

Encl. *RM*
May 31, 2012

BE IT RESOLVED, that the Horseheads Central School District Board of Education hereby appoints and employs Dr. Ralph Marino, Jr., as Superintendent of Schools, for the period of five (5) years—May 31, 2012 to May 30, 2017—and further approves the Employment Agreement dated May 31, 2012, setting forth the terms and conditions of such appointment and employment.

May 31, 2012

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made this 31st day of May, 2012, by and between the BOARD OF EDUCATION OF THE HORSEHEADS CENTRAL SCHOOL DISTRICT, Chemung County, New York (hereinafter referred to as the "Board"), party of the first part, and DR. RALPH MARINO, JR., residing at 33 Brookwood Hills Drive, Horseheads, NY (hereinafter referred to as the "Superintendent"); party of the second part.

WITNESSETH THAT:

WHEREAS, the Board wishes to employ the Superintendent as the Chief Executive and Administrative Officer of the Horseheads Central School District (hereinafter referred to as the "District") upon the terms and conditions set forth herein; and

WHEREAS, it is acknowledged that a written contract specifying the terms and conditions of the Superintendent's employment by the District will provide the basis for effective communication and future understanding between the parties; and

WHEREAS, the parties have mutually agreed upon the following terms and conditions of the Superintendent's employment with the District;

NOW, THEREFORE, in consideration of the agreements hereinafter set forth and other good and valuable consideration the parties hereto hereby agree as follows:

1. **AGREEMENT OF EMPLOYMENT.** The Board hereby agrees to employ the Superintendent as Superintendent of Schools of the District, and the Superintendent hereby agrees to be employed by the Board as Superintendent of Schools of the District on the terms and conditions set forth herein.

2. **TERM OF EMPLOYMENT.** The Superintendent's term of employment shall be for five (5) years commencing on May 31, 2012 and terminating on May 30, 2017.

3. **EXTENSION OF TERM.** The Board of Education shall, in accordance with provision eight (8) herein, complete an evaluation of the Superintendent during the month of April, and following completion of the evaluation and before May 31st of each year, the Board of Education shall take an informal poll at an executive session of the Board of the Board's intention to extend the contract for a period of one additional year. If the Board's intention is to extend the contract for one year, action shall be taken in public session. If the Board determines not to extend the contract, the matter shall be kept confidential.

No later than May 31st in each year of this agreement, or any extension hereof, the Board shall meet to consider extending the term of the Superintendent's employment for an additional one (1) year period. Upon the Board's failure or refusal to so move, second consider and vote upon such an extension with the time provided herein, the then unexpired term of this agreement shall be automatically extended by an additional one (1) year period.

4. **SUPERINTENDENT'S DUTIES AND RESPONSIBILITIES.**

(a) The Superintendent shall be the Chief Administrative Officer of the District and shall perform all of the duties and possess all of the authority granted to a Superintendent of Schools under the provisions of the Education Law and other statutes of the State of New York, and the rules or regulations of the Commissioner of Education. The Superintendent shall, in accordance with Section 1711(2)(e), have the supervision and direction of teachers, administrators, and support staff under the direction and management of the Board of Education.

(b) The Board may from time to time prescribe additional duties and responsibilities for the Superintendent; provided, however, that

(i) the Board shall not, without the Superintendent's written consent, adopt any policy, bylaw or regulation which impairs or reduces the duties and authority specified by the Education Law and Commissioner's regulations; and

(ii) all additional duties and responsibilities prescribed by the Board shall be consistent with those normally associated with the position of Superintendent of Schools in the State of New York.

(c) With respect to their relationships to one another and the determination of their respective powers and duties, the parties acknowledge that they are subject to the laws of the State of New York, the applicable rules and regulations of the Board of Regents and the Commissioner of Education of the State of New York, and the contractual obligations set forth in collective bargaining agreements heretofore entered into by the District.

(d) The Superintendent shall be notified of and shall have the right to attend all regular and special meetings of the Board, including subcommittees and executive sessions of the Board, except that the Board may exclude the Superintendent from any portion of a meeting during which they are discussing his performance or salary.

