



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

ANDY DILLON
STATE TREASURER

AMENDED AND RESTATED CONTRACT FOR EMERGENCY FINANCIAL MANAGER SERVICES

RICK SNYDER, Governor of the State of Michigan (Governor), and the Department of Treasury retain and appoint Donald B. Weatherspoon as the Emergency Financial Manager for the Muskegon Heights School District (School District) under Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, MCL 141.1201 *et seq.* (the Act).

The Emergency Financial Manager will provide services to the School District pursuant to the terms and conditions set forth in this Contract and the Act.

Students being educated within the School District are entitled to an education that enables them to learn at high levels and, upon graduation, be fully prepared to enter the workforce or attend college. This cannot happen when there is uncertainty about schools being able to stay open, or about their ability to maintain an environment that is conducive to teaching and learning.

The Emergency Financial Manager's role is to remedy the distress of the School District by requiring prudent fiscal management and the efficient provision of services by exercising the necessary authority conferred by the State to take appropriate action on behalf of the District and its students. The result for students should be an education that allows them to think and act innovatively, demonstrate high performance, and meet the highest expectations. In accepting this appointment, the Emergency Financial Manager agrees to leverage all his skills and abilities to accomplish these objectives on behalf of our students, parents, and citizens.

1. PARTIES, PURPOSE, DUTIES, AND REPORTS

1.1 Parties. The parties to this Contract are the State of Michigan by the Department of Treasury and Donald B. Weatherspoon.

1.2 Purpose. The parties to this Contract agree that Donald B. Weatherspoon will act as the Emergency Financial Manager for the School District. The Emergency Financial Manager's duties and responsibilities are delineated in the Act and include conducting all aspects of the operations of the School District and establishing and implementing a written financial plan as required by Section 40 of the Act.

1.3 Duties. The Emergency Financial Manager shall possess all the powers and duties authorized under the Act, including those specifically related to school districts. In addition, the Emergency Financial Manager shall work cooperatively with the Office of the Governor, the State Treasurer, and the Superintendent of Public Instruction as part of an education reform leadership team. The Emergency Financial Manager agrees to inform these officials of major initia-

tives to be undertaken in furtherance of this Contract before their public announcement. The Emergency Financial Manager shall seek the approval of the State Treasurer before entering into a new collective bargaining agreement.

1.4 Bankruptcy Proceedings. The Emergency Financial Manager shall not institute proceedings under Section 41(3) of the Act to authorize the School District to proceed as a debtor under the federal bankruptcy code without the express prior written approval of the Governor.

1.5 Reports. The Emergency Financial Manager shall file quarterly reports with the Department of Treasury beginning on January 15, 2013, for the immediately preceding quarter and shall file the first report required by Section 41a of the Act within six months of his appointment and every six months thereafter.

2. TERM OF CONTRACT

2.1 The Emergency Financial Manager shall serve at the pleasure of the Governor as provided in Section 38 of the Act.

2.2 Effective Date. This contract is effective on Monday October 29, 2012. The term of the contract shall be from October 29, 2012 to August 9, 2013, and may be renewed at the option of the State upon 30 calendar days written notice and with the written consent of the Emergency Financial Manager.

2.3 Oath of Office. The Emergency Financial Manager shall take and subscribe an oath of office administered by an official authorized to administer oaths under the laws of Michigan and file such oath with the Office of the Great Seal.

3. COMPENSATION FOR SERVICES PROVIDED

3.1 Salary. The Emergency Financial Manager's salary for services rendered under this Contract shall be \$60,000.00 per year, paid by the School District. If this Contract is terminated after the Emergency Financial Manager has provided services for a portion of the month, the Emergency Financial Manager shall be entitled, for that portion of that month, to \$5,000.00 multiplied by the proportion that the number of days of the month for which services were provided bears to the number of days of the whole month.

3.2 Payment for Services. The Emergency Financial Manager will be paid in equal bi-weekly installments consistent with the established written policies and procedures of School District. Additional information for services performed shall be provided if requested by the State.

3.3 Reimbursement for Actual and Necessary Expenses. The Emergency Financial Manager's actual and necessary expenses will be reimbursed, including customary expenses related to travel, meals, and lodging, incurred and connected to services for the School District. The Emergency Financial Manager must provide original copies of all receipts for meals, lodging, and travel reimbursement with his billings.

3.4 Source of Payment. The School District is required to pay the Emergency Financial Manager's compensation for all services rendered and for all expenses incurred under this Contract.

4. ADDITIONAL STAFF AND CONSULTANT FEES

4.1 Staff. The Emergency Financial Manager may appoint additional staff as necessary to fulfill the obligations of his appointment and duties under this Contract. Payment of compensation for additional staff will be the obligation of the School District. While authority to hire additional staff rests with the Emergency Financial Manager, the Emergency Financial Manager agrees to consult with the Treasurer or the Treasurer's designee at least 24 hours before extending offers of employment for positions paying \$50,000.00, or more, annually.

