

# AGREEMENT

This Agreement ("Agreement") is entered into by and between Kevin Barker ("Barker"), and the New Plymouth School District #372 (the "District").

## Recitals

**A.** Barker is currently employed by the District as Superintendent of Schools pursuant to the State of Idaho standard form Superintendent Contract dated May, 15, 2017. That Contract is for a term of three years, ending on June 30, 2020 and provides for an annual salary of \$89,849.00.

**B.** As is normal, Barker's Contract with the District was extended and amended by Board action on January 8, 2018 ("Amendment"). Pursuant to the Amendment, the employment term was extended through June 30, 2021 and provided for an annual salary of \$93,000.00 beginning July 1, 2018.

**C.** Barker has determined that it is not in his best long-term employment interest to remain employed by the District.

**D.** Barker desires to resign from his position as Superintendent of Schools pursuant to the terms and conditions set forth herein. The District has determined that it is in the best interest of the District, students, and patrons to accept Barker's resignation pursuant to the terms set out herein.

**E.** The District has received from a third-party funds sufficient to meet the obligations of the District under paragraph 6 and Barker acknowledges that the sums to be paid pursuant to paragraph 6 are contingent on the receipt by the District of the funds from the third-party.

## Agreement

In consideration of the foregoing and the promises contained herein, the parties agree as follows:

- 1. Release from Contract.** Barker will seek and be granted release from his contract with the District effective June 30, 2018 and waive any rights or contractual interest he has or may have with respect to the 2018-2019 school year or thereafter, under the current contract. Until the effective date of the release of his contract Barker agrees to assist the District and Board, by completing principal evaluations and responding to inquiries from the Board related to transitioning in a new superintendent. Barker will have no obligation to perform any other duties as Superintendent and shall not be required to maintain regular office hours. Barker shall continue to receive any and all compensation and benefits set out in the current contract.

2. **Resignation.** Simultaneously with the execution of this agreement Barker will execute and deliver to the District a resignation letter addressed to the Board of Trustees of the District announcing his resignation as Superintendent of Schools effective June 30, 2018. The resignation letter shall be in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Barker shall be entitled to revoke his resignation if the consideration referenced in paragraph 6 below is not timely paid to him; in all other respects Barker's resignation shall be irrevocable.
3. **Consulting.** Barker shall be retained and employed by the District as a consultant from the Effective Date of his resignation as Superintendent through June 30, 2020. As a Consultant, Barker shall receive benefits equivalent to those the District would otherwise be contractually obligated to provide under Barker's current Superintendent Contract through June 30, 2020, including without limitation PERSI contributions and life insurance benefits. Barker shall receive the cost of full family health insurance benefits. In addition, Barker shall receive a monthly salary in the net amount of \$1,500.00 from the Effective Date of his resignation as Superintendent through June 30, 2020. Barker's salary shall be paid in monthly installments consistent with District payroll policies. All amounts shall be subject to ordinary withholdings and Barker's wages shall be reported by the District on IRS Form W-2.

Notwithstanding the foregoing, should Barker accept employment where health insurance benefits are equal to or better than those provided hereunder the District's obligation to provide such health insurance shall cease. Other employment shall not affect the District's obligation to pay the monthly salary of \$1,500.00 (net) to Barker during the term of the consulting agreement.

4. **Consulting Duties.** Barker shall be available to consult with the Board on issues related to his duties performed during the time he served as superintendent, and for no other purposes. Barker shall have a reasonable time to respond to Board inquiries. Barker shall have no obligation to attend any Board meetings or to enter upon the premises of any school property. Barker's duties shall not prevent or impinge upon his right and ability to undertake other consulting or employment opportunities during the term of his consulting agreement.
5. **Consideration.** In exchange for Barker's agreement to waive any and all rights he has to his current Superintendent contract, as amended and extended, and to resign and provide consulting services to the District he will be paid the sum of \$400,000.00 ("lump sum payment"). The District will provide Barker with evidence it is holding the lump sum payment within twenty-four hours (24) of the execution of this Agreement. The parties agree that the District shall report payments made to Barker from the lump sum payment by issuing an IRS form 1099(s). Barker may designate, in his discretion, how the lump sum payment is distributed to him, and may direct said payment be made to High Valley Consulting, LLC. Barker may elect to take the lump sum payment over a period of time not to exceed December 2020. Barker shall be responsible for the payment of any taxes that may be due as a result of the receipt of the lump sum payment. The receipt of such lump sum is not deemed to be in lieu of the amounts Barker is to be paid as a consultant

and instead constitutes the consideration for the release of his contract and all rights and privileges thereunder and his release of the District from any and all rights, claims or causes of action relating to his employment with the District as Superintendent

It is expressly acknowledged that the source of the lump sum payment from the District to Barker is generated from private funds that have been donated to the District for the purpose of completing this Agreement. None of the funds related to the lump sum payment utilizes general fund monies or any public funds. Pursuant to the terms of the agreement related to the donated funds the District must only use such funds as part of the lump sum payment to Barker.

