

MANAGEMENT AGREEMENT

This Management Agreement is made and entered into as of the 1 day of July, 2008, by and between the **Foundation for Behavioral Resources**, a Michigan non-profit corporation ("FBR"), and **Arbor Academy**, a body corporate and public school academy (the "Academy").

RECITALS

The Academy is a charter school, organized as a public school academy under the revised Michigan School Code (the "Code"). The Academy has been granted a contract (the "Contract") by the Grand Valley State University Board of Trustees ("GVSU") to organize and operate a public school academy, with GVSU as the authorizing body.

FBR was instrumental in the creation of the Academy, having incorporated the Academy, recruited its initial Board of Directors (the "Board"), prepared the application with GVSU for the Contract (the "Application"), and prepared the curriculum and related documents submitted with the Application and essential for the operation of the Academy.

The Academy and FBR desire to create an enduring educational partnership, whereby the Academy and FBR will work together to bring educational excellence and innovation to the Kalamazoo/Portage metropolitan area, based on FBR's school design, comprehensive educational program and management principles.

In order to facilitate the commencement of school for the 2008-2009 school year and the continuation of school indefinitely thereafter, and to implement an innovative educational program at the school, the parties desire to establish this arrangement for the management and operation of the Academy.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

CONTRACTING RELATIONSHIP

- A. Authority.** The Academy represents that it is authorized by law to contract with a private entity and for that entity to provide educational management services. The Academy further represents that it has been granted the Contract by GVSU to organize and operate a public school academy. The Academy is therefore authorized by the code and GVSU to supervise and control such academy, and is invested with all powers necessary or desirable for carrying out the educational program contemplated in this Agreement.
- B. Contract.** The Academy hereby contracts with FBR, to the extent permitted by law, for the provision of all labor, materials, facilities, equipment and supervision necessary for

the provision of educational services to students, and the management, operation and maintenance of the Academy in accordance with the educational goals, curriculum, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade range of pupils to be enrolled, educational goals, and method to be used to monitor compliance with performance of targeted educational outcomes, all as adopted by the Board of the Academy and included in the Contract between the Academy and GVSU.

- C. Designation of Agents.** The Board designates the employees of FBR's Central Office and Charter School Division as agents of the Academy having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. §1232g, the Family Rights and Privacy Act ("FERPA").
- D. Status of the Parties.** FBR is a non-profit Michigan corporation, and is not a division of or a part of the Academy. The Academy is a body corporate and governmental entity authorized by the Code, and is not a division or part of FBR. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and not employer – employee. Except as expressly provided in this Agreement, no agent or employee of FBR shall be deemed to be the agent or employee of the Academy. FBR shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between FBR and the Academy is based solely on the terms of this Agreement, and the terms of any other written agreements between FBR and the Academy.

ARTICLE II

TERM

- A. Term.** This Agreement shall be effective as of _____, 2008 and shall expire on June 30, 2013. This Agreement shall automatically renew for an additional term of one year, and from year to year thereafter, unless otherwise terminated or renegotiated in accordance with Article VII.

ARTICLE III

FUNCTIONS OF FBR

- A. Responsibility.** FBR shall be responsible and accountable to the Board for the administration, operation and performance of the Academy in accordance with the Contract. FBR's responsibility is expressly limited by: (i) the budget FBR and the Academy agree upon pursuant to the terms of this Agreement, and (ii) the availability of state funding to pay for said services. Neither FBR nor the Academy shall be required to expend Academy funds on services in excess of the amount set forth in the Academy budget.

B. Educational Program. FBR agrees to implement the educational goals and programs as incorporated in the Contract (the "Educational Program"). In the event FBR determines that it is necessary to modify the Educational Program, FBR shall inform the Board of the proposed changes and obtain board approval, and if required under the Contract, approval of GVSU. The parties hereto acknowledge that an essential principle of the Educational Program is its flexibility, adaptability and capacity to change in the interest of continuous improvement and efficiency, and that the Academy and FBR are interested in results and not in inflexible prescriptions. At the end of each academic semester, and otherwise as requested, FBR will provide the Board with updated reports on progress towards implementing each of the Academy's educational goals in the Educational Program.

