturdays and Sundays. Unused vacation may be accumulated up to forty-two (42) days. Upon termination, unused accumulated vacation will be compensated at the *per diem* salary rate then in effect. This *per diem* salary shall be calculated by dividing the gross annual salary by two hundred fifty (250) days. Vacation leave is accrued proportionately to the time of service in any given year but the entire yearly allowance may be utilized at any time during the year, subject to reimbursement to the District if leave is taken in excess of the proportion finally accrued.

4.2 Professional Memberships and Activities. The District shall pay membership fees for the Superintendent to maintain membership in the American Association of School Administrators, the Association of Supervision of Curriculum Development and the Colorado Association of School Executives. Subject to approval of the Board, the Superintendent shall be reimbursed for membership in civil and social organizations or attendance at activities related to the Superintendent's responsibilities and duties and which may enhance his community standing, participation and reputation. The Superintendent shall be encouraged to attend appropriate professional meetings at the local, state and national levels within budget constraints as approved by the Board.

4.3 Health Insurance. The Superintendent shall be provided health, dental and vision insurance coverage under the policies carried or sponsored by the District, with such coverage extended to the Superintendent and his family and being paid for entirely by the District. In addition, the Superintendent shall be provided life insurance and long-term disability insurance coverage under the policies carried or sponsored by the District.

- 4.4 Sick Leave. The Superintendent shall be entitled to twelve (12) days of sick leave with pay each contract year.
- 4.5 Supplemental Stipend for Additional Meetings, Activities, and Functions. The Superintendent shall be provided an additional salary of \$10,000 for these.
- 4.6 Medical Exam. The School Board encourages the Superintendent to have a comprehensive medical examination once each year. Cost of the medical examination shall be borne by the District.

5. **Expense Reimbursement**

The District shall reimburse the Superintendent for reasonable expenses necessarily incurred outside El Paso County by the Superintendent in carrying out his duties hereunder, subject to submission of paid receipts.

6. **Evaluation**

- 6.1 The Board shall evaluate and assess in writing the performance of the Superintendent at least once during the term of this Agreement during each school year in which this Agreement continues. This evaluation and assessment shall be based upon the Superintendent's job description, and upon any goals and objectives with performance standards as agreed by the Board and the superintendent. At a minimum, this evaluation shall include a meeting between the Superintendent and the Board in June of each year of this Agreement to conduct the formative part of the evaluation and a meeting in the next following January to conduct the summative evaluation.
- 6.2 At the conclusion of each evaluation, the Board and the Superintendent shall meet in closed executive session for the purpose of mutual evaluation of the performance of the Board and the Superintendent.
- 6.3 In the event the Board determines that the performance of the Superintendent is unsatisfactory in any respect, the Board shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas where the Board deems performance to be unsatisfactory. The Superintendent shall have the right to make a written response to the evaluation which shall be attached to the Board's written evaluation. The Board shall provide the Superintendent a reasonable amount of time within which to correct such performance deficiencies.
- 6.4 The parties agree that the evaluation process established by this Agreement shall not be construed to be a prerequisite to a condition of dismissal or termination except as otherwise provided herein.

7. **Certification**

Within six months of the initial signing of this Agreement and at all times thereafter during the term of this Contract, the Superintendent shall hold a Colorado Principal license or Administrator license. If at any time the Superintendent fails to meet this requirement, this Agreement, without further action by either of the parties, shall thereupon be automatically terminated.

8. **Indemnification**

8.1 Hold Harmless. The Board agrees that, to the extent it can legally do so, it shall defend, hold harmless and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings at law or in equity (specifically excluding, however, any demand, claims, suits, actions or legal proceedings brought against the Superintendent by or on behalf of the District, and any criminal proceedings brought against the Superintendent), in his individual capacity or in his official capacity as agent and employee of the District, provided the incident giving rise to the claim arose while the Superintendent was acting in good faith and within the scope of his employment and not willfully or wantonly.

8.2 Provision of a Defense. The obligations of the District pursuant to this Section 8 shall be conditioned on (A) prompt notification to the District by the Superintendent of any threatened or reasonably contemplated claim; (B) full cooperation by the Superintendent with the District and legal counsel in defending the claim; and (C) the Superintendent not compromising, settling, negotiating or otherwise similarly dealing with the claim without the express consent of the Board. In the event the District has provided a defense pursuant to this Section 8, and a court or other decision-making body having jurisdiction over the matter determines that the act or omission of the Superintendent did not occur during the performance of his duties hereunder and within the scope of his employment or that the act or omission was willful or wanton or not in good faith, the Superintendent shall reimburse the District for all costs of such defense and indemnity actually incurred by the District.

8.3 Individual Liability of Board Members. In no event shall individual Board members be individually or collectively liable or responsible to the Superintendent for defending or indemnifying the Superintendent against such demands, claims, suits, actions, and legal proceedings.

8.4 Taxes - The Superintendent shall defend and indemnify the District against any income tax liability for income taxes not properly paid by him in the event of a claim against the District. Record keeping requirement concerning all tax related income, deductions for expenses and other individual/employee tax related requirements are the sole responsibility of the Superintendent.

