

**KALAMAZOO COUNTY
EARLY/MIDDLE COLLEGE CONSORTIUM PROGRAM
CONTRACT**

In accordance with sections 1473, 1282, 601a, 627(1)(b), and 11a(3),(4) of the Revised School Code MCL 380.1 *et seq.*, and pursuant to approval given by the Michigan Department of Education, the Kalamazoo Regional Educational Service Agency ("Kalamazoo RESA") and participating constituent districts of Kalamazoo County as herein defined ("Constituent Districts"), referred to collectively as "Consortium Districts" , hereby establish the Kalamazoo County Early/Middle College Program Consortium.

This Agreement is entered into this _____ day of _____, 2014, by and between Kalamazoo RESA, [INSERT PARTICIPATING DISTRICT NAMES], and additional Consortium Districts as may be admitted in accordance with this Agreement which Parties and the MOU IHEs (defined herein) shall be referred to collectively and cooperatively for purposes of this Agreement as the "Consortium."

In consideration for their mutual promises and obligations under this Agreement, the Parties agree as follows:

1. Definitions. Capitalized terms in this Agreement shall have the following meanings for purposes of this Agreement.
 - a. "Consortium District" is defined to mean a Constituent District that is a Party to this Agreement.
 - b. "Constituent District" is defined to mean a local school district the territory of which is entirely within and is an integral part of the Kalamazoo RESA and, for purposes of this Agreement, includes a public school academy as defined in section 5(7) of the Revised School Code, the territory of which is entirely within, and is an integral part of the Kalamazoo RESA.
 - c. "Fiscal Agent" means the Kalamazoo RESA (or any successor Fiscal Agent) appointed and operating in accordance with this Agreement.
 - d. "MOU IHE" means an institution of higher education that enters into a Memorandum of Understanding with the Fiscal Agent in accordance with this Agreement.
 - e. "Operating Agency" is defined to mean a Consortium District, Kalamazoo RESA, or an MOU IHE that operates a Consortium-approved program pursuant to this Agreement, or any related MOU.
2. It is the purpose and intent of this Agreement to set forth certain terms and conditions to establish an Early/Middle College Program ("Program") for students of Consortium Districts to earn college credits by completing course work at Consortium District high schools, at area career and technical education programs, on the campuses of Kalamazoo Valley Community College ("KVCC") and/or other institutions of higher education ("IHE") as may be approved in accordance with this agreement, and through on-line learning environments, pursuant to the Kalamazoo County Early/Middle College Program application approved by the Michigan Department of Education on [INSERT APPROVAL DATE], the Memorandum of Understanding ("MOU") between Kalamazoo

RESA as Fiscal Agent for the Consortium and KVCC ("KVCC MOU"), and such other IHEs as may be approved in accordance with this Agreement. (A copy of the KVCC MOU is attached as Appendix A.)

3. This Agreement shall be in full force and effect as was approved by resolution of the Kalamazoo RESA Board of Education and the respective board of education of each Consortium District authorizing participation in this Consortium and execution of this Agreement, subject to the approval granted by the Michigan Department of Education for a Kalamazoo County Early/Middle College Program.
4. Kalamazoo RESA shall be Fiscal Agent of the Consortium. The Fiscal Agent shall be responsible for the fiscal, legal, and day-to-day administrative affairs of the Consortium and Program, and shall perform all such responsibilities as required by law or direction of the Executive Committee (defined in Article 5 of this Agreement) including, without limitation, to:
 - (a) Collect and disburse funds;
 - (b) Participate in identifying and securing funds, as may be available, on behalf of the Consortium;
 - (c) Prepare and implement budget and oversee Consortium finances;
 - (d) Maintain proper records of accounts;
 - (e) Ensure proper accounting;
 - (f) Calculate and credits costs among the Parties;
 - (g) Enter into contracts for goods and services for Consortium purposes, within budget limits and as authorized and approved by the Executive Committee; and
 - (g) Pay lawful bills from Consortium funds.
5. The Parties hereby establish an Early/Middle College Program Executive Committee ("Executive Committee") composed of the Superintendent (or Superintendent's designee) of each Consortium District and may include a representative of KVCC (and/or such other IHEs as may execute MOUs with Kalamazoo RESA as Fiscal Agent for the Consortium in accordance with this Agreement, hereinafter "MOU IHEs"). The Program Administrator shall serve as a non-voting member of the Executive Committee. The Kalamazoo RESA Superintendent shall preside at Executive Committee Meetings.

