



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

ROBERT J. KLEINE
STATE TREASURER

CONTRACT

Between the Local Emergency Financial Assistance Loan Board

And

The Emergency Financial Manager for the City of Benton Harbor

Appointed Pursuant to Public Act 72 of 1990

WHEREAS, pursuant to Section 12(1) of Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, hereinafter "the Act," a preliminary review was conducted by the Michigan Department of Treasury on August 24, 2009, through September 24, 2009, to determine whether a serious financial problem existed within the City of Benton Harbor, hereinafter "the City"; And

WHEREAS, pursuant to Section 12(3) of the Act, the State Treasurer on September 24, 2009, reported to the Governor the conclusion that, based upon the preliminary review, a serious financial problem existed within the City; And

WHEREAS, pursuant to Section 13(1)(b) of the Act, the Governor appointed a Financial Management Review Team on November 30, 2009, to conduct a detailed review of the financial condition of the City; And

WHEREAS, the Review Team met on December 8, 2009, December 16, 2009, December 22, 2009, January 20, 2010, and January 27, 2010, to consider information relevant to the financial condition of the City and concluded that a local government financial emergency existed in the City because no satisfactory plan existed to resolve a serious financial problem; And

WHEREAS, the Review Team reported to the Governor on January 27, 2010, that a local government financial emergency existed in the City because no satisfactory plan existed to resolve a serious financial problem existed in the City; And

WHEREAS, by letter dated February 26, 2010, the Governor informed the Mayor and City Commissioners of her determination that a local government financial emergency existed in the City because no satisfactory plan existed to resolve a serious financial problem, set forth the findings of fact upon which the determination was based, and indicated the right of the City to request a hearing upon the determination; And

WHEREAS, the Mayor, by letter dated March 8, 2010, requested a hearing which was conducted on March 17, 2010; And

WHEREAS, by letter dated March 25, 2010, the Governor informed the Mayor and Commissioners of the City that based upon the testimony and information presented at the hearing she had confirmed her determination that a financial emergency existed in the City because no satisfactory plan existed to resolve a serious financial problem. In her letter dated March 25, 2010, the Governor also informed the Local Emergency Financial Assistance Loan Board that she was assigning responsibility for the management of the local government financial emergency in the City to the Local Emergency Financial Assistance Loan Board established pursuant to Public Act 243 of 1980, the Emergency Municipal Loan Act; And

WHEREAS, Section 18(1) of the Act requires the Local Emergency Financial Assistance Loan Board to appoint an Emergency Financial Manager upon the determination of a financial emergency by the Governor.

NOW, THEREFORE, be it resolved that the Local Emergency Financial Assistance Loan Board hereby appoints Joseph L. Harris as Emergency Financial Manager for the City of Benton Harbor, subject to the terms and conditions set forth in this Contract.

Authority of Emergency Financial Manager

1. Subject to supervision by the Local Emergency Financial Assistance Loan Board, the Emergency Financial Manager shall have the powers, rights, duties, and obligations to do all of the following:
 - (a) Issue to the appropriate officials or employees of the City the orders that the Emergency Financial Manager considers necessary to accomplish the purposes of this Contract, including, but not limited to, orders for the timely and satisfactory implementation of a financial plan as provided in this Contract. An order issued under this Contract is legally binding upon the City official or employee to whom it is issued.
 - (b) In consultation with the City, develop and, if necessary from time to time, amend a written financial plan for the City. The financial plan shall be in a form prescribed by the Emergency Financial Manager, shall contain that information for each year during which the financial plan is in effect that the Emergency Financial Manager specifies and shall provide for both of the following:
 - (1) Conduct the operations of the City within the resources available according to an estimate of available revenues by the Emergency Financial Manager.
 - (2) The payment in full of the scheduled debt service requirements on all bonds and notes of the City and all other uncontested legal obligations.
 - (c) After the initial development of the financial plan and in consultation with the City, re-examine the financial plan as necessary. If the Emergency Financial Manager reduces his

revenue estimates, the Emergency Financial Manager shall modify the financial plan to conform to the revised revenue estimates.