6. **Use of Accumulated Leave.** The Board pre-approves Barker's use of any and all of his accumulated personal leave or vacation leave days prior to June 30, 2018. The actual use of such days shall be at the discretion of Barker.
7. **Release of Claims.** The parties hereby knowingly, intentionally and voluntarily waive and release all claims, causes of action, demands or suits, by whatever name, nature, title or description, including claims grounded in statute, contract, tort, or common law that they may have against each other, their agents, board members, representatives or successors in any manner relating to or arising from Barker's employment with the District as Superintendent of Schools or the cessation of Barker's employment with the District as Superintendent. However, with respect to any and all claims brought by a third person while Barker was employed by the District, Barker's and the District's rights (or lack thereof) to indemnification, contribution and/or defense shall be governed by the Idaho Tort Claims Act, including but not limited to Idaho Code 6-903, as well as any applicable insurance policies.
8. **Disclosure of Terms.** It is acknowledged that the Board will meet in a duly noticed open meeting for the purpose of releasing Barker from his current contract and accepting his resignation, as well as, employing Barker as a consultant for the 2018-2019 school year and that Barker waives any applicable privacy interests that may be applicable to his request for release from his contract, his resignation letter or this agreement. Barker further acknowledges that the District shall comply with any and all applicable statutes, rules, regulations, or board policies concerning the placement of this Agreement, and any related documentation including Barker's letter of resignation in Barker's personnel file and/or the reporting of his separation from the District to any required governmental agencies or organizations.
9. **Announcement.** The District and Barker shall make a joint announcement to District personnel, the community and any news sources concerning Barker leaving the District. Said announcement shall provide only that the parties reached an agreement wherein Barker has agreed to resign his position as Superintendent and that Barker shall serve in the capacity of a consultant for the District during the 2018-2019 school year.

**10. Personnel Files and Records.** Barker will have the opportunity to review his personnel file pursuant to applicable Board policies and/or law. With respect to his personnel file, the District represents:

**10.1** Grievances filed against Barker in 2017 by District staff were investigated by a third party who concluded that Barker performed appropriately in accordance with District policies and goals.

**10.2** The Board acknowledges that no grievances have been filed against Barker during the 2017-2018 school year.

**10.3** The Board will document Barker's January 2018 evaluation with proficient or distinguished marks and said evaluation will be placed in Barker's personnel file.

**10.4** The Board will provide Barker with a letter of recommendation in the form attached hereto as Exhibit B.

This Agreement, Barker's resignation, and the letter of recommendation shall be included in his personnel file.

**11. Return of District's Property.** To the extent applicable, Barker represents that he has returned to the District all equipment and/or other property belonging to it; provided however, the parties agree that Barker shall be entitled to retain the Microsoft Surface and laptop computer issued to him in connection with his employment as Superintendent.

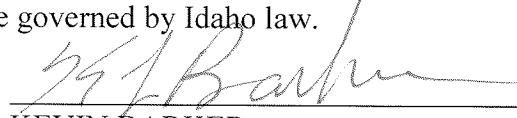
**12. Costs and Attorneys' Fees.** If either party to this Agreement shall be in default under the terms of this Agreement, the non-defaulting party shall have the right, at the defaulting party's expense, to retain an attorney to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this Agreement. The non-prevailing party hereby agrees and promises to pay all costs and expenses so incurred by the prevailing party, including, without limitation, reasonable attorney fees.

**13. Voluntary Agreement.** Barker hereby affirms and acknowledges that he has read this Agreement, that he has been advised to seek the advice of an attorney or has engaged an attorney, that he has had sufficient time and opportunity to review its terms and discuss it with his attorney, that he fully understands and appreciates the meaning of each of its terms, and that this Agreement and the Release contained herein has been entered into as a voluntary act.

**14. Entire Agreement; Miscellaneous.** This Agreement constitutes the complete understanding between Barker and the District and supersedes any and all prior agreements, verbal or otherwise, expressly including the Superintendent Contract, as amended. This Agreement may not be modified except by a written document signed by the District and Barker, and is binding upon the parties hereto, their successors and assigns. Any waiver of any term or provision of this Agreement must be in writing and signed by the party granting the waiver. The provisions of this Agreement are severable


and if any part of this Agreement is found to be unenforceable the other provisions shall remain fully valid and enforceable. Section headings in this Agreement are included for convenience of reference only and shall not be considered a part of this Agreement for any other purpose. This Agreement shall be governed by Idaho law.

Dated: 4-25-18

  
KEVIN BARKER

NEW PLYMOUTH SCHOOL DISTRICT

Dated: 4/25/18

By   
Name DAVID BEAGAN  
Title Chair Person