5. **BOARD REFERRAL.** The Board, individually and collectively, shall promptly and discreetly refer to the Superintendent, in writing, for his study and recommendation, any and all criticisms, complaints and suggestions, communications or comments which it may

have regarding the administration of the District or the Superintendent's performance of his duties.

6. **CERTIFICATION.** The Superintendent shall possess a valid certificate to act as a Superintendent of Schools in the State of New York during the term of employment with the District.

7. **COMPENSATION.** The Superintendent's work year shall be 12 months, from July 1 to June 30. The annual salary of the Superintendent shall be at a 12-month rate as stated below, to be paid in equal installments in accordance with standard operating procedures of the District. The Superintendent's compensation for each subsequent 12-month period of employment shall be determined by the Board no later than May 31 in each year; provided, however, that in no event shall the Superintendent's compensation for any 12-month period of employment be less than the amount of compensation paid during the preceding 12-month period.

Further, the Board agrees to pay the Superintendent the following salary amounts in each of the years set forth:

May 31, 2012 – June 30, 2012 ----- \$180,000 (prorated)

July 1, 2012 – June 30, 2013 ----- 2½% Salary Increase

July 1, 2013 – June 30, 2014 ----- 2½% Salary Increase

July 1, 2014 – June 30, 2015 ----- To be determined in May 2013

July 1, 2015 – June 30, 2016 ----- To be determined in May 2014

July 1, 2016 – May 30, 2017 ----- To be determined in May 2015

The Board retains the right to review the salary of the Superintendent during the term of this contract or any extension of this contract. The foregoing shall not be deemed to preclude the Board and Superintendent from entering into a multiple year salary formula at any time.

The Superintendent shall notify the Board of Education on or before April 1 of each year of the contract of the Board's obligation to evaluate the Superintendent and determine his salary for the following year of this agreement. Should the Board of Education fail to act upon a salary increase for the Superintendent of Schools by June 30 of each year, the Superintendent will receive a cost-of-living increase as determined by the Consumers Price Index of NY-Northeastern, New Jersey All Urban Consumers Index for the 12-month period ending December 31 of the prior year or a 2 ½% salary increase, whichever is greater, with such increase being added to the Superintendent's base salary for the following year of this agreement.

8. PERFORMANCE EVALUATION.

(a) On or before September 1 of each subsequent school year of this Agreement, the Superintendent shall provide to the Board a written statement of the annual goals and objectives which the Superintendent intends to concentrate on during the upcoming school year. The Board shall review said goals and objectives and if the Board concurs with the Superintendent's written statement of goals and objectives, the Board's concurrence will be noted on said written statement via execution by the Board President. If the Board does not agree with the Superintendent's written statement of goals and objectives, it shall meet with the Superintendent to form mutually acceptable goals and objectives. If the Superintendent fails to

provide such goals and objectives to the Board in accordance herewith, then the Board may determine such goals and objectives and shall provide same to the Superintendent by October 1.

(b) Prior to January 1st the Board will conduct a mid-year assessment with the Superintendent related to the Superintendent's progress towards the agreed upon goals. Agreed upon changes and adjustments will be reduced to writing and will be executed by the Superintendent and the Board President on behalf of the Board.

(c) The Board shall conduct an annual evaluation of the performance of the Superintendent during each year of this Agreement and shall provide the Superintendent with a written evaluation to be discussed in an executive session of the Board, no later than May 31st. The Superintendent shall be provided with a copy of the written evaluation at least ten (10) days prior to the executive session of the Board scheduled to discuss such evaluation.

The Board shall base its evaluation upon the Superintendent's performance and progress towards the goals and objectives established by the Superintendent and the Board as set forth above, as well as on the general performance of the Superintendent in carrying out his required duties and responsibilities. The form of the written evaluation shall be the District approved format as contained in the policy manual. The Superintendent may, at his discretion, provide a written response to the Board of Education related to any aspect of the annual evaluation. Such response shall be attached to the annual evaluation and become part of the evaluation document.