- (d) Make public the financial plan or modified financial plan. However, the Emergency Financial Manager need not receive public approval before the Emergency Financial Manager implements the financial plan or any modification of the plan.
- (e) Analyze factors and circumstances contributing to the financial condition of the City and recommend to the Local Emergency Financial Assistance Loan Board steps to be taken to correct the condition.
- (f) Amend, revise, approve, or disapprove the budget of the City and limit the total amount of funds appropriated or expended during the balance of the financial emergency.
- (g) Require and approve or disapprove, or amend or revise a plan for liquidating all outstanding debts of the City.
- (h) Require and prescribe the form of special reports to be made by the finance officer of the City to City Council, creditors of the City, the Emergency Financial Manager, or the public.
- (i) Examine all records and books of account, and require under the procedures of Public Act 2 of 1968, the Uniform Budgeting and Accounting Act, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the City.
- (j) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a permanent position by any appointing authority.
- (k) Review payrolls or other claims against the City before payment.

- (l) Exercise all of the authority of the City to renegotiate existing labor contracts and act as an agent of the City in collective bargaining with employees or representatives and approve any contract or agreement.
- (m) Unless prohibited by law or charter, consolidate departments or transfer functions from one department to another and to appoint, supervise, and, at the discretion of the Emergency Financial Manager, remove heads of departments other than elected officials.
- (n) With the approval of the Local Emergency Financial Assistance Loan Board, employ or contract with, at the expense of the City, auditors and other technical personnel considered necessary to implement this Contract.
- (o) Require compliance with the orders of the Emergency Financial Manager by court action if necessary.
- (p) Prosecute, or defend, or both, any litigation to which the City is a party.
- (q) Upon approval by the Local Emergency Financial Assistance Loan Board, delegate any of the powers and duties of the Emergency Financial Manager to one or more designees.
- (r) Except as prohibited by charter or law, sell or otherwise use the assets of the City to meet past or current obligations, provided that the use of assets for this purpose does not endanger the public health, safety, or welfare of the residents of the City.
- (s) Apply for a loan from the State on behalf of the City, subject to the conditions of Public Act 243 of 1980, the Emergency Municipal Loan Act, in a sufficient amount to pay the expenses of the Emergency Financial Manager and for other lawful purposes.
- (t) Approve or disapprove of the issuance of obligations of the City on behalf of the City, subject to the conditions of Public Act 34 of 2001, the Revised Municipal Finance Act, or Public Act 279 of 1909, the Home Rule City Act.

- (u) Enter into agreements with other units of local government for the provision of City services.
- (v) Exercise the authority and responsibilities affecting the financial condition of the City as provided in Public Act 279 of 1909, the Home Rule City Act.
- (w) Procure and maintain for the Emergency Financial Manager, at the expense of the City, such workers compensation, general liability, and motor vehicle insurance as may be provided to elected and appointed officers, employees, volunteers and others working for the City. 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 from the date of his appointment to the expiration of the applicable statute of limitation provided the claim, demand, or lawsuit asserted or costs recovered against the Emergency Financial Manager resulted from actions taken in accordance with the Act while this Contract was in effect.

Emergency Financial Manager Reports

2. On a quarterly basis beginning by the 15th day of July 2010, the Emergency Financial Manager shall submit to the Local Emergency Financial Assistance Loan Board a compliance monitoring report. Each compliance monitoring report shall either confirm or deny that adequate accounting systems and management practices are in place and that each of the following has occurred:
 - (a) That revenues recorded in the most recent quarterly financial statements are fairly stated in all material respects on a modified accrual basis of accounting, except that in the case of the water and sewer fund, revenues recorded in the most recent quarterly financial statements shall be fairly stated in all material respects on a full accrual basis of accounting.

