

SUPERINTENDENT'S EMPLOYMENT AGREEMENT

THIS SUPERINTENDENT'S EMPLOYMENT AGREEMENT (the "Agreement") is entered into this 17 day of August 2010, by and between the **BOARD OF EDUCATION OF BENTON HARBOR AREA SCHOOLS**, its successors and assigns (hereafter referred to as the "Board") and **LEONARD SEAWOOD** (hereafter referred to as the "Superintendent").

WITNESSETH:

The purposes and objectives of this Agreement are (i) to set forth the salary, benefits and general working conditions of the Superintendent, and (ii) to establish the policy governing the basic relationship between the Board and the Superintendent.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of the mutual benefits herein provided, the Board and the Superintendent agree as follows:

1. **TERM.** This Agreement shall take effect on July 22, 2010, and continue in force through the close of business on June 30, 2013, subject to any extension and/or termination of the Agreement, as provided in Paragraphs 6 and 20 of this Agreement.

2. **QUALIFICATIONS.** The Superintendent warrants and represents that he holds or meets, and will maintain throughout the term of this Agreement, all Michigan licensing requirements and certificates necessary for employment by the Board in the position of Superintendent. The Superintendent also agrees, as a condition of continued employment, to meet all continuing education requirements of the Michigan Department of Education as may be established from time to time. If at any time the Superintendent fails to meet or maintain all required licensing, certificates, continuing education requirements or qualifications required for the position, this Agreement shall automatically terminate, and the Board shall have no further obligations.

3. **DUTIES:** The Superintendent agrees to devote his best, full-time energies, talents, skills, efforts and abilities to perform the duties of Superintendent in a competent, proficient, good faith and professional manner in compliance with the laws applicable to Benton Harbor Area Schools and the policies and regulations adopted by the Board. The Superintendent agrees to faithfully perform those duties assigned by the Board and to comply with and fulfill all responsibilities and tasks required by state and federal law and regulations, and Board policies. He will act as an advisor to the Board on matters pertaining to the school administration and the School District and he will timely inform the Board as to administrative action taken on its behalf. The Superintendent shall recommend, implement, or cause to be implemented, the policies and programs of the Board as may be adopted. He will faithfully and diligently fulfill all the duties and obligations incumbent upon him as the executive head of the administrative section of Benton Harbor Area Schools. It is understood that the Board may modify the duties and responsibilities of the Superintendent at any time.

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4. **OUTSIDE ACTIVITIES.** The Superintendent shall devote his full-time, skill, labor and attention to the direction and supervision of the School District and shall not, during the term of his employment, be materially engaged in any other business. By advance agreement from the Board, the Superintendent may undertake speaking engagements, writing, lecturing, membership and office in educational organizations, or other professional duties and obligations. If Superintendent receives compensation for such activities, she will be required to use vacation time to cover the time missed from work. In the event the Board, in its sole discretion, determines that any such activity interferes with the Superintendent's performance of duties, the Board may require that the Superintendent cease some or all of such outside activities. In no case will the Board be responsible for any expense related to the performance of outside activities.

5. **EVALUATION.** The Board shall annually review with the Superintendent his performance as Superintendent. The Board's evaluation of the Superintendent's performance will include criteria and an evaluation process mutually agreed upon which shall include but not be limited to the following generalized factors:

- a. Leadership in education
- b. Business and finance matters
- c. Employee relations
- d. Community relations
- e. Relationships with the Board

The criteria and evaluation process shall be discussed at a Board retreat. At the request of the Superintendent, the Board shall provide him with an informal evaluation near the midway point of his initial year pursuant to this Agreement.

6. **EXTENSION.** This Agreement may be extended either by option of the Board of Education or by operation of law, as follows:

a. **Board Option.** The Board of Education, no later than the 31st day of March each year during the term of this Agreement, may extend the Agreement for an additional one-year period. In exercising this option, the Board of Education shall also establish the annual salary to be paid to the Superintendent for the school year included in the extension. All other terms and conditions of this Agreement shall remain unchanged.

The Board of Education, in its sole discretion, and with or without cause, may decline to extend this Agreement for an additional year. The decision not to renew this Agreement is at the sole discretion of the Board.

b. **Operation of Law.** Unless the Board of Education gives written notice of non-renewal of this Agreement to the Superintendent at least 90 days before the termination date, this Agreement will, without further action, be automatically renewed for an additional one-year period as provided by Michigan Public Act 289 of 1995 (MCL §380.1229).