(d) The Board may use the mid-year assessment and the end of the year evaluation to inform the Superintendent of any concerns it may have or any concerns it has

received from others. The Board should inform the Superintendent of any complaints or concerns on an ongoing basis as they occur. No concerns related to provision five (5) on pages 3-4 of this contract shall be used as part of the annual evaluation unless they have been previously presented to the Superintendent and the Superintendent has had the opportunity to respond.

(e) Any assessment or performance evaluation prepared pursuant to this paragraph shall be confidential and shall be kept so by the Board and individual Board members.

9. VACATION LEAVE.

(a) The Superintendent shall be credited with thirty (30) days of vacation per year on July 1. In the year of separation, vacation days will accrue on a prorated basis. These days will be credited according to the following formula: 5 days as of July 1; 5 days as of August 1; and 2 days on the first day of each subsequent month. The Superintendent shall make prior written notice to the Board President when utilizing vacation days.

(b) The Superintendent shall be entitled to accumulate up to a maximum of fifty (50) days of unused vacation leave during the period of his employment with the District. Such accumulated vacation leave shall be carried over and may be used during any subsequent year of employment.

(c) In the event the Superintendent has both accumulated vacation leave and unused vacation leave (any vacation leave carried over from previous years and vacation leave from the current year) at the time his employment with the District terminates, he shall be paid at the rate of 1/215 of his then current annual salary for each day of accumulated and unused vacation leave. The Superintendent has the option to have the vacation leave amount placed in

his tax sheltered annuity (403b) account as an employer contribution to the maximum amount allowed by law.

(d) The Superintendent may sell back up to fifteen (15) vacation days per year at a rate of 1/215 of his current annual salary.

(e) After the completion of three (3) years of service, the Superintendent shall be eligible to elect to have up to five (5) days of vacation converted to regular salary. The Superintendent must notify the District prior to June 15 in order that the appropriate adjustment may be made, in which case, up to five (5) days of vacation will be deleted from the Superintendent's allotment, and the Superintendent will have his regular salary increased by an equivalent amount. Said increase shall become a part of the Superintendent's base salary in the subsequent school year. The Superintendent started employment with the District on December 1, 2006.

10. SICK DAYS AND DISABILITY.

(a) The Superintendent shall have fifteen (15) sick days per year credited on July 1 of each school year. The Superintendent may accumulate sick days up to a maximum of 150 days. Sick leave may be used for illness or injury to the Superintendent or a member of his/her immediate family. "Immediate family" shall be defined as spouse, children, or parents. The Superintendent shall make written notice upon return to the Board President when utilizing a sick day(s).

(b) In the event the Superintendent has both accumulated sick leave and unused sick leave (any sick leave carried over from previous years and sick leave from the current year)

at the time his employment with the District terminates, he shall be paid at the below rate of his then current annual salary for each day of accumulated and unused sick leave. The Superintendent has the option to have the sick leave amount placed in his tax sheltered annuity (403b) account as an employer contribution to the maximum amount allowed by law.

1 - 50 Days @ 1/645

51 - 100 Days @ 1/430

101 - 150 Days @ 1/215

(c) In the event the Superintendent exhausts all of his accumulated sick days, he shall be able to use a sick day bank of fifty (50) days for catastrophic illness.

(d) The Superintendent may sell back up to five (5) sick days per year at a rate of 1/215 of his current annual salary.

(e) Should the Superintendent become disabled, the District will continue his salary and benefits for six (6) months. The District will pay up to \$3,500.00 per year for disability insurance policies that will become effective after six (6) months of disability. Should the Superintendent be disabled for a period exceeding thirty (30) days, he will be placed on a leave of absence due to illness but his salary and benefits continued for six (6) months and the Board may appoint an acting superintendent to manage the District.

11. **HOLIDAYS.** The Superintendent shall be entitled to paid holiday leave in accordance with the school district's holiday calendar committee. The Superintendent shall have fifteen (15) paid holidays.

(b) The Superintendent shall receive an allowance in the sum of \$450.00 per month for use of his personal vehicle for school purposes.