- (b) That expenditures recorded in the most recent quarterly financial statements are fairly stated in all material respects on a modified accrual basis of accounting, except that in the case of the water and sewer fund, expenditures recorded in the most recent quarterly financial statements shall be fairly stated in all material respects on a full accrual basis of accounting. Accounts payable, vouchers payable, and accrued payrolls are to be included in the determination of expenditures.
- (c) That all appropriate interfund transactions have been recorded in the financial records of the City.
- (d) That the City is in compliance with its budget for the fiscal year on a year-to-date basis and that the budget has been amended as required by law.
- (e) That the reconciliation of bank accounts has been completed and appropriate adjusting journal entries have been made to the general ledger of the City.
- (f) That remittance of payroll taxes, pension payments, 401(k) payments, debt payments, and taxes collected for other governmental units were completed on a timely basis.
- (g) That cash flow reported for the most recent preceding month is fairly stated in all material respects.
- (h) That overtime is properly disclosed and recorded in the most recent quarterly financial report of the City.
- (i) That the original of all source financial documents have been properly retained and preserved and that the City is in compliance with all other legal requirements, except to the extent specified in the report.

Employment Status of City Employees

3. Beginning on the effective date of this Contract, any employee of the City whose position is

not covered by a collective bargaining agreement is employed at the will of the Emergency Financial Manager.

Bankruptcy Proceedings

4. After written notice to the Local Emergency Financial Assistance Loan Board, the Emergency Financial Manager may authorize the City to proceed under Title 11 of the United States Code, Sections 101 to 1330, unless this authorization is disapproved by the Local Emergency Financial Assistance Loan Board within 60 days after the notice has been received by the Board. A notice to the Local Emergency Financial Assistance Loan Board shall include a determination by the Emergency Financial Manager that no feasible financial plan can be adopted that can satisfactorily resolve the financial emergency in a timely manner, or a determination by the Emergency Financial Manager that an adopted financial plan, in effect for at least 180 days, cannot be implemented, as written or as it might be amended, in a manner that can satisfactorily resolve the financial emergency in a timely manner.

Compensation

5. The Emergency Financial Manager shall be entitled to compensation and reimbursement for actual and necessary expenses paid for by the City as approved by the Local Emergency Financial Assistance Loan Board as follows:
 - (a) For each whole month during which this Contract is in effect, \$11,000 per month during the term of this Contract.
 - (b) For any portion of a month if this Contract is terminated after the Emergency Financial Manager has provided services for a portion of the month, \$11,000 multiplied by the proportion which the number of days of the month for which services were provided bears to the number of days of the whole month.

Unless otherwise authorized by the Local Emergency Financial Assistance Loan Board, any reimbursement for actual and necessary expenses shall be included within, and shall not be in addition to, the compensation authorized under this Contract.

Staff Support

6. Upon approval by the Local Emergency Financial Assistance Loan Board, the Emergency Financial Manager may appoint staff in addition to that otherwise authorized by law and secure professional assistance considered necessary to implement this Contract.

Limitation upon Liability

7. This State, the members of the Local Emergency Financial Assistance Loan Board, and the Emergency Financial Manager shall not be liable for any obligation of or claim against the City resulting from actions taken in accordance with the terms of this Contract. When acting under this Contract, the Emergency Financial Manager shall be deemed to be engaging in the exercise of a governmental function and shall be immune from liability for any action taken which the Emergency Financial Manager reasonably believed to be within the scope of the Emergency Financial Manager's authority granted by statute or under this Contract.

Cooperation with Emergency Financial Manager

8. All City officials and employees shall cooperate fully with the Emergency Financial Manager and the obligation of City officials and employees to do so is not subject to release or discharge due to any contingencies, including, but not limited to, clerical errors, computer failures, late mailings, or the failure to comply with reporting due dates or other scheduled due dates due to adverse weather, acts of God, acts of third parties, or compliance with court orders. Elected officials of the City shall provide to the Emergency Financial Manager upon request the assistance and information necessary to permit the Emergency Financial Manager

to discharge the duties pursuant to this Contract. The failure of an elected official of the City to comply with this provision shall be considered gross neglect of duty, which the Emergency Financial Manager shall report to the Local Emergency Financial Assistance Loan Board. Following review and a hearing with the elected official, the Local Emergency Financial Assistance Loan Board may recommend to the Governor that the Governor remove the elected official from office. If the Governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

Limitation upon Taxation

9. This Contract does not authorize the Emergency Financial Manager or the Local Emergency Financial Assistance Loan Board to impose taxes in addition to those already authorized by law without the approval at an election of a majority of the qualified electors voting on the question.