4.2 Professional Assistance. The Emergency Financial Manager may secure professional assistance as necessary to fulfill the obligations of his appointment and duties under this Contract. Payment of compensation for additional professional assistance will be the obligation of the School District. The Emergency Financial Manager agrees to consult with the Treasurer or the Treasurer's designee at least 24 hours before authorizing professional services contracts of \$50,000.00 or more per engagement or project.

4.3 Security. The Emergency Financial Manager will be entitled to receive security protection in connection with his duties under this Contract. Security personnel will be retained only upon the approval of the State Treasurer or the designee of the State Treasurer and only after consultation with the Director of the Michigan State Police or her designee. Payment of compensation for security personnel will be the obligation of the School District.

5. REPRESENTATIONS

5.1 Qualifications. The Emergency Financial Manager, by signing this Contract, represents that he meets the minimum qualifications for appointment set forth in the Act.

5.2 Conflict of Interest. The Emergency Financial Manager represents and warrants that, to his knowledge, he has no personal or financial interest, and will not acquire any such interest, that would conflict in any manner or degree with the performance of this Contract.

5.3 Non-competition. The Emergency Financial Manager warrants that he is not subject to any non-disclosure, non-competition, or similar clause with current or prior clients or employers that will interfere with the performance of this Contract. The State will not be subject to any liability for any such claim.

5.4 Facilities and Personnel. The School District will provide the Emergency Financial Manager with proper facilities and personnel to perform the services and work required to be performed pursuant to this Contract.

5.5 Records. The Emergency Financial Manager shall maintain complete records in accordance with generally accepted accounting practices and sound business practices. This re-

quirement applies to all information maintained or stored in the Emergency Financial Manager's computer system and in the School District's computer system. The State and its designees shall have the right to inspect all records related to this Contract.

5.6 Non-Discrimination.

a) The Emergency Financial Manager shall comply with the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and all applicable federal, State and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that he will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Emergency Financial Manager must impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant is a material breach of this Contract. MCL 37.1209.

b) The Emergency Financial Manager shall comply with the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and all applicable federal, State and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that he will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. The Emergency Financial Manager must impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant may be considered a material breach of this Contract.

5.7 Unfair Labor Practices. The Emergency Financial Manager shall not enter into a contract for the performance of any obligation imposed by this Contract with a subcontractor, manufacturer, or supplier whose name appears in the register prepared pursuant to MCL 423.322 of employers found in contempt of court for failure to correct unfair labor practices. MCL 423.323. The State may void this Contract if the Emergency Financial Manager or any subcontractor, manufacturer, or supplier of the Emergency Financial Manager that is a party to a contract for the performance of any obligation imposed by this Contract, appears in the above register.

5.8 Independent Contractor. The relationship of the Emergency Financial Manager to the State and the School District in this Contract is that of an independent contractor. Except as specifically provided in the Act, no liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer-employee relationship, shall arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract.

6. NOTICES

6.1 The State Treasurer is the designee of the State for this Contract unless notice of an-

other designation is provided by the Governor. All notices, correspondence, requests, inquiries, billing statements, and other documents mentioned in this Contract shall be directed to the attention of the State Treasurer, Andy Dillon, and to the following:

For the State:

Thomas F. Saxton, Deputy Treasurer
Richard H. Austin Building
430 W. Allegan Street
Lansing, Michigan 48922
Phone: (517) 373-3223

Frederick Headen
Director, Bureau of Local Government Services
Richard H. Austin Building
430 West Allegan Street
Lansing, Michigan 48922
Phone: (517) 373-3305

For the Emergency Financial Manager:

Donald B. Weatherspoon
8942 East Saginaw
Haslett, MI 48840

7. LIMITATION UPON LIABILITY

7.1 The State. The State, the Governor, the Treasurer, and all other state officials are not liable for any obligation of or claim against the School District resulting from actions taken in accordance with the Act or the Contract.

7.2 The Emergency Financial Manager. The Emergency Financial Manager is engaging in a governmental function and is immune from liability for any action taken which he reasonably believes to be within the scope of his authority granted by the Contract or the Act.

8. INSURANCE

8.1 General. The Emergency Financial Manager may procure and maintain, at the expense of the School District, worker's compensation, general liability, professional liability, and motor vehicle insurance for himself and any employee, agent, appointee, or contractor of the Emergency Financial Manager as may be provided to elected officials, appointed officials, or employees of the School District. The insurance procured and maintained by the Emergency Financial Manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the Emergency Financial Manager and any employee, agent, appointee, or contractor of the Emergency Financial Manager as provided in the Act.