C. Specific Functions. FBR shall be responsible for the management, operation, administration, accounting and education at the Academy. Such functions include, but are not limited to:

1. Implementation and administration of the Educational Program, including the selection and acquisition of instructional materials, equipment and supplies, and the administration of any and all extra-curricular and co-curricular activities and programs.
2. Management of all personnel functions, including professional development for the School Administrator and all instructional personnel and the personnel functions outlined in Article VI.
3. Operation of the school building, which FBR shall rent, lease or otherwise provide for the Academy's use, and the installation of technology integral to the school design.
4. All aspects of the business administration of the Academy.
5. All aspects of the accounting operation, including general ledger management and financial reporting.
6. Food service, if any is provided, for the Academy.
7. Before and after school child care, if any is provided, for the Academy through the use of FBR's Child Development Centers.
8. Any other function necessary or expedient for the administration of the Academy.

D. Purchases. Purchases made by FBR on behalf of the Academy with Academy monies including, but not limited to, instructional materials, supplies, and equipment will be the property of the Academy.

E. Subcontracts. FBR reserves the right to subcontract any and all aspects of all services it agrees to provide to the Academy including, but not limited to transportation and/or food

service. However, FBR shall not subcontract the management, oversight or operation of the teaching and instructional program, except as specifically permitted in this Agreement or with approval of the Board.

- F. Place of Performance.** FBR reserves the right to perform functions other than instruction, such as purchasing, professional development, and administrative functions, off-site, unless prohibited by state or local law.
- G. Educational Facilities.** It is FBR's responsibility to locate facilities to be used by the Academy. The Board agrees that FBR may own the facilities used by the Academy and further agrees that FBR may rent or lease these facilities to the Academy at Fair Market Value. Fair Market Value shall be based on cost/square foot/year for property and shall be charged in either 12 or 9 equal monthly payments. The Board agrees that FBR has fully disclosed its ownership interest in the Educational Facilities and agrees that FBR may select such facilities and construct additional facilities for use by the Academy.
- H. FBR Office Space.** For the term of this Agreement, suitable office space shall be provided at the Academy for FBR personnel and subcontractors. The office space shall be used by FBR for FBR activities related to the Academy. The Academy shall also provide FBR, upon FBR's request, with an additional room to be used for activities related to the Academy. The Academy agrees that FBR may incur, on the Academy's behalf, office and rental expenses associated with off-site central management.
- I. Student Recruitment.** FBR and the Board shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies. Students shall be selected in accordance with the procedures set forth in the Contract and in compliance with the Code and other applicable law.
- J. Due Process Hearings.** FBR shall provide student due process hearings in conformity with the requirements of state and federal law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the Academy's own obligations. The Academy shall retain the right to provide due process as required by law.
- K. Legal Requirements.** FBR shall provide educational programs that meet federal, state, and local requirements, and the requirements imposed under the Code and the Contract, unless such requirements are or have been waived, but the Academy shall interpret state and local regulations liberally to give FBR flexibility and freedom to implement its educational and management programs.
- L. Rules & Procedures.** FBR shall recommend reasonable rules, regulations and procedures applicable to the Academy and is authorized and directed to enforce such rules, regulations and procedures adopted by the Academy.

- M. School Year and School Day.** The school year and school day shall be as provided in the Contract submitted to and approved by GVSU. FBR reserves the right to modify the school year/day so long as State mandated days and hours of instruction are met.
- N. Pupil Performance Standards and Evaluation.** FBR shall implement pupil performance evaluations which permit evaluation of the education progress of each Academy student. FBR shall be responsible and accountable to the Board for the performance of students who attend the Academy. FBR will utilize assessment strategies acquired by the terms of the Contract. The Board and FBR will cooperate in good faith, to identify measures of school performance and goals for Academy students including, but not limited to, parent satisfaction.
- O. Services to Disabled Students and Special Education.** FBR shall provide special education services to students who attend the Academy in conformity with the requirements of state and federal law. FBR may subcontract as necessary and appropriate for the provision of services to students whose special needs cannot be met within the Academy's program, subject to approval of the Academy Board. Such services shall be provided in a manner that complies with local, state and federal laws and applicable regulations and policies.
- P. Contract between the Academy and GVSU.** FBR will not act in a manner which will cause the Academy to be in breach of its Contract with GVSU.
- Q. Unusual Events.** FBR agrees to timely notify the Board and/or school administrator of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect the Academy in complying with its responsibilities hereunder.
- R. Student and Financial Records.** All student and financial information related to the Academy shall be available for inspection at the Academy or at FBR's central office upon reasonable request consistent with applicable federal and state laws.