Waiver of Provisions

10. Unless otherwise prohibited by law, the Local Emergency Financial Assistance Loan Board may waive a provision of this Contract if, in its sole discretion, the Local Emergency Financial Assistance Loan Board concludes that the Emergency Financial Manager has demonstrated good cause shown for the waiver. However, the lack of a specific action by the Local Emergency Financial Assistance Loan Board shall not be construed as a waiver of a provision of this Contract.

Due Dates

11. An order issued by the Emergency Financial Manager which requires a City official or employee to submit to the Emergency Financial Manager a report, information, or other document by a specific due date shall not be deemed complied with unless the report, information, or other document is received by the Emergency Financial Manager by the due date speci-

fied. If the due date for a report, information, or other document falls on a weekend or legal holiday, then the report, information, or other document shall be due on the first day thereafter which is not a weekend or legal holiday.

Status of Emergency Financial Manager

12. The Emergency Financial Manager shall serve at the pleasure of the Local Emergency Financial Assistance Loan Board and may be removed by the Local Emergency Financial Assistance Loan Board with or without cause.

Duration of Contract

13. This Contract shall remain in effect until such time as the Local Emergency Financial Assistance Loan Board recommends to the Governor that the conditions for revoking the declaration of a financial emergency in the City have been met and the Governor informs the Local Emergency Financial Assistance Loan Board that the recommendation has been accepted.

Effective Date

14. The terms of this Contract shall have immediate effect upon the signing of this Contract by the Emergency Financial Manager and the Local Emergency Financial Assistance Loan Board. Any amendment to or modification of this Contract by the Local Emergency Financial Assistance Loan Board shall have immediate effect upon its approval by the Local Emergency Financial Assistance Loan Board, unless the Local Emergency Financial Assistance Loan Board shall specify a different effective date, in which case the amendment or modification shall take effect on the date specified. An action, if any, taken by the Emergency Financial Manager after the date of his appointment by the Local Emergency Financial Assistance Loan Board but before the date upon which this Contract is signed shall be as valid as if the action were taken after the date that this Contract was signed.

Delegation of Ongoing Supervision

15. The Local Emergency Financial Assistance Loan Board may delegate to the State Treasurer responsibility for the day to day supervision of the Emergency Financial Manager.

Measurement of Progress


16. For purposes of measuring progress in resolving the financial emergency in the City, the Emergency Financial Manager shall adhere to and abide by the checklist a copy of which is appended to this Contract.

Supplemental Employment


17. The Emergency Financial Manager may engage in employment supplemental to his duties under this Contract, but only after serving written notice to that effect upon the Local Emergency Financial Assistance Loan Board and unless the Local Emergency Financial Assistance Loan Board disapproves any supplemental employment. The Emergency Financial Manager shall not engage in supplemental employment which would constitute a conflict of interest with his duties under this Contract.

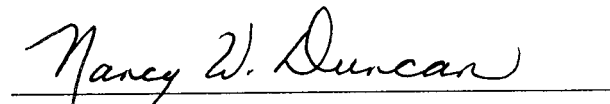
IN WITNESS WHEREOF, the parties have signed and executed this Contract on this 1st day of April, 2010.

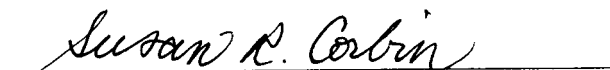
By the Emergency Financial Manager:


Joseph L. Harris

By the Local Emergency Financial Assistance Loan Board:


Robert J. Kleine, State Treasurer


Nancy W. Duncan, Deputy State Budget Director, for
Kenneth D. Theis, Director and CIO
Department of Technology, Management and Budget


Susan Corbin, Deputy Director and Chief of Staff, for
Stanley F. "Skip" Pruss, Director
Department of Energy, Labor, and Economic Growth