(c) The Board will pay or reimburse the Superintendent for all such expenses that are related to his job duties and responsibilities upon presentation from time to time of an itemized account of such expenditures.

(d) The Superintendent shall receive a business related expense allowance in the sum of \$300.00 per month.

15. HEALTH BENEFITS.

(a) Health Insurance. The Superintendent shall participate in and be covered by the District's Health Plan pursuant to the following terms. The Superintendent shall pay 20% of the premium equivalent for a family plan.

(b) Dental Insurance. The Superintendent shall participate in the District's Dental Plan with the premium being paid by the District for a family plan.

(c) Optical Insurance. The Superintendent will be allowed to participate in the District's Optical Plan with the premium being paid by the District for a family plan.

(d) Should the Superintendent retire from the District under circumstances which allow him to receive benefits from the New York State Teacher Retirement System, he will be provided with family health, dental, and optical insurance including Medicare forever upon payment of the contribution equal to his contribution as an active employee of the District at the time of retirement. The employee contribution rate at the time of retirement will be fixed forever. Should he predecease his spouse, his spouse will be entitled to individual or family coverage for

payment of the employee contribution at the time. This paragraph shall survive the term and be enforceable after the termination of this Agreement.

If the Superintendent establishes a permanent residence outside of the Horseheads area where existing District coverage is not accepted, the District will reimburse the Superintendent (and/or his spouse to the extent she would be eligible as provided above) for health, dental, and optical insurance purchased in their locale up to the same dollar amount of contribution as it would have made for the District plan. Reimbursement will be limited to the extent of the District contribution to which the Superintendent would have otherwise been entitled under this Agreement. Reimbursement shall be made directly on a monthly basis. Proof of coverage and payment must be submitted with the request for reimbursement.

16. **RESIDENCY.** The Superintendent shall be required to be a resident of the Horseheads Central School District.

17. **TERMINATION OF CONTRACT.**

(a) **Severance.** Throughout the term of this contract the Superintendent shall be subject to discharge by the Board for just cause. In the event of his discharge, his salary and other benefits shall be prorated to the date of termination.

Charges against the Superintendent may only be brought by the Board and all such charges shall be in writing. The Superintendent shall be entitled to a fair hearing on said charges, upon at least thirty (30) days' notice, before an independent hearing officer who shall be an attorney-at-law. The hearing shall be in executive or public session, at the option of the Superintendent. A fair and impartial hearing officer may be selected by mutual agreement

between the Superintendent and the Board or, in the event no such agreement is reached within fifteen (15) days after the Superintendent's receipt of the written charges, a request shall be made to the American Arbitration Association by either party for a list of Arbitrators. If upon presentation of written charges the Superintendent submits his resignation within ten working days, he shall receive one (1) year's salary and benefits.

(b) If the Superintendent is suspended from the performance of his duties, it shall be with full pay and benefits and he shall be entitled to due process protection at such hearing including, but not limited to, the right to elect a public or private hearing; to be represented by counsel, to present, cross-examine and subpoena witnesses, to subpoena documents, papers, letters or other tangible evidence, to have all testimony given under oath, to receive without cost an accurate written transcript of the proceedings; and to receive written findings of fact and conclusions of law. The hearing officer's decision shall be final and binding upon the parties, subject to their respective rights to appeal in accordance with the law. The District, at its expense, shall provide a certified shorthand or court reporter who will transcribe all proceedings.

(c) Any criticisms or complaints which have not been previously forwarded to the Superintendent in accordance with the provision of Section 5 of this Agreement or charges based upon any allegation which was made known in writing to the Superintendent by the Board more than one (1) year before the charge is filed, shall not be admissible at such a hearing against the Superintendent. The hearing officer shall strike from the written charge or charges any such charge against the Superintendent.

(d) The hearing officer shall, upon the conclusion of the hearing, prepare and submit written findings of fact and recommendations as to the disposition of each charge and penalty, if any. Both the Board and Superintendent shall be bound by the decision of the hearing officer. Both parties shall, however, retain their right to appeal the decision of the hearing officer to any forum with jurisdiction.