ARTICLE IV

OBLIGATIONS OF THE BOARD

- A. Good Faith Obligation.** The Board shall be responsible for its fiscal and academic policy. The Board shall exercise good faith in considering the recommendations of FBR including, but not limited to, FBR's recommendations concerning policies, rules, regulations and budgets. The Board's failure to adopt FBR's reasonable recommendations with respect to policies, rules and regulations to enable FBR to implement the school design as set forth in the Contract may, at FBR's option, be deemed a material breach of this Agreement by the Academy. The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and carrying on of the Academy, including regulations relative to the conduct of pupils while in attendance at the Academy or

en route to and from the Academy. The Board shall further retain the obligation, as provided in Section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials and equipment.

- B. Assistance to FBR.** The Academy shall cooperate with FBR in furnishing all information and submitting all forms and reports required in association with this Agreement, including timely notice of all Board meetings. The Academy shall timely furnish FBR all documents and records necessary for FBR to properly perform its responsibilities under this agreement.
- C. Unusual Events.** The Academy agrees to timely notify FBR of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect FBR in complying with its responsibilities hereunder.
- D. FBR Office Space.** For the term of this Agreement, suitable office space shall be provided at the Academy for FBR personnel and subcontractors. The office space shall be used by FBR for FBR activities related to the Academy. The Academy shall also provide FBR, upon FBR's request, with an additional room to be used for activities related to the Academy. The Academy agrees that FBR may incur, on the Academy's behalf, office and rental expenses associated with off-site central management.
- E. Retained Authority.** The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and carrying on of the Academy, including regulations relative to the conduct of pupils while in attendance at the Academy or en route to and from the Academy. The Academy Board shall further retain the obligation, as provided in section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials and equipment.
- F. Building Facility.** It is FBR's obligation to secure a building that complies with all requirements of the Contract. FBR may own, build, purchase or lease a school facility for or on behalf of the Academy.
- G. Educational Consultant.** The Board may retain at its own expense an educational consultant to review the operations of the Academy and the performance of FBR under this agreement. FBR shall cooperate with such consultant in the performance of his or her responsibilities to the Board. Notwithstanding anything contained elsewhere in this agreement, without Board authorization, FBR shall have no authority to select, evaluate, assign, supervise or control any consultant retained by the Board.

ARTICLE V

FINANCIAL ARRANGEMENTS

- A. Revenues.** Except as hereinafter provided, all monies received by the Academy Board shall be deposited within three (3) business days with a financial institution acceptable to

the Board and FBR. The Academy and FBR shall be named signatories on the account. FBR, as disbursement agent for the Board, is authorized to disburse funds from the account on behalf of the Academy for the purposes and uses authorized pursuant to the terms of this Agreement. Except as specifically excluded by the terms of this Agreement, the term "Revenues" shall include all funds received by on or behalf of the Academy including, but not limited to;

- 1) State Aid Funds.
- 2) Special Education funding provided by Federal or State Governments to the Academy that is directly allocable to special education students in the Academy.
- 3) Gifted and Talented funding provided by Federal and State Governments that is directly allocable to gifted and talented students in the Academy.
- 4) At-Risk funding provided by Federal and State Governments to the Academy that is directly allocable to at-risk students in the Academy.
- 5) Funding provided by Federal and State Governments to the Academy that is directly allocable to students in the Academy with limited English proficiency.
- 6) Federal and State grant sources, including Title 1, which is directly allocable to the Academy.
- 7) Grants and donations received by the Academy (except to the extent FBR is not required or involved in soliciting, administering, or managing such grants and/or donations).
- 8) Fees charged to students for extra services as and to the extent permitted by law.

(All of the above are hereinafter collectively referred to as the "Revenues").

The Revenues shall be expended by FBR in accordance with the approved Budget and as otherwise authorized by the Board. The expenditure of Revenues received from governmental entities shall be consistent with all applicable regulations and policies, and in the case of private donations, the directives of the donor where applicable.

B. Budget

1. Projected Budget. FBR shall provide the Board with an annual projected Budget (the "Budget"). The budget shall be submitted to the Board prior to June 30th for the following academic year.
2. Budget Detail. The Budget shall contain reasonable detail as requested by the Board. The Budget shall include all projected expenses and costs reasonably associated with operating the Academy and the FBR school program including, but not limited to, the projected cost of: all services and education programs provided to the Academy, leasehold and other lease obligations incurred by the Academy, maintenance and repairs to Academy facilities and capital improvements except as otherwise agreed upon, supplies and furnishings necessary to operate the Academy, all taxes of any kind that are assessed or imposed, insurance premiums, utilities, professional fees, and other costs and expenses connected to operating the Academy.