7. **TENURE EXCLUSION.** The Superintendent shall not be granted continuing tenure in the position of Superintendent, nor to any other position to which he may be assigned or transferred, 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 Agreement or any employment assignment with the District for which certification is required by the Michigan Department of Education. Nor shall the decision of the Board not to continue or renew the employment of the Superintendent for any subsequent period in any capacity, other than as a classroom teacher, as may be required by Michigan's Teachers' Tenure Act (MCL §§38.71 *et. seq.*), be deemed a breach of this Agreement, or a discharge or demotion within the provisions of Michigan's Teachers' Tenure Act.

8. **TOTAL COMPENSATION.** For all services rendered by the Superintendent during the initial year of this Agreement, the Board shall compensate the Superintendent with a base annualized gross salary of One Hundred Forty Thousand Dollars (\$140,000.00), payable in approximately equal installments in accordance with the Board's customary payroll practices, less withholding for regular and required federal, state and/or local taxes. The base annualized salary for any subsequent contract year shall be negotiated with the Board. If no agreement can be reached as to the Superintendent's base annualized salary in any succeeding year of this Agreement, his salary shall not be less than the annualized salary amount for the applicable preceding year of this Agreement.

9. **INSURANCE BENEFITS.** The Superintendent shall be provided with term life insurance policy/policies in an aggregate amount of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), provided the Superintendent is insurable at standard rates. If for any reason he is not insurable at standard rates, he will have the option of obtaining such insurance by paying personally the rate differential between the standard rate and his actual quoted rate. The Superintendent shall be eligible to participate in any fringe benefit plan or program that is applicable to top management (non-bargaining unit) administrators and for which he satisfies the required eligibility criteria.

10. **VACATION.** The Superintendent shall be entitled each contract year to a vacation of twenty-five (25) working days excluding weekends and legal holidays, during which time he will be paid his regular salary. The Superintendent shall not schedule his vacation during a time when his presence and leadership is critical to the District. The President of the Board shall always be informed, in advance, of any time the Superintendent is scheduled to be on vacation or absent from a Board Meeting. The Superintendent may be paid in cash for up to five (5) unused vacation days at the end of each contract year at his regular salary rate. Any remaining unused vacation days at the end of any year of this Agreement shall be carried forward to the following year, with notification to the Board President of the amount to be carried forward. However, such carry forward of vacation time shall result in a maximum accumulation of twenty-five (25) days vacation during the duration of the contract. Upon termination of the Superintendent's employment with the School District, he shall be paid for his unused accumulated vacation days at his regular salary rate.

11. **SICK LEAVE.** The Superintendent will be given sick leave allowance of eighteen (18) days per year to be earned at the rate of one and one-half (1½) day per month.

Unused days of sick leave, plus unused sick leave earned during previous years of employment with the Board, shall accumulate up to a maximum of thirty (30) days. Such leave days without loss of pay, may be taken for personal illness or injury or for critical illness or injury in the immediate family. Should the employee resign, during the term hereof, unused sick days shall not be paid or prorated.

12. **PERSONAL LEAVE.** In the event the Superintendent finds it necessary to be absent from work for urgent or compelling personal business reasons, he may do so upon notification of the president of the Board of Education for up to a total of three (3) days per year without loss of pay. Such days, when taken, shall be deducted from the Superintendent's earned sick leave.

13. **AUTOMOBILE ALLOWANCE.** The Superintendent may obtain reimbursement for mileage driven while using his personal automobile for School District business as provided in Section 15 of this Agreement.

14. **PROFESSIONAL DEVELOPMENT.** The Board agrees to pay the Superintendent's professional dues for membership in two (2) Michigan and two (2) national education associations, as well as two (2) local civic/community organizations.

15. **EXPENSES.** The Superintendent is hereby authorized to incur reasonable expenses for and in the performance of his duties and in attending hearings and conferences on behalf of the School District, including reasonable and necessary expenses for lodging, travel, meals and similar items. The Board shall provide for the reimbursement of all reasonable, necessary and actually incurred expenses as provided above upon the presentation by the Superintendent of an itemized account and original receipts of such expenditures in accordance with Board Policy.

16. **EXAMINATIONS.** The Superintendent shall, if requested by the Board, and not more often than once annually during his employment, provide the Board or its designee with report(s) of examination by mutually agreed to and appropriate health care professionals certifying the Superintendent's ability to perform the essential functions of his assigned responsibilities on a regular and consistent basis, with or without reasonable job accommodation(s). Any such examination shall be job related and consistent with business necessity. The Board shall pay the cost of any such examination (e.g., medical, psychological, psychiatric, etc.) and related tests required during the term of this Agreement. The Board reserves the right to designate the health care provider(s) to conduct the examination(s). By signing this Agreement, the Superintendent authorizes the release of any such examinations, reports and opinions to the Board or its designee, that relates to the Superintendent's ability to perform the essential functions of his assigned responsibilities on a regular and consistent basis, with or without reasonable job accommodation(s). Such documents and information shall be considered and treated in a confidential manner. The Superintendent agrees to provide all relevant medical information to any health care provider(s) who conduct any examination(s) in accordance with this Agreement.