The Executive Committee will act as the principal policymaking body for the Consortium and the Early/Middle College Program and may establish bylaws, policies, guidelines, rules and regulations with reference to operating procedures for the Consortium and Program. The Executive Committee shall have oversight and direction over the establishment, administration and operation of the Consortium and Program, including responsibility to:

- a) Make recommendations to the Fiscal Agent and Operating Agencies with reference to budget. For purposes of this Agreement, the terms "Operating Agency" or "Operating Agencies" means one or more Parties or an MOU IHE that hosts and/or operates a Consortium-approved Early/Middle College program;
- b) Approve a balanced operating budget and any revised budgets for program administration;

- c) Make recommendations to the Fiscal Agent and Operating Agencies with reference to establishing rules and regulations as they apply to the Early/Middle College Consortium programs;
 - d) Evaluate programs;
 - e) Any other matters set forth in this Agreement; and
 - f) Additional matters agreed to by the Parties.
6. The Consortium is not a legal partnership and has no authority to contract in its own name or in any way, and no authority to act as an agent for, or to enter into any contract that would bind, any Party. Except as provided in Article 7 below in regard to contracts between Consortium Districts, the Kalamazoo RESA and/or an MOU IHE, no Party (including the Fiscal Agent) has the authority to enter into any contract that would bind (i.e., provide or permit direct legal recourse against), any other Party (including the Fiscal Agent). Legally binding transactions, expenditures, and obligations necessary for the operation of the Consortium may only be entered into by the Fiscal Agent.
7. One or more Consortium District may act in an individual capacity (not representative of, or binding upon, any other Party) to contract on an as-needed basis with Kalamazoo RESA or KVCC (or another MOU IHE) to provide programs, facilities, or services (including personnel).

In administering the Early/Middle College Program, Kalamazoo RESA, as Fiscal Agent, shall employ, in consultation with the Executive Committee, a Program Administrator of the Early/Middle College Program, who shall be responsible to:

- a) Develop a budget for program administration based upon recommendations of the Executive Committee;
 - b) Make recommendations for capital improvements and equipment;
 - c) Implement the budget and programs, as approved by the Executive Committee;
 - d) Arrange for necessary supplies and equipment;
 - e) Serve as liaison between the Fiscal Agent, the Consortium Districts, Operating Agencies, and KVCC and/or other MOU IHEs for Program development and implementation;
 - f) Be available for consultation regarding program personnel selection;
 - g) Implement rules and regulations for Early Middle/College Consortium programs;
 - h) Comply with all state and federal guidelines; and
 - i) Perform all duties necessary to create and sustain a successful program.
8. The Parties also agree that each Party or MOU IHE operating one or more

Consortium-approved Early/Middle College Consortium programs, shall be responsible, as the Operating Agency, to:

- a) Hire post-secondary approved teaching personnel, for whom the hiring Operating Agency shall be the employer of record.
 - b) Provide utilities and custodial services.
 - c) Maintain and improve facilities.
 - d) Record daily attendance when required.
 - e) Keep records on student achievement.
 - f) Provide student policies and discipline.
 - g) Request and disperse supplies.
9. Pursuant to separately executed MOUs, KVCC and other MOU IHEs will give college credit to eligible and enrolled students upon the successful completion of courses for which Programs of Study have been evaluated and approved utilizing various delivery models. (See MOUs, attached hereto as Appendix A).
10. A student participating in the Kalamazoo County Early/Middle College Consortium Program will be subject to the policies, rules, code of student conduct, and regulations of the respective Operating Agency at which the student is in attendance, during the times that the student is in attendance at an Early/Middle College Consortium program. The building principal (or appropriate Administrator) of an Operating Agency shall have the authority to discipline, suspend, or remove a student in attendance at the Operating Agency's Early/Middle College program. The reasons for, and the procedure to be followed for, the disciplining, suspension, or removal of a student from the Operating Agency's program shall be the same as those used for all the students enrolled in the same Operating Agency.
11. Each Consortium District shall be allocated a number of student positions, as agreed upon by the Executive Committee, for each Consortium-approved program. Students enrolled in Consortium Districts will receive preference for enrollment over students enrolled in any non-consortium districts. If there are unassigned student positions, students enrolled in a non-consortium school district located within the geographic boundaries of Kalamazoo RESA will have an opportunity to fill the position on a first come, first serve basis by enrolling through a Consortium District.