3. **Board Surplus.** The Budget shall provide that the Board shall have a surplus for use by the Board in an amount equal to two (2) percent of Revenues after deducting the percentage paid to GVSU pursuant to its Contract (the "Board Surplus").
 4. **Approval.** The Budget shall be prepared by FBR and submitted to the Board for approval. The Budget may be amended from time to time as deemed necessary by FBR and the Board.
 5. **Expenditures.** FBR shall not expend the Revenues in such a way as to deviate materially from the provisions of the Budget without Board approval (except where the deviation is less than the amount budgeted).
- C. Fee.** FBR shall be entitled to retain as compensation for its services rendered pursuant to this Agreement the difference, if any, between the amount of the Academy's Revenues and the amount of Revenues actually expended by or on behalf of the Academy during its fiscal year after deducting the Board Surplus (the "Fee"). It is anticipated that FBR will be paid its Fee monthly over approximately twelve months. The exact date of each monthly payment and the amount of each monthly payment may vary depending on the timing and the amount of funds received each month by the Academy.
- D. Availability of Funds.** FBR shall only be required to perform its responsibilities upon this Agreement to the extent that the Academy has received and made available to FBR sufficient Revenues to make payments in accordance with the terms of the Budget.
- E. Other Public School Academies.** The Academy acknowledges that FBR may enter into similar management agreements with other public school academies. FBR shall maintain separate accounts for expenses incurred by or on behalf of the Academy and other Public School Academies, and shall only charge the Academy for expenses incurred by or on behalf of the Academy. If FBR incurs authorized reimbursable expenses on behalf of the Academy and other public school academies which are incapable of precise allocation, then FBR shall allocate such expenses among all such academies, including the Academy, on a prorated basis based upon the number of students enrolled at such academies, or upon such other equitable basis as is acceptable to the parties.
- F. Financial Reporting.** FBR shall provide the Board with:
- 1) The projected annual Budget as required by the terms of this Agreement.
 - 2) Detailed statements of all Revenues received, and detailed statements of all direct expenditures for services and or expenses rendered or incurred to or on behalf of the Academy, whether incurred on-site or off-site, upon request.
 - 3) Reports on Academy operations, finances, and student performance shall be provided upon request, but not less frequently than two (2) times per year.
 - 4) Other information on a periodic basis to enable the Board to monitor FBR's performance and the efficiency of its operation of the Academy, and to reconcile the Fee paid to FBR.

- G. Access to Records.** FBR shall keep accurate financial records pertaining to its operation of the Academy, together with all Academy financial records prepared by or in possession of FBR, and shall retain all of these records for a period of five (5) years from the close of the fiscal year to which such records relate. FBR and the Academy shall maintain the proper confidentiality of personnel, students, and other records as required by law.
- H. Review of Operational Budget.** The Academy Board shall be responsible for reviewing and approving the annual Budget of the Academy as presented by FBR.
- I. Annual Audit.** The Academy Board shall select, retain, and pay for an annual audit in accordance with the Academy's authorizing documents and the School Aid Act.
- J. Start-up Financing.** FBR has and may continue to provide start-up funds for the Academy, including funds for the development of a curriculum, technology system and school operations plan; recruiting, selecting and pre-service training of staff members; and cleaning, fixing and equipping of the academy building as required by this Agreement. FBR advances shall be budgeted and FBR shall be reimbursed from the Revenues as and when funds are available.
- K. Other Financing.** The Board may apply to FBR for financing from time to time. Any such financing shall be subject to written agreement between the parties as to terms, and may cover the cost of funds for the development and on-going operations of any and all aspects of the Academy's program. The Academy shall reimburse FBR for any such financing from state school aid payment and/or other revenue sources.