(e) If the charges against the Superintendent are not sustained at such hearing or after any appeal therefrom, the Board shall reimburse the Superintendent for his costs and attorney's fees incurred in defense of the hearing or appeal therefore.

(f) Mutual Termination. The majority of the Board and the Superintendent may mutually agree, in writing, to terminate this agreement during the term hereof. The Superintendent shall give sixty (60) days' written notice of termination.

(g) Disability or Death. If the Superintendent should become permanently disabled, the Board shall have the right to terminate this agreement. The Superintendent shall be deemed permanently disabled if his attending physician so determines or if a physician selected by the Board so determines, but if there is a disagreement between the physician selected by the Board and the Superintendent's physician, a third physician chosen by the two of them shall examine the Superintendent and his determination of permanent disability shall be binding.

In the event of the death of the Superintendent prior to the expiration of this agreement, this agreement shall terminate immediately and the compensation herein provided shall be prorated to the date of his death. In addition, his legal representative shall be paid a sum equal to his then daily rate of pay for each day of unused and accumulated vacation, sick, and personal leave. His spouse and dependent children will be entitled to family health, dental, and

optical insurance coverage for one (1) year for payment of the employee contribution rate at the time of the Superintendent's death.

18. **INDEMNIFICATION.** The Board agrees to provide legal counsel and to indemnify the Superintendent against all uninsured financial loss arising out of any proceeding, claim, demand, suit, or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person or damage to the property of any person committed while the Superintendent is acting within the scope of his employment or under the direction of the Board.

The District agrees, as a further condition of this employment contract, that it shall defend, hold harmless, and indemnify the Superintendent from any and all demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his individual capacity, or in his official capacity as agent and employee of the District, provided the incident arose while the Superintendent was acting within the scope of his employment or under the direction of the Board.

As a condition of receiving such indemnification, the Superintendent shall, within ten (10) days of the time he is served with any summons, complaint, process, notice, demand, or pleading, deliver a copy of the same to the Board.

If in the good faith opinion of the Superintendent, a conflict exists as regards the defense to such claim between the legal position of the Superintendent and the legal position of the District, the Superintendent may engage counsel, in which event the District shall indemnify the Superintendent for the costs of the legal defense.

19. **OTHER WORK.** The Superintendent shall devote his full time, skill, labor, and attention to the discharge of his duties during the term of this agreement; provided, however, that he may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties, obligations, and activities, with or without remuneration, so long as such activities do not interfere with the full and faithful discharge of the Superintendent's duties and responsibilities as specified.

The Superintendent shall be permitted to teach at the college/university level, with or without remuneration, for up to ten (10) days per school year in July, August, or during school recesses without the loss of paid leave. While out of the District, he will maintain full responsibility of the District via telephone and email. If there is an emergency in the District and upon the request of the Board President, the Superintendent shall return to the District immediately.

20. **MEDICAL EXAMINATION.** The Superintendent agrees to have a comprehensive medical examination performed once during each 12-month period of his employment and to file a statement from the examining physician certifying to his physical competency with the Clerk of the Board. Such statement will be treated as confidential information by the Board and costs of such medical examination shall be paid by the Board.

21. **GOVERNING LAW.** This agreement has been entered into under, and shall be governed in accordance with, the laws of the State of New York.

22. **PARAGRAPH HEADINGS.** The paragraph headings in this agreement are inserted for convenience of reference only and if there is a conflict between any such heading and the text of this agreement, the text shall control.

23. **WRITTEN AGREEMENT.** This agreement shall continue in full force and effect for the term expressed herein unless otherwise terminated, modified, or extended by a subsequent agreement in writing between the parties.

24. **SEVERABILITY.** The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

25. **EDUCATION LAW PROVISION.** Consistent with and pursuant to Education Law 211-B(5)(a) the Superintendent shall cooperate fully with any distinguished educators appointed by the Commissioner of Education.