The Superintendent shall also submit to such medical examinations, supply such information, and execute such documents as may be required by any underwriter, policyholder or third-party administrator providing insurance programs specified under this Agreement.

17. **DISABILITY.** In the event the Superintendent is unable to perform the essential functions of his position as Superintendent by reason of physical or mental illness or incapacity, he shall be granted an initial leave up to ninety (90) calendar days for recovery upon submission of medical certification in a form satisfactory to the Board. The Board may require additional opinion(s) consistent with the Family and Medical Leave Act, if applicable. During any such leave, the Superintendent shall be required to first exhaust any accumulated vacation and sick leave (in that order), with the balance, if any, to be unpaid. Health plan premiums shall be paid during this period to the extent required by law. In the event the Superintendent's incapacity or disability continues for a period of more than ninety (90) calendar days, his base annualized salary thereafter payable to her during the remaining period of such illness or incapacity shall be in accordance with a School District provided disability income protection plan, or self-insurance plan, which plan shall provide an income to the Superintendent of two-thirds (2/3) of his base annualized salary otherwise payable to him during the continued period of such illness or incapacity for a period of up to one (1) calendar year from the commencement of the illness or incapacity. If the disability continues for more than the one (1) calendar year, this Agreement may be terminated at the sole option of the Board and if so terminated, the Superintendent shall thereafter be entitled to receive only those benefits for which may be eligible under the Board's disability income plan.

18. **ERRORS AND OMISSIONS COVERAGE.** The Board agrees to pay the premium amount for School Board errors and omissions insurance coverage, which includes the Superintendent while engaged in the performance of a governmental function and while the Superintendent is acting within the scope of his authority. The terms of the errors and omissions insurance policy shall be controlling respecting defense and indemnity of the Superintendent but in no case shall the coverage be extended to any demands, claims, suits, actions and/or legal proceedings brought against the Board, its individual member(s) or the School District by the Superintendent. The sole obligation undertaken by the Board shall be limited to the payment of premium amounts for the above errors and omission coverage. In the event that such insurance coverage cannot be purchased in the amounts and/or at a reasonable premium rate, the Board shall have the right to discontinue said coverage and shall so notify the Superintendent. In that event, the Board agrees on a case-by-case basis to consider providing legal defense and/or indemnification to the Superintendent as is authorized under MCL §691.1408.

19. **SUSPENSION.** Whether pending the procedures set forth in Paragraph 20 or pending an investigation of the conduct of the Superintendent, the Board may suspend the Superintendent with pay from all or part of the active performance of his duties and responsibilities, and may assign the performance of such responsibilities to another person or persons.



20. TERMINATION.

a. The term of this Agreement and Superintendent's employment shall automatically terminate upon the death of the Superintendent, or the resignation of the

Superintendent. The Superintendent may terminate this Agreement upon 180 days written notice to the Board. In the event the Superintendent resigns, the Board's obligations will end as of the date of resignation, or an accelerated date prior to the Superintendent's resignation date at the Board's discretion.

b. This Agreement shall automatically terminate and the Board shall have no further obligations hereunder if the Superintendent fails to meet or maintain the qualifications required for the position.

c. This Agreement shall terminate if the Superintendent is unable to perform the essential functions of his position, with or without reasonable job accommodations, for a period of 180 consecutive or nonconsecutive days in any twelve (12) month period.

d. The Superintendent may also be terminated for good and just cause. For purposes of this Agreement, "good and just cause" shall include, but not be limited to, a serious violation of the Board's written rules, regulations, policies or directives; conviction of a criminal offense or engaging in conduct that adversely affects the regard or reputation of the Board and/or School District in the community; willful or negligent neglect of duty; or material breach of the terms of this Agreement.

e. At any time during this Agreement, the Board may discharge the Superintendent for acts of moral turpitude, grave misconduct in office, dishonesty, fraud, conviction of felony or high misdemeanor, insubordination, material misrepresentation or falsification of records, in which event this Agreement may be terminated without liability or further obligation to the Superintendent.