ARTICLE VI

PERSONNEL & TRAINING

- A. Personnel Responsibility.** FBR, subject to Board approval, shall select qualified personnel to perform services at the Academy. FBR shall determine if the staff shall be employees of the Academy or of FBR. The parties anticipate that virtually all staff shall be employees of FBR but such determination may change from time to time with Board approval. Compensation of all employees will be paid in accordance with the budget referenced in Article V. For purposes of this agreement, compensation shall include salary, bonus (if applicable), fringe benefits, and state and federal tax withholdings. FBR shall have the responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline, transfer and terminate personnel consistent with state and federal law. If FBR executes contracts with administrative or teaching staff that have a term longer than one (1) year, the Board reserves the right to have the School Administrator or teacher placed elsewhere by FBR if the Board is reasonably dissatisfied with their respective performance at the end of the academic year.
- B. School Administrator.** The accountability of FBR to the Academy is an essential foundation of this Agreement. Since the responsibility of the Academy school

administrator is critical to the Academy's success, FBR shall have the authority, consistent with state law, to select and supervise each school administrator and to hold the school administrator accountable for the success of the Academy. FBR shall consult with the Board with respect to the hiring of the School Administrator, and FBR shall remove the School Administrator from the Academy if the Board is reasonably dissatisfied with his or her performance. The duties of the school administrator, and the terms of the school administrator's employment contract, shall be determined by FBR subject to approval by the Board. The school administrator shall be accountable for the performance of the Academy, and shall work with FBR in conjunction with the operation and management of the Academy. Since the selection and performance of the school administrator is essential to the success of the Academy, the Board's failure to adopt/ratify FBR's recommendations with respect to the school administrator shall constitute a material breach of this Agreement.

- C. Teachers.** FBR shall determine the number of teachers, and the applicable grade levels and subjects, required for the operation of the Academy. FBR shall provide the Academy with such teachers, qualified in the grade levels and subjects required, as are required by the Academy. The curriculum taught by such teachers shall be the curriculum prescribed by FBR for the Academy. Such teachers may, in the discretion of FBR, work at the Academy on a full or part time basis. If assigned to the Academy on a part time basis, such teachers may also work at other schools managed or operated by FBR. Each teacher assigned or retained by the Academy shall hold a valid Michigan teaching certificate issued by the state board of education under the Code, to the extent required under the Code.
- D. Support Staff.** FBR shall determine the number and functions of support staff required for the operation of the Academy. FBR shall provide the Academy with qualified staff to efficiently operate the Academy's school in accordance with the Contract. The support staff may, in the discretion of FBR, work at the Academy on a full or part time basis. If assigned to the Academy on a part time basis, the support staff may also work at other schools managed or operated by FBR.
- E. Training.** FBR shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular basis. Non-instructional personnel shall receive such training as FBR determines reasonable and necessary under the circumstances.

ARTICLE VII

TERMINATION OF AGREEMENT

A. Termination.

- 1. By FBR.** FBR may terminate this Agreement prior to the end of the terms specified in Article II in the event the Board fails to remedy a material breach within 30 days after notice from FBR. A material breach includes, but is not

limited to, FBR's failure to receive for any reason compensation or reimbursement as required by the terms of this Agreement, or the Academy's loss or suspension of its Contract.

2. **By Academy.** The Academy may terminate this Agreement prior to the end of the terms specified in Article II in the event that FBR shall fail to remedy a material breach within 30 days after notice from the Board. Material breach includes, but is not limited to: (i) failure to account for its expenditures or to pay Academy operating costs (provided funds are available to do so), (ii) failure to follow policies, procedures, rules, regulations or curriculum duly adopted by the Board which are not in violation of the Contract, this Agreement, or law, or (iii) receipt by the Board of unsatisfactory reports from FBR or from an educational consultant retained by the Board about matters concerning FBR's performance or the performance of the staff which are not adequately corrected or explained.

B. Renewal/Termination/Expiration

1. **Renewal.** Unless written notice of intent to terminate or renegotiate is given by either party by March 15 of the 10th year of the Agreement or any subsequent March 15 if the Agreement has been renewed, this agreement shall automatically renew for an additional term of one year and from year to year, thereafter.
2. **Removal of personal property.** Upon termination of this Agreement, equipment and other assets acquired with Academy Revenue and owned by the Academy shall remain the exclusive property of the Academy. Equipment leased by the Academy shall remain subject to the interest of the Lessor/Owner.
3. **Future Advances/Out-of-Pocket Expenses.** Upon termination of this Agreement, for any reason, all future advances or out-of-pocket expenses paid by FBR shall be immediately repaid by the Academy unless otherwise agreed in writing by FBR.

- C. **Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, FBR shall provide the Academy reasonable assistance for up to 90 days to assist in the transition back to a regular school program.