9. **Applicable Law and Policy**

Notwithstanding and not as modification of any other specification or reference herein, this Agreement is subject to and includes all applicable laws of the federal and state governments and all duly adopted policies, rules, and regulations of the District as are in effect or become in effect during the term of this Agreement; and the Board specifically reserves the right to change such policies, rules and regulations at any time without prior notice.

10. **Termination of Employment Contract**

This employment Agreement may be terminated by:

10.1 Mutual Agreement. This Agreement may be terminated by mutual agreement of the parties.

10.2 Disability of Superintendent. Should the Superintendent be unable to perform the duties and obligations of this Agreement, by reason of illness, accident or other cause beyond the Superintendent's control and such disability exists for a period of more than sixty (60) days after the exhaustion of accumulated sick leave days, if any, and vacation days, if any, during any school year, the Board, in its discretion, may make a proportionate deduction from the salary stipulated. If such disability continues for ninety days or if such disability is permanent, irreparable or of such nature as to make the performance of the Superintendent's duties impossible, the Board, at its option, may terminate this Agreement, whereupon the respective duties, rights and obligations of the parties shall terminate.

If a question exists concerning the capacity of the Superintendent to return to his duties, the Board may require the Superintendent to submit to a medical examination, to be performed by a medical doctor. The Board and the Superintendent shall mutually agree upon the physician who shall conduct the examination. If the parties are unable to mutually agree upon a physician, a physician shall be designated by the Board president. The examination shall be done at the expense of the District. The physician shall limit his report to the issue of whether the Superintendent has a continuing physical or mental disability which prohibits him from performing the essential functions of the position.

10.3 Discharge for Cause. Throughout the term of this Agreement, the Superintendent shall be subject to discharge for good and just cause relating to the Superintendent's duties, which includes, but is not limited to, the failure to comply with the terms and conditions of this Agreement, an act of dishonesty or breach of any fiduciary duty owed to the District, a willful or intentional refusal to obey a reasonable written order of the Board of Education, acting as a body, that is consistent with the delegation of authority and responsibility made or reserved in this Agreement, conviction of a felony (which will include a *nolo contendere* plea or deferred

sentence or plea bargain), or serious misconduct materially injurious to the District or its students. However, the Board shall not arbitrarily and capriciously call for the Superintendent's dismissal and the Superintendent shall have the right to service of written charges, notice of hearing and a hearing before the Board. If the Superintendent chooses to be accompanied by legal counsel at the hearing, said legal expenses shall be paid by the Superintendent.

- 10.4 Unilateral Termination by Board. The Board may unilaterally terminate this Agreement upon payment of twenty four (24) month's salary or the salary amount remaining due to the Superintendent under this Agreement, whichever is less. In addition, the Superintendent shall be eligible for compensation of the unused sick leave, vacation leave and health insurance benefits to which he would have been entitled had he remained employed for the term of this Agreement.
- 10.5 Death of the Superintendent. This Agreement shall automatically terminate upon the death of the Superintendent.
- 10.6 Unilateral termination by Superintendent. The Superintendent may, at his option, unilaterally terminate this Agreement in the manner permitted for chief executive officers in C.R.S. 22-63-202(2). The parties agree that C.R.S. 22-63-202(2) and any subsequent amendments thereto are incorporated into this Agreement by reference.

The Superintendent agrees to pay damages to the District and the Board agrees to collect or withhold damages from compensation due or payable to the Superintendent with such damages being assessed against the Superintendent if the Superintendent abandons, breaches or otherwise refuses to perform services pursuant to this contract, unless the Superintendent has given written notice to the Board on or before the first day of May that he will not fulfill the obligations of this contract during the succeeding academic year, or after the beginning of the academic year unless the Superintendent has given at least sixty (60) days written notice to the District to the effect that he wishes to be relieved of this contract for the remainder of the year as of a certain date, and providing further that such damages shall not exceed ordinary and necessary expenses of the District to secure the services of a suitable replacement for the Superintendent.

## 11. **Suspension of Superintendent**

The Board may, at any time, suspend the Superintendent with pay and benefits and without prejudice for such purposes and period of time as the Board deems to be in the best interest of the District. In any case, the Superintendent shall be notified in writing of reasons for the suspension.

12. **Notice**

Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective on the day of mailing thereof by first class mail, registered or certified mail, postage prepaid, addressed:

If to the Board, to:  
President  
Board of Education  
Lewis-Palmer School District 38  
P.O. Box 40  
Monument, Colorado 80132

If to the Superintendent, to:  
Michael G. Pomarico, Ed.D.  
2408 Persimmon  
Derby, Kansas 67037

13. **Miscellaneous**


- 13.1 This Agreement has been executed in Colorado and shall be governed in accordance with the laws of the State of Colorado in every respect.
- 13.2 Paragraph headings and numbers have been inserted for convenience of reference only, and if there shall be any conflict between any such headings or numbers and the text of this Agreement, the text shall control.
- 13.3 This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall be considered one and the same instrument.
- 13.4 This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements and communications between the parties concerning such subject matter whether written or oral.
- 13.5 If, during the term of this Agreement, it is found that a specific clause of this Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such ruling shall remain in full force and effect.