The Executive Committee will determine the minimum number of student positions required for each Consortium-approved program to operate on a fiscally viable basis. Once the required minimum number of student positions per Consortium-approved program has been determined by the Executive Committee, no Consortium-approved program will be established to operate with fewer than the required minimum student positions unless the Consortium Districts that desire to participate in the program agree by unanimous decision of their respective Superintendents to be responsible for the cost of providing the program. A minimum number of student positions per Consortium-approved program shall be established by the Executive Committee by the

third week of April in the year prior to offering the program. By the first week of May, the Executive Committee will approve the scope of Consortium operations for the subsequent school year, make recommendations to the Fiscal Agent and Operating Agencies, as appropriate, and approve the budget. Following this determination, each Consortium District will be financially responsible for its share of program cost as outlined in this Agreement. After the scope of Consortium operations has been approved and a Consortium District enrolls fewer students than the total number of assigned student positions in Consortium programs, the Consortium District will not be financially responsible for any unfilled student position(s) if another Consortium District has enrolled students to fill such vacant position(s).

12. Each Consortium District's financial obligation for Consortium operations shall be as set forth in Appendix B.

a) Each Consortium District shall be responsible to ensure that its respective participating students meet the eligibility requirements, as may be amended from time to time, to participate in the Consortium Program and for the Consortium District to count the pupil in membership to receive funding under the State School Aid Act for a fifth (grade 13) year of high school as an early/middle college pupil (not to be confused with the eligibility requirements for a fifth year senior). Each respective Consortium District shall be solely responsible for any deductions in State Aid resulting from its loss of pupil membership for failure to meet the eligibility requirements to count an early/middle college pupil in membership.

b) The Consortium District in which a Participating Student with a disability is a resident shall be responsible for the provision and added cost of programs and services as necessary to allow that Participating Student to participate in the Consortium Program consistent with the requirements of that Participating Student's Individualized Education Program (IEP) and in accordance with the Kalamazoo RESA Special Education Plan. The Consortium District may satisfy this responsibility in either of the following ways or a combination thereof: (i) operating the special education program or service; or (b) contracting with the Kalamazoo RESA or another Consortium District for delivery of the special education programs or services. However, nothing in this provision is intended nor shall be construed to relieve an Operating Agency of any separate obligations under controlling law to a student with a disability enrolled in a program operated by that Operating Agency, including without limitation Section 504 of the Rehabilitation Act of 1973 or under the Americans with Disabilities Act (ADA).

13. The provisions of this Agreement may not be added to, amended or modified except upon the express written approval of all Parties to this Agreement. Any modification to this Agreement shall be filed with the Michigan Department of Education, Office of Career and Technical Education (or successor).

14. Contract Duration and Termination Clause. This Contract, subject to the rights of amendment, modification or termination, shall be in full force and effect until June 30, _____. Should a majority of the Parties to this Consortium Agreement wish to terminate the Consortium and Early/Middle College Consortium Program, written notice of intent to terminate shall be provided by each Party wishing to terminate to each of the other

Parties and the MOU IHEs. After notification, each Party shall continue a one (1) full school year period of participation in and operation of the Early/Middle College Consortium programs to allow for an orderly transition both in the area Early/Middle College programs and the other non-Early/College programming offered at each Operating Agency. Should expiration of a one (1) year time period fall during the course of the academic year, the agreement shall be extended to the end of the current academic year; that is, June 30th.