ARTICLE VIII

INDEMNIFICATION

- A. **Indemnification.** Each party to this Agreement does hereby indemnify and hold harmless the other, and GVSU, and their respective board of directors, partners, officers, employees, agents, representatives, and attorneys from and against any and all claims, actions, damages, expenses, losses or rewards which arise out of (i) the negligence of the other party, (ii) any action taken or not taken by the other

party, or (iii) any noncompliance or breach by the other party of any terms, conditions, warranties, representations, or undertaking contained in or made pursuant to this Agreement. As used in this subsection, "party" shall include the party's trustees, directors, officers, employees, agents, representatives and attorneys. Such indemnification may be achieved by the joint purchase of general liability and property insurance policies, or by such other means as the parties may mutually agree.

ARTICLE IX

INSURANCE

- A. Insurance Coverage.** FBR shall obtain, on behalf of the Academy, insurance in the amount required by the Academy's contract with GVSU. The Academy, FBR, and when necessary, GVSU will be named as insured. In addition, the Academy shall maintain an umbrella liability policy of two million dollars (\$2,000,000.00) with FBR listed as an additional insured. The building and related capital facilities remain the responsibility of the FBR and the FBR shall cover its property with insurance. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. Each party shall comply with any information or reporting requirements required by other party's insurer(s), to the extent reasonably practicable.
- B. Workers' Compensation Insurance.** Each party shall maintain workers' compensation insurance as required by law, covering their respective employees.

ARTICLE X

WARRANTIES AND REPRESENTATIONS

- A. Academy Warranties and Representations.** The Academy represents that it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The Board warrants that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.
- B. FBR Warranties and Representations.** FBR warrants and represents that it is a corporation in good standing and is authorized to conduct business in the State of Michigan. FBR will comply with all registration and licensing requirements relating to conducting business under this Agreement. The Academy agrees to assist FBR in applying for such licenses and permits in obtaining such approvals and consents.
- C. Mutual Warranties.** The Academy and FBR mutually warrant to the other that there are no pending actions, claims, suits or proceedings, to its knowledge,

threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XI

MISCELLANEOUS

- A. Sole Agreement.** This Agreement supercedes and replaces any and all prior agreements and understandings between the Academy and FBR.
- B. Force Majeure.** Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement under Article VI if sufficient grounds exist as required by said Article VI.
- C. State Governing Law/Waiver of Jury Trial.** The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Michigan. FBR and the Academy hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either FBR or the Academy against the other.
- D. Agreement in Entirety.** This Agreement (including Attachments) constitutes the entire agreement of the parties.
- E. Official Notices.** All notices and other communications required by the terms of this Agreement shall be in writing and sent to the parties hereto at the facsimile number or address set forth below. Notice may be given by (i) facsimile with written evidence of confirmed receipt by the receiving party of the entire notice, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal or personal delivery if given by facsimile or personal delivery, or upon the date of postmark, if sent by certified or registered mail. The address of the parties hereto for the purposes aforesaid shall be:

THE ACADEMY:

Arbor Academy
55 Arbor Street
Battle Creek, MI 49015
Telephone: (269) 963-5851
Facsimile: (269) 964-2643

with a copy to:

Arbor Academy

School Board President

Telephone: _____

Facsimile: _____

FBR:

Foundation for Behavioral Resources

Attn: Dr. Ronald Hutchinson

600 South Lincoln Street

Augusta, MI 49012

Telephone: (269) 731-5775

Facsimile: (269) 731-5246

F. Assignment. FBR may assign this Agreement with the consent of the Academy Board.

G. Amendment. This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the Board and signed by both the President of the Academy's School Board and an authorized officer of FBR.

H. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

I. Cost and Expenses. If any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

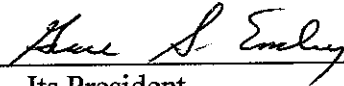
J. Delegation of Authority. Nothing in this Agreement shall be construed as delegating to FBR powers or authority of the Board which are not subject to delegation by the Board under Michigan law.

K. Compliance with Law. The parties to this Agreement agree to comply with all applicable laws and regulations.

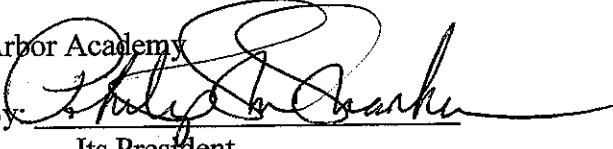
IN WITNESS WHEREOF, the undersigned have executed this Agreement

FBR

Date: April 24, 2008

By: 
Its President

Date: 4/24, 2008

Arbor Academy
By: 
Its President