f. If the Board takes action to dismiss Superintendent pursuant to subsections 20 b through e, Superintendent shall first receive advance notice that the Board is considering termination, together with a written statement of the reasons the Board is considering termination. If the Superintendent wishes to contest the reasons given for his termination, he shall have the right to respond in writing to each of the reasons and may make a request for a meeting with the Board within ten (10) calendar days of his receipt of the notice. If the Superintendent does not contest the reasons in the time and manner specified, the reasons shall be considered admitted and the Superintendent shall be considered to have waived any right to contest the reasons. If requested by the Superintendent, the Superintendent and a representative of his choice and at his cost may meet at a time and place set by the Board with not less than a majority of the Board, in public or private as the Superintendent may choose, to discuss the reasons stated in the written statement, and to make such oral or written response, as the Superintendent may elect. The subsequent vote of the Board whether or not to terminate the Agreement shall take place in a public session, at which time the Board will state the reason for its action.



g. Upon termination of this Agreement, the respective rights, duties and responsibilities of the parties pursuant to this Agreement shall cease.

21. **DISPUTE RESOLUTION.** Any and all disputes, controversies or claims arising out of or in connection with or relating to this Agreement, or any breach or alleged breach thereof, and any claim that the Board and/or School District violated any state or federal statute, including, but not limited to: the Michigan Elliott-Larsen Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, Age Discrimination in Employment Act, Americans With Disabilities Act, and Title VII of the Civil Rights Act of 1964, all as amended; common law doctrines; or tort claims relating to the employment relationship with the School District shall, upon the request of the party involved, be submitted to and settled by arbitration in the State of Michigan pursuant to the applicable rules of the American Arbitration Association (or at any other place or under any other forum of arbitration mutually acceptable to the parties involved), arbitration under this provision shall be conducted pursuant to the Michigan Arbitration Act, MCL §600.5001 *et seq*, and shall be subject to the following terms:

a. The parties hereto specifically agree to arbitrate with the other party in a joint proceeding with regard to all common issues and disputes. As such, neither party may litigate such claims against each other in court. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

b. Notice of the demand for arbitration must be filed, in writing, with the other party to this Agreement and with the American Arbitration Association (AAA). The demand for arbitration shall be made within 180 days after the claim, dispute or other matter in question arose. If the demand for arbitration is not made within 180 days as described above, any and all claims against the Board or Benton Harbor Area Schools, whether asserted or unasserted, will be waived by Superintendent. Each party is responsible to pay their share of the initiation and/or administration fee assessed by AAA.

c. The parties shall have the right to be represented by a representative or legal counsel of their choice and at their cost.

d. An arbitrator shall be chosen according to the American Arbitration Association procedures and shall be impartial to the matter. The arbitrator shall be sworn to hear and decide the matter fairly.

e. The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth findings of fact and conclusions of law only as to the claims or disputes at issue.



f. This arbitration procedure does not waive or limit in any way any statutory damages to which a party claims it or he is entitled. The Board shall be responsible to pay the fees and costs of the arbitrator. Each party shall pay for its or her own costs and attorneys' fees, if any.

g. Any award by the arbitrator shall be final, conclusive and binding upon the parties, and a judgment thereon may be entered in the highest court for the forum, state or federal, having competent jurisdiction. Upon the entry of an arbitral award in favor of the Superintendent, the District shall have thirty (30) days after its receipt of such award within which to fully comply with the same, and a judgment may not be entered to enforce such award until such time as the District has had reasonable opportunity to comply with the arbitral award in accordance with this provision.

22. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Board and the Superintendent and supersedes any previous oral or written understandings and agreements pertaining to or arising in any way out of Superintendent's employment. No individual Board member or other School District Administrator has authority to alter this Agreement or enter into any new or different Agreement. No amendments,

modifications, additions or deletions shall be binding upon the parties unless in writing, signed by both parties, and approved by the Board in an open meeting.

23. **NON-ASSIGNABILITY.** This Agreement is personal to each of the parties and may not be assigned or delegated to any other party without obtaining the written consent of the other party.

24. **SEVERABILITY.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without such provision, unless the elimination of such provision substantially defeats the intents and purposes of the parties as embodied in this Agreement.

25. **CONSTRUCTION.** This Agreement is the product of negotiations between the parties and shall not be construed in favor of or against either party.

26. **CONTROLLING LAW.** This Agreement shall be governed by the laws of the State of Michigan, and shall be enforced only in a court of competent jurisdiction in Berrien County, Michigan or the United States federal District Court for the Western District of Michigan.

27. **BREACH.** In the event of a breach on the part of either party to this Agreement, nothing contained herein shall be construed to render the obligations of the other party under this agreement null and void.



IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Date: 8/17/2010

Date: 8/17/2010

BENTON HARBOR AREA SCHOOLS

By: *LeRoy Hawes*
ITS: PRESIDENT

Leonard Seawood
LEONARD SEAWOOD