14. **Binding Effect**

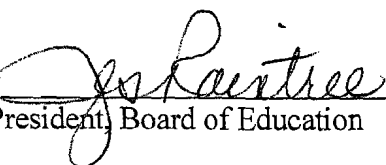
This Agreement is one for personal services to be provided the District only and may not be assigned. Any compensation due and payable to the Superintendent under this Agreement shall be payable to his heirs and legal representatives in the event of his death.




IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names and in the case of the Board, by its President, on the day and year first written above.

  
\_\_\_\_\_  
SUPERINTENDENT

BOARD OF EDUCATION  
LEWIS-PALMER SCHOOL DISTRICT 38

By   
\_\_\_\_\_  
President, Board of Education

ATTEST:  
  
\_\_\_\_\_  
Secretary, Board of Education

## SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT is entered into effective as of December 18, 2006, between Michael G. Pomarico ("Pomarico") and the Lewis-Palmer School District No. Thirty-Eight ("School District").

Background. Pomarico was employed by the School District as Superintendent on March 2, 2006, for a term to commence July 1, 2006. Pomarico desires to terminate his employment by resigning under the terms stated in this Agreement and the School District desires to accept his resignation. Pomarico has contemporaneously delivered his voluntary, irrevocable resignation from employment to be effective as of the end of the current fiscal year (June 30, 2007). The parties acknowledge that they have mutually determined to amicably sever the employment relationship and that such separation is not based upon any knowledge or wrongdoing on the part of either party.

1. In consideration of the above background and the payments to be made by the School District described in paragraph 2 below, Pomarico for himself and his representatives hereby releases, waives, and discharges the School District and its directors, employees, and representatives from any and all claims arising out of or in any way related, directly or indirectly, to Pomarico's employment and resignation from employment, including, without limitation, claims to the continuation of employment or re-employment, claims arising under any state or federal law to the full extent permitted, and any demands, damages, and liabilities, presently known or unknown. Pomarico agrees that he will not apply for or otherwise seek re-employment by the School District including, without limitation, any current or future charter schools within the School District at any time in the future.

2. Effective as of December 18, 2006, Pomarico shall be on leave with pay through June 30, 2007 ("leave period"). During the leave period, the School District will continue to pay only his gross monthly salary (\$12,500.00) and, prior to June 30, 2007, will pay for 12 days of sick leave and 21 days of vacation leave at the per diem rate of (\$600.00). Payment of the foregoing amounts will be subject to applicable state and federal withholding and other deductions, as well as Colorado Public Employees' Retirement Association ("PERA") contributions and deductions from the School District and Pomarico respectively (except for the payments of sick leave). From December 18, 2006, through June 30, 2007, the School District will continue to pay for Pomarico's and his dependents' health insurance coverage under School District policies in the same manner as has been the case under his Superintendent's Contract prior December 18, 2007. After June 30, 2007, the School District will reimburse Pomarico only for his individual health insurance coverage and then only during the period required by federal COBRA requirements. Other than the payments for health insurance and PERA through June 30, 2007, the School District shall not be responsible nor pay for any other benefits. On or before June 30, 2007, the School District shall pay Pomarico the gross amount of \$150,000.00, subject to applicable state and federal tax withholding and deductions. As a severance payment, the parties acknowledge that no PERA contributions shall be paid by the School District on this amount. The foregoing payments are in full satisfaction payment and release of any and all claims of Pomarico, as stated above, including but not limited to salary or other compensation that

would otherwise be due to Pomarico either under his current contract, which is hereby terminated, or for any other reason.

3. Pomarico hereby irrevocably tenders his resignation from all employment with the School District to be accepted by the School District on December 21, 2006, and to be effective as of the end of June 30, 2007; provided, however, from December 18, 2006, through June 30, 2007, Pomarico shall be on administrative leave with pay as provided above in paragraph 2. While on leave, Pomarico will have no duties and responsibilities to, nor any authority to act on behalf of, the Board or School District and shall not return to any school or School District activities. Pomarico confirms that his resignation and decision to enter into this Agreement have been made knowingly and voluntarily. Upon the execution hereof, the School District has provided a letter of reference for Pomarico from the President of the School District's Board of Education. Pomarico acknowledges and agrees that this Separation Agreement shall be binding on him from the date of execution hereof, but is subject to final acceptance by and approval of the Board of Education of the School District at its meeting scheduled for December 21, 2006.

4. This document contains the complete agreement between Pomarico and the School District. No other promises or representations have been made to or relied upon by Pomarico, and no other consideration, other than Pomarico's resignation and the payment and benefits, described herein, are due or involved between the parties.

IN WITNESS WHEREOF, the parties have executed this Separation Agreement as of the dates set forth below.

LEWIS-PALMER SCHOOL DISTRICT  
NO. THIRTY-EIGHT

Michael G. Pomarico  
Michael G. Pomarico      12/15/06      Date

By: Jes Raintree      12-15-06  
Jes Raintree, President      Date  
Board of Education