15. Insurance and Indemnity.

- a) Mutual Indemnification and Insurance. Each Party (whether acting as Consortium District, Operating Agency, or Fiscal Agent) shall be solely and entirely responsible for acts or omissions attributable to it or its officers, employees, agents, or subcontractors during the performance of this Agreement. To the extent permitted by law, each Party (whether acting as Consortium District, , Operating Agency, or Fiscal Agent) shall hold harmless and indemnify the other Parties (whether those other Parties are acting as Consortium Districts, Operating Agencies, or Fiscal Agent) from any claim, suit, damage, or cause of action, including the defense thereof, resulting or due to any action or inaction by the indemnifying Party, or its officers, employees, agents or subcontractors in respect of the Consortium, Consortium Program, Consortium-approved programs, or this Agreement. Each Party shall acquire and maintain at its own expense (whether as Consortium District, Operating Agency, or Fiscal Agent) such types and amounts of insurance coverages as required by the Executive Committee, in consultation with the Fiscal Agent's insurance provider, and as may be amended from time to time. Each Party (whether acting as Consortium District, Operating Agency, or Fiscal Agent) shall name all other Parties (their respective governing boards, officers, employees and agents) as additional insureds.
- b) Proof of Insurance. Any Party: (i) may require proof of insurance in the form of certificates of insurance, including sufficient notification to all Parties for material changes in coverage and naming Parties as additional insureds, and (ii) may require the opportunity to review the actual insurance policies.
- c) Expiration of Indemnity. The indemnity obligations of this Agreement shall expire on the last day of the fiscal year that this Agreement is in effect and shall have no effect beyond that date for any claims, whether or not asserted during the term or after the expiration of this Agreement, for damages or other relief occurring after the last day of said fiscal year. Provided, however, that any liabilities known and accrued prior to the expiration of this Agreement shall first be satisfied out of Consortium funds before any disbursement thereof.
- d) The foregoing provisions are not intended and shall not be construed as a relinquishment or waiver of any kind, by any Party, of immunity from liability under Section 7 of the Governmental Liability for Negligence Act, being Act No. 170, Public Acts of Michigan, 1964. Further, it is understood and agreed that the Parties

reserve, and expressly do not waive, any immunities, defenses, and rights as provided by Michigan and federal law, and nothing in this Agreement shall be construed to diminish those immunities, defenses, and rights.

16. Alternative Dispute Resolution. The Parties agree to act promptly and in good faith to mutually resolve any disputes that may arise concerning any alleged breach of this Agreement, or arising out of or relating to the interpretation of this Agreement or any Party's performance of its respective obligations under this Agreement. Any disputes that the Parties are not able to resolve within thirty (30) business days after one Party provides another Party with a written notice of dispute or breach shall be submitted to the Executive Committee for consideration. Any disputes that are not able to be resolved within sixty (60) business days after submission to the Executive Committee shall be submitted to binding arbitration under the rules of the American Arbitration Association (AAA), which will be the sole and exclusive remedy for such matters. This provision does not restrict any Part's ability to withdraw from the Consortium in accordance with any applicable provision hereof.

Unless the Parties agree upon a single arbitrator, the arbitration panel shall consist of three persons, with each party selecting one arbitrator (or the Executive Committee selecting 2 arbitrators in a multi-party dispute) and the two arbitrators selecting the third arbitrator. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, and at a location mutually agreeable to the Parties, with such variations as the Parties and arbitrator(s) unanimously accept. A judgment on the award rendered by the arbitrator(s) may be entered in any court having appropriate jurisdiction. The losing Party(ies) shall pay the cost of arbitration, not including attorney fees. The arbitrator(s) shall have the discretion to award reasonable attorney's fees to the prevailing Party(ies) to be paid by the losing Party(ies).

17. Additional Parties.

- a) Admission of New Parties. A Constituent District (as defined for purposes of this Agreement),, may be admitted to membership in the Consortium and as a Party to this Agreement by action of the Executive Committee and execution of an Addendum to this Agreement. A new Party admitted pursuant to this Article shall be required to contribute to the operating, capital outlay and start-up costs of the Consortium and Consortium-approved programs as determined by the Executive Committee.
- b) Limited Effects of Withdrawal. No resignation or withdrawal by a Party shall operate to annul this Agreement during its term, terminate the existence of the Consortium, or relieve the withdrawing Party from its obligation (as Consortium District, Operating Agency or Fiscal Agent) to abide by the terms of this Agreement unless otherwise agreed upon by all the Parties; provided however, that by action of the Executive Committee, a Party may temporarily discontinue its participation in the Consortium Program for a period not to exceed twelve (12) months.
- c) Unilateral Withdrawal. A Party may unilaterally withdraw from its participation in the Consortium by giving written notice to the Executive Committee prior to the March 31st preceding the next school year. Participation shall only be withdrawn effective at the end of a school year and shall not be effective (without the written consent of the Executive Committee) at any other time of the school year. In the event of unilateral withdrawal by a Party during the term of this Agreement (without the

written consent of the Executive Committee), the Party shall forfeit any right it may possess, under this Agreement or otherwise, to distribution of Consortium assets or funds. Those assets or funds shall then revert to the Consortium. Unilateral withdrawal of participation, during the term of this Agreement, shall not relieve the withdrawing Party from its obligations under this Agreement, including but not limited to:

- (i) The obligation, if any, to continue to assign its employees to Consortium-approved programs to the end of the school year, or such other date as may be agreed upon by the Executive Committee;
 - (ii) The continuation of enrollment of its students in the Consortium Program to the end of the school year, or such other date as may be agreed upon by the Executive Committee;
 - (iii) Unpaid payments due under this Agreement for past or current fiscal years.
- d) Withdrawal at Expiration. In the event of withdrawal of a Party at the expiration of this Agreement, the withdrawing and remaining Parties shall within thirty (30) days attempt to resolve their respective remaining rights and obligations. If agreement by all remaining Parties and the withdrawing Party(ies) is not reached at the expiration of the above interval, any Party may refer the matter to the Dispute Resolution procedures identified in Article 16 of this Agreement.

18. Miscellaneous.

- a) Governing Law. This Contract and all policies, rules, and regulations adopted by the Parties to govern the operation of the Early/Middle College Consortium Program shall comply with the laws of the State of Michigan, applicable federal law, and with applicable rules and regulations of the State Board of Education ("Applicable Law"). This Agreement shall be governed by and enforced in accordance with the laws of the State of Michigan.
- b) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision(s) of this Agreement. If any provision of this Agreement shall be or become in violation of any local, state or federal law, such provision shall be considered null and void and the remainder of this Agreement shall remain in full force and effect.
- c) Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart so executed shall be deemed an original, but all such counterparts taken together constitute one and the same instrument.
- d) No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Parties. Except as otherwise provided, nothing in this Agreement shall create or be deemed to create a relationship between the Parties hereto, or any of them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.
- e) Notices. All notices, bills, or other communications to a Party (whether acting as Consortium District, Operating Agency, or Fiscal Agent), required or permitted

under this Agreement, shall be in writing and shall be deemed to be duly given: (a) on the day of service if personally served; (b) on the day of confirmed facsimile delivery, if facsimile numbers are provided by that Party; (c) on the day after deliver to the United States Postal Service for regular mail service, or to a courier service, to the attention of the Party's Superintendent and/or Board of Education as applicable, at its address as listed alongside its signatory line at the end of this Agreement. A Party may change its address(es) by notice in this same manner. Notice to the Consortium shall be to the Fiscal Agent, and the Fiscal Agent shall as necessary promptly transmit such notice to Parties and MOU IHEs.

- f) Non-Discrimination. All Parties shall comply with applicable law prohibiting discrimination and, in accordance therewith, no unlawful discriminating practices based on gender/sex, sexual orientation, race, religion, height, weight, color, age, national origin, disability, or any other status covered by federal, state, or local law shall be allowed during any Consortium activity, service, or in employment. Any contract for the Consortium, or by the Fiscal Agent, in connection with the performance of this Agreement, shall contain the non-discrimination covenant which is required to be included in such contracts, according to the laws of the State of Michigan.
- g) Successors and Assigns. No Party may assign or transfer any of its rights under this Agreement, in whole or in part, without prior written notice to, and the prior written consent of, the Executive Committee. This Agreement shall inure to the benefit and shall be binding upon the successors and permitted assigns of the Parties.
- h) Non-Waiver. Failure by any Party at any time to require performance by another Party or to claim breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Agreement, nor prejudice either Party with regard to any subsequent action to enforce the terms of this Agreement.
- i) Construction. This Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party(ies) prepared the Agreement.
- j) Force Majeure. If any circumstances occur which are beyond the control of the Parties, which delay or render impossible the obligations of one or more of the Parties, the Party(ies)'s obligations to perform shall be postponed for an equivalent period of time or shall be cancelled, if such performance has been rendered impossible by such circumstances.

The Kalamazoo County Early/Middle College Program Agreement was approved by the Boards of Education as follows:

[INSERT PARTICIPATING DISTRICT NAMES]

SIGNATURE PAGE

KALAMAZOO RESA

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary

[INSERT DISTRICT NAME]

Date: _____

Board President

Board Secretary