26. **FUNERAL LEAVE.** The Superintendent shall be granted up to five (5) days' absence at full pay for the death of father, mother, son, daughter, spouse, sibling, mother-in-law, father-in-law, grandparents, and grandchild. Funeral leave will not be charged against sick leave or any other leave otherwise accruing to the Superintendent.

27. **JURY DUTY LEAVE.** The Superintendent will be entitled to jury duty leave with regular pay.

28. **SURVIVAL.** If the District is dissolved, annexed to, merged or consolidated with one or more school districts, the Board agrees to make every reasonable effort to ensure that the Superintendent is appointed to the position of Superintendent of the merged district. If this is not possible, then the Board shall make every reasonable effort to ensure that

the Superintendent is appointed to a position in the merged district which is consistent with the Superintendent's education, background, experience, certification and former status and acceptable to the Superintendent.

If the Superintendent is not appointed to the position of Superintendent or a comparable position in the merged district or if the new position is not acceptable to the Superintendent, then the Board shall continue to pay the Superintendent all salary and benefits for one (1) year or the time remaining on the Superintendent's contract, whichever is less. If the merged district fails to pay said salary and benefits, such cost shall be a debt of the District, and the District shall continue in existence as provided by law for the purpose of paying such debt. Alternative severance arrangements may be entered into upon written agreement of the Superintendent and the Board.

29. **LONGEVITY.** Upon the completion of 5, 10, and 15 years of employment with the District, the Superintendent shall be entitled to a permanent salary adjustment (increase) in the amount of \$10,000 at each five (5) year increment. Said longevity payments shall become a part of the Superintendent's base salary in the school year in which it is earned. The Superintendent started employment with the District on December 1, 2006.

In recognition of the fiscal strains on the District in 2011, the Superintendent has agreed to delay for one year his five-year permanent longevity adjustment until December 1, 2012. It was scheduled to take effect on December 1, 2011.

30. **TAX-SHELTERED ANNUITY (403B) ACCOUNT.** The Superintendent shall be entitled to participate in the tax-sheltered annuity (403b) of his choice in accordance with the applicable provisions of the Internal Revenue Service Code.

The District shall provide matching funds to a tax-sheltered annuity (403b) for the Superintendent. The matching funds shall be paid at a 4 (Superintendent) to 1 (District) ratio. For every \$4.00 the Superintendent contributes to his tax-sheltered annuity (403b) the District will match it with \$1.00 up to the IRS legal limit. The matching funds shall be deposited twice a year into the Superintendent's tax-sheltered annuity (403b) on December 31 and June 30. Such matching funds shall be owned by the Superintendent.

31. **SECTION 125 PLAN.** The Superintendent shall be eligible to participate in the District's Section 125 Plan.

32. **CONTINUING EDUCATION.** With prior Board approval, the District shall pay all costs associated with the Superintendent's enrollment in a graduate program or graduate courses that are functionally related to his position including but not limited to admission testing, tuition, books, fees, printing, and copying costs. The Superintendent shall be permitted to attend classes on campus or via distance learning so long as such attendance does not negatively impact his performance. While out of the District, he will maintain full responsibility of the District.

IN WITNESS WHEREOF, the Board has caused this agreement to be executed by its President, duly authorized by vote of the Board of Education, and the Superintendent has hereunto set his hand and seal as of the day and year first above written.

HORSEHEADS CENTRAL SCHOOL DISTRICT

Dated: May _____, 2012

By:

Mr. Brian Lynch.
President, Board of Education

Dated: May _____, 2012

Dr. Ralph Marino, Jr.
Superintendent of Schools

OATH OF OFFICE

HORSEHEADS CENTRAL SCHOOL DISTRICT
HORSEHEADS, NEW YORK 14845

STATE OF NEW YORK
COUNTY OF CHEMUNG

I do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of Superintendent of Schools, according to the best of my ability.

Dr. Ralph Marino, Jr.
Superintendent's Signature

33 Brookwood Hills Drive
Horseheads, New York 14845

Subscribed and sworn to before me this _____ day of _____, _____

Clerk of the Board of Education
Horseheads Central School District
Chemung County