8.2 Post-Contract. If, after the date that the service of the Emergency Financial Manager is concluded, the Emergency Financial Manager or any employee, agent, appointee, or contractor of the Emergency Financial Manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of the Emergency Financial Manager, and not covered by a procured insurance policy, litigation expenses, including but not limited to attorney fees and payments made in settlement as specified pursuant to the Act, shall be paid by the School District. If such expenses are not paid by the School District they shall be treated as a debt owed to the State.

8.3 Additional Insurance. If the School District has purchased or otherwise obtained an errors and omissions policy, then, as provided in the Act, the Emergency Financial Manager may choose to be covered under such policy at the expense of the School District.

8.4 Payment by School District. All insurance required under this Contract shall be acquired at the expense of the School District under valid and enforceable policies, issued by insurers of recognized responsibility. The State reserves the right to reject as unacceptable any insurer.

9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 Termination by the State.

a) GOVERNOR. The Emergency Financial Manager serves at the pleasure of the Governor, who has the power to rescind the appointment and terminate this Contract at any time and without cause, by issuing a Notice of Termination to the Emergency Financial Manager.

9.2 Termination Process. Upon receipt of a Notice of Termination, and except as otherwise directed by the Governor or his designee, the Emergency Financial Manager shall:

a) Cease work under the Contract on the date and to the extent specified in the Notice of Termination;

b) Incur no costs beyond the date specified by the Notice of Termination;

c) Submit to this State on the date the termination is effective all records, reports and documents as the State shall specify and carry out such directives as the State may issue concerning the safeguarding and disposition of files and property; and

d) Submit within 30 calendar days a closing memorandum and final billing, which shall be paid within 30 days.

9.3 Termination by Emergency Financial Manager. The Emergency Financial Manager may terminate this Contract at any time, with or without cause, with 30 days written notice to the Treasurer. Within 30 days of his final day of service, the Emergency Financial Manager shall submit a closing memorandum and final billing, which shall be paid within 30 calendar days.

8.2 Post-Contract. If, after the date that the service of the Emergency Financial Manager is concluded, the Emergency Financial Manager or any employee, agent, appointee, or contractor of the Emergency Financial Manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of the Emergency Financial Manager, and not covered by a procured insurance policy, litigation expenses, including but not limited to attorney fees and payments made in settlement as specified pursuant to the Act, shall be paid by the School District. If such expenses are not paid by the School District they shall be treated as a debt owed to the State.

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10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract shall be subject to and construed according to the laws of the State of Michigan, and no action shall be commenced against the State, its agents, or employees for any matter whatsoever arising out of this Contract, in any court other than a Michigan State court.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract shall not constitute waiver of any breach of the Contract.

10.3 Other Debts. The Emergency Financial Manager agrees that he is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.4 Severability. If any provision of this Contract or its application to any persons or circumstances shall, to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

10.5 Invalidity of Act. If the Act is repealed, or otherwise rendered ineffective, this Contract shall continue in full force and effect under any prior or successor statute providing for emergency manager contracts, emergency financial manager contracts, or similar forms of agreement.

10.6 Headings. Contract section headings are for convenience only and shall not be used to interpret the scope or intent of this Contract.

10.7 Entire Agreement. This Contract represents the entire and exclusive agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

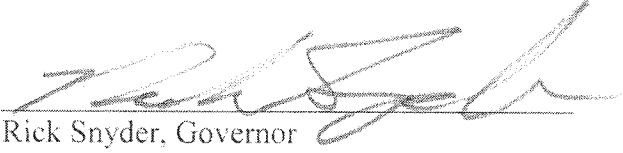
10.8 Amendment. No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite state approvals are obtained.

10.9 Order of Priority. This Contract and the Act shall be read to be consistent with one another. However, if there is a conflict between the terms of the Contract and the Act, the Act shall supersede the terms of the Contract.

IN WITNESS WHEREOF, the Governor and the Emergency Financial Manager have signed and executed this Contract.

STATE OF MICHIGAN

Dated: 10/29/12


Rick Snyder, Governor

Dated: _____

Donald B. Weatherspoon, Emergency Financial
Manager

This Contract may be executed in separate counterparts, each of which when executed shall be deemed an original but all of which when taken together shall constitute one and the same contract.

IN WITNESS WHEREOF, the Governor and the Emergency Financial Manager have signed and executed this Contract.

STATE OF MICHIGAN

Dated: _____
Rick Snyder, Governor

Dated: 10/26/12

Donald B. Weatherspoon, Emergency Financial
Manager

This Contract may be executed in separate counterparts, each of which when executed shall be deemed an original but all of which when taken together shall constitute